



Raising the Bar

The newsletter of the
Young Lawyers Committee

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Committee Leadership



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In This Issue

Featured Article

An Inside Glimpse of Seminar Marketing..... 2

Articles of Note

The New Frontier
Battery by Tweet 3

Five Steps to Success
A Former Criminal Practitioner’s Guide to Succeeding in
Civil Litigation..... 5

Leadership Note

The Chair’s Corner
2018 DRI Annual Meeting—San Francisco, October 17–21 6

DRI Young Lawyers Member Spotlight
John “Jack” M. Gray III 7

Membership Minute
Recruiting: What’s in It for You? (HINT: \$\$\$) 8

Timeout for Wellness
Friendly Bacteria 9

News & Announcements
Liam Felsen Achieves Defense Verdict in Complex Regional
Pain Syndrome Trial..... 10
And The Defense Wins 10

Featured Article

An Inside Glimpse of Seminar Marketing

By Brad Robinson and Catherine Ava Kopiec



Brad Robinson, Co-Chair of Marketing:

This was my third year working on the Marketing Subcommittee, and sadly, my last year in Young Lawyers. Effectively marketing a seminar like this requires huge efforts from a ton of different people and groups. Looking back, I think this was the perfect way to close out a way-too-short YL career. Last year I served as the Vice Chair of the Marketing Subcommittee and, although I worked hard and was given an array of assignments, I didn't appreciate the complexity and the amount of moving pieces involved in the marketing effort until it was my turn to pull those strings.

Fortunately, I had a great co-chair, Suzanne Whitehead, great vice-chairs, and last year's fantastic co-chair, Brett Tarver, on whom I relied. There is no way we could accomplish everything we did without their hard work. We also collaborated with a number of other subcommittees. For instance, we worked with State and Local Defense Organizations and Substantive Law to organize Young Lawyer representatives in every state and in every substantive law committee throughout DRI. With their help, we were able to host happy hours throughout the country to market our seminar and reach out to hundreds of young lawyers who may not have been familiar with DRI Young Lawyers or the seminar. We also utilized multiple email blasts and phone trees to individually reach out to potential seminar attendees. Specifically, we contacted three groups: young lawyers who had an unused free seminar certificate, seminar attendees from the past three years, and YL members who were not yet registered for the seminar. By focusing our efforts on all three groups we cast the widest possible net, and the returns demonstrated that the efforts were well worth the time. Each steering committee member was given phone tree assignments, regardless of which they were assigned, in order to give everyone a sense of ownership for the number of people who ultimately attended the seminar. We also worked closely with the Social Media and Communities subcommittees to keep the seminar in the front of people's minds, and posts included photos from happy hours, local trivia, seminar speaker bios, and past-attendees' favorite moments from previous seminars.

Being on the marketing committee can require a significant time commitment, but the reward is worth

every moment. I can't think of another committee where you get to interact with more of your peers and develop the relationships that motivated most of us to join YL in the first place. I am extremely proud of the job we did marketing the Portland seminar, of our team's efforts, and those efforts of the other subcommittees whose work was integral in bringing this all together. Best of luck to all of you in planning Young Lawyers 2019.

Catherine Ava Kopiec, Co-Vice Chair of Marketing:



This is my first year working on the marketing committee, and it was an extremely rewarding and engaging experience. I am really proud of our efforts and I think we had an excellent turnout (even though due to a last minute dropout we were only one attendee shy of this year's goal of 180). It was a huge accomplishment to get so many young lawyers out to Portland from all across North America!

This year our activities to market the YL Seminar ranged from happy hours all across the country, comprehensive social media outreach, and reaching out directly to previous seminar attendees. We also took time to remind young lawyers (who had not done so already) that the seminar in Portland would be a great way to use the free seminar certificate they received when they first joined DRI. I personally hosted a happy hour in Columbia, SC and called and emailed potential seminar attendees. We had a lot of help from the YL Steering Committee in personally reaching out to other young lawyers to get the word out—we couldn't have done it without you! We also coordinated with local and state defense groups to co-market the seminar, which was a huge help in spreading the word to a much larger audience. Our State and Local Defense Organizations Committee was integral in helping members plan events and happy hours to reach out to potential attendees.

The most important thing I learned this year is to start with a solid plan and implement it as early as possible. Even something as seemingly small as trivia posts to get people excited about the seminar can take a lot of time to plan! Marketing had an abundance of help from other

subcommittees, but it is up to us to really generate the action items and the plan to get things in motion. Having a plan early on and being ready to execute makes all the difference. I made a plan to dedicate some weekend time to YL marketing (partly because I was procrastinating on less fun, actual work) and it felt great to have things set in motion and to have a designated strategy to share with all the other subcommittees within YL that help us to promote the seminar. It takes hard work and a lot of diligence and follow-up, but it's a great feeling when someone who you've emailed with about the seminar comes up to you as a first time attendee and expresses to you how glad they are to have attended. It makes all the work worth it, and I hope to be a part of the marketing efforts for YL 2019!

Brad Robinson is a senior attorney with *Hartline Dacus Barger Dreyer* in Dallas. Brad grew up in Dallas and attended the University of Texas at Austin and Baylor Law School. His practice focuses on products liability,

premises liability, and employer liability cases, involving catastrophic injuries and death. He currently serves as national and regional counsel for a number of product manufacturers and sellers. Throughout his career, Brad has defended commercial litigation matters involving claims of fraud, embezzlement, breach of contract, and property damage. Currently, Brad serves as the National Marketing Co-Chair for the Defense Research Institute's (DRI) Young Lawyers Committee.

Catherine Ava Kopiec practices in the Columbia, South Carolina, office of *Rogers Townsend and Thomas, PC*. Ms. Kopiec focuses her practice in the areas of construction litigation, products liability and insurance defense. She is a 2012 graduate of the University of South Carolina School of Law and earned her undergraduate degree at the University of North Carolina at Chapel Hill. Active in professional and community organizations, Ms. Kopiec serves on the Young Lawyers Steering Committee for DRI as the Vice Chair of Marketing and is also the SC Membership Chair for DRI.

Articles of Note

The New Frontier Battery by Tweet

By **Laura Emmett**



In a case of first impression, *Eichenwald v. Rivello*, No. JKB-17-1124, 2018 WL 2462874 (D. Md. May 31, 2018), a federal district court allowed an individual's tort claim for battery to move forward—surviving a motion to dismiss—

where the mechanism of injury was through the social media platform, Twitter. The Plaintiff filed a civil claim with four causes of action, including one count for battery arising out of a tweet he received which caused him to suffer a seizure. *Id.* In this particular case it was not the words which constituted the physical contact necessary to support a claim of battery but the embedded Graphic Interchange Format (“GIF”) that contained “an animated strobe image flashing at rapid speed.” *Id.* at *2.

The plaintiff is a well-known journalist and author who has written for *Newsweek*, *Vanity Fair*, and the *New York Times*. *Id.* *1. He is also an active Twitter user, having posted over 50,000 tweets. *Id.* Of significance, Plaintiff suffers from epilepsy which he has shared publicly. *Id.*

During the 2016 presidential election, the Plaintiff was critical of then-candidate Donald J. Trump, both in published writings and on Twitter. *Id.* As a result, he encountered numerous threats and messages via the internet which he documented in an article published in *Newsweek* in October 2016. *Id.* In this article, Plaintiff specifically discussed one attack by a Twitter user who sent him an epileptogenic—or seizure triggering—video. *Id.* Plaintiff did not suffer a seizure in this attack as he dropped his iPad immediately after opening the video. *Id.*

Two months later, Plaintiff alleges the defendant replied to one of Plaintiff's tweets with a GIF that contained an animated strobe image flashing at a rapid speed and the message YOU DESERVE A SEIZURE FOR YOUR POSTS.” When Plaintiff clicked on his notifications, the GIF automatically loaded, played, and triggered a seizure. *Id.* at *2. Plaintiff alleged in his Complaint that the defendant committed battery when he intentionally sent a GIF to

Plaintiff knowing its physical properties would cause a seizure thereby harming him *Id.* at *5.

Under Texas law, “a battery is the intentional, knowing, or reckless causing of a bodily injury, or intentionally or knowingly causing ‘physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.’” *Id.* (quoting Tex. Pen. Code Ann. §22.01(a)(1), (3)). An essential element of battery is physical contact; however, the physical contact does not have to be direct. *Id.* (internal citations omitted). “So, in order for a battery to occur, there must be some physical contact between something and the plaintiff or something attached to the plaintiff.” *Id.* at *5.

Defendant filed a Motion to Dismiss the battery count on the basis that the complaint does not allege any physical contact between the plaintiff and the defendant. *Id.* at *6. Plaintiff alleged in his Complaint that the light waves emitted from the GIF touched Plaintiff’s retina, generated an electric signal, and caused a seizure. *Id.* In its analysis, the court pointed to examples of other courts finding second-hand smoke and a loud noise over the phone sufficient to constitute a battery. *Id.* The court opined that if the facts in the Complaint are taken as true—as is required in considering a Motion to Dismiss—that the Defendant converted a mode of communication into a weapon to inflict physical injury on the Plaintiff. *Id.* The court made clear that it was not the words or pictures contained within the communication but the physical nature of the light emitted from the GIF which was the physical tool used to touch the Plaintiff

and cause physical harm. *Id.* In denying Defendant’s Motion to Dismiss, the court found that the complaint sufficiently alleged a battery with the light waves emitted from the GIF sufficient to constitute physical contact with Plaintiff through his eyes. *Id.*

While the case is novel, it is not surprising given the deliberate nature of the tweet. There are many instances where twitter users harass or threaten others without regard for the impact that a tweet can have. In this case, the physical properties of the tweet took it beyond the normal bounds of harassment. While this is only one district court’s ruling, this case paves the way for other courts to further expand the bounds of traditional torts. At the end of the day, we, as lawyers, need to be prepared to respond to the continuously evolving challenges the internet and social media present to previously held notions. It’s not just the 280 characters we have to watch out for anymore.

Laura Emmett is a lawyer at Strigberger Brown Armstrong LLP in Ontario, Canada. She has a diverse practice where she focuses on bodily injury claims, product liability, cyber liability, privacy law and drone liability. She has appeared in all levels of the Court in Ontario as well as before various administrative tribunals. Laura is the President of the Canadian Defence Lawyers and actively involved in the DRI where she is the State Representative for Canada. She also serves as a member of the DRI Young Lawyers Steering Committee and International Committee.

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Five Steps to Success

A Former Criminal Practitioner's Guide to Succeeding in Civil Litigation

By Gayatri R. Deodhar



As a former criminal defense attorney, the transition from the life of a public defender to that of an associate in a law firm was daunting to say the least. So, imagine my surprise when I realized that many of the skills I had honed as

a criminal defense attorney representing indigent clients could translate into my new line of work. What follows are my tips and tricks to succeed in civil litigation—like a public defender!

Think Defensively

I know this seems obvious—after all, what else would a defense attorney do? But, thinking defensively does not begin when it is time to prepare for trial or a deposition. It starts the second you receive the complaint. As a public defender, the first thing I would do when I received a new case was to analyze the police report and/or grand jury testimony I had received to determine if any part of the evidence could be thrown out. I literally have had life felonies dismissed because the police messed up in collecting evidence and taking a statement from my client, or because there was no probable cause to charge my client with a crime in the first place. While a complaint is not drafted by a cop (we hope), plaintiffs' attorneys mess up, too. So, take a closer look at that complaint. What are the elements of each cause of action? Have those elements been met in the complaint? Have they brought a complaint against the correct party? Has the matter been brought in the appropriate forum? Start the analysis now, and you will save yourself a world of headaches later.

Investigate ASAP

As a public defender, if I knew that there were text messages or surveillance videos floating out there that could help my client, I needed to do everything I could to make sure those items did not get lost or deleted. Similarly, if I knew a helpful witness was out there and willing to talk, I needed to get my investigator out there as quickly as possible to speak with him or her. In criminal law, the longer you wait to gather favorable evidence, the higher the chances that that evidence will be gone forever. The same goes for civil litigation. It is important, then, when you first start analyzing a case, to visit the scene. Take

pictures. Talk to witnesses. Ask those witnesses if they know of other witnesses. Ask for surveillance videos. The more information you can gather up front, the more control you have over the case as time goes on.

Talk To Your Client

Sure, civil litigation does not carry the same consequences that criminal law does. No one is going to jail for years, or possibly the rest of their life. No one is losing custody of their children. No one is losing their housing. But, just because your client is not losing or risking those things, it doesn't mean that these cases matter any less. As a public defender, we were required to meet with our new, incarcerated clients within three days of being appointed to represent them. After that, it was our job to keep them updated at regular intervals about their cases. I have seen many attorneys being fired in spectacular fashion in court because their client—rightfully so—did not appreciate being ignored. Don't be that attorney. You might think that "all" that is at stake is money; however, your client may be a small business owner or someone with absolutely no experience in the legal system. To clients like this, "losing" their case is a really, really big deal, and there is nothing that frustrates them more than feeling like they are being kept in the dark. As a lawyer, you cannot keep your head buried in your file and forget that there is another, likely very worried, human being involved in your case. Talk to them. Keep them updated on what is going on. Remember: a knowledgeable client is a happy client.

Develop Your Story

Anyone who has practiced criminal law will tell you that it is a study in human behavior. Whether you are a district attorney or a defense attorney, you see the best, and the worst, in people. As a public defender, then, from almost the very first day, you are trying to develop a story in support of your client by asking yourself several questions: How do the people involved know each other? Was there any bad blood between them? What would compel the alleged victim to make an accusation like this against your client? Similarly, when you have an individual defendant in a civil matter, with every new piece of information you receive, start thinking about what your "story" is going

to be. Why would that thirty-something, unemployed but physically capable plaintiff be claiming that he suffered horrendous, permanent injuries after a slip and fall in your client's store? Why would the plaintiff, who injured herself while shopping with her highly litigious friend, now be bringing suit? At trial, no jury wants to hear you recite the facts with no creative context behind them. Make things more interesting for them—and you—and tell a story.

Stay Realistic

The most successful criminal defense attorneys are the ones who are realistic with their clients. Everyone *wants* to hear that they have a 100 percent, no problems here, winnable case. But, a client definitely does not want to hear that they had a 100 percent, no problems here, winnable case ... after they have lost. If you get a piece of bad information, or you come across some bad case law, don't hide it from your client, hoping it will all just go away. Take it from me—it won't. Your client will appreciate it far more if you tell them about the pitfalls in their case, and about how you can try and defend against them. This is especially true

in civil litigation, when so many cases settle short of trial. A client is in a far better position to discuss settlement if they know exactly how their case stands, good or bad. Stay realistic with your client, and you will have a client for life.

Conclusion

Whether civil litigation with a firm is your first job out of law school, or, like me, you have made a transition from a different type of law, there is no doubt that civil work can be challenging. But, if you utilize the steps above, not only will your cases be easier to handle, but you might also have some fun along the way. Happy litigating!

Gayatri R. Deodhar is an associate with *Litchfield Cavo LLP* in Lynnfield, Massachusetts. She previously worked as a staff attorney for the Committee for Public Counsel Services in Massachusetts, representing indigent clients in criminal matters in the District and Superior Courts. She is the Co-Chair of Membership for the Young Lawyers Steering Committee, and can be reached at deodhar@litchfieldcavo.com.

Leadership Note

The Chair's Corner

2018 DRI Annual Meeting—San Francisco, October 17–21

By Joshua C. Webb



Greetings, friends—this will be my last column as Chair of the Young Lawyers Committee ...

... but do not despair. I hope that by now you have learned—whether from me or other members of the DRI Young Lawyers

Committee—that the true value of your DRI membership is in the relationships that you build with your colleagues and friends. Over the past decade of my involvement in DRI, my experience and advice to you can be reduced to that simple truism.

So, it is perhaps fitting that I can write to you about the DRI Annual Meeting in this column. Registering for the Annual Meeting is easy, just [click here](#)—and if you do it before September 19, you will save \$200 (you can thank me in San Francisco).

More importantly, I want to emphasize the Annual Meeting as an opportunity for you to forge your DRI relationships. Yes, you can attend the mainstage presentations with world-class speakers like Dr. Condoleezza Rice and Valerie Jarrett. And you must be present for our committee programming and business meeting (Thursday, October 18) where we will be treated to a practice management presentation from two DRI YL all-stars, Stephanie Wurdock and Greg Pottorff, on managing decision making, stress, and ethical obligations. But for every one item of interest that is included in the official schedule of events at the Annual Meeting, let me assure you that there will be many more opportunities to be connect with your friends (old and new) and enjoy the opportunity to build your relationships.

If I can encourage you to invest your resources in DRI, the Annual Meeting gives you a bang for the buck like no other event. Be sure to take a look at the event materials, and feel free to contact me with any questions—we will be adding some events specifically for Young Lawyers in the weeks leading up to San Francisco, and will hope to see you there!

Joshua C. Webb is the chair of the DRI Young Lawyers Committee. He is a commercial litigator and trial lawyer, and

a shareholder of Hill Ward Henderson in Tampa, Florida. His litigation practice includes defending and prosecuting a wide variety of business disputes in state and federal courts throughout Florida, and sometimes in other jurisdictions. Most notably, Josh dedicates a significant part of his practice to representing other lawyers and law firms in professional liability matters, and he is also a member of the DRI Professional Liability steering committee.

DRI Young Lawyers Member Spotlight

John “Jack” M. Gray III



John “Jack” M. Gray III is an associate at Smith, Spires, Peddy, P.C., in Birmingham, Alabama. In his practice, Jack handles trucking litigation, premises liability, construction defect litigation, products liability, commercial litigation, insurance coverage, workers’ compensation, and general personal injury defense.

Jack graduated cum laude from Washington and Lee University in Lexington, Virginia. After college, he taught for three years through Teach for America in the Atlanta Public Schools. Jack taught high school Spanish at The New Schools at Carver in inner-city Atlanta. After TFA, Jack went to law school, graduating cum laude from Cumberland School of Law at Samford University in Birmingham. At Cumberland, Jack was a Senior Associate Editor of the American Journal of Trial Advocacy and a member of the Moot Court team.

How and why did you first get involved with DRI?

The senior lawyers at my firm encouraged me to join DRI in order to meet and network with other lawyers around the country. I hope to be able to use other DRI members as resources in the future and to expand my knowledge-base and practice areas.

What DRI committees (other than Young Lawyers) are you most interested in, and why?

Retail and Hospitality due to the fact that a lot of my practice is devoted to premises liability claims. I’m also interested in the Litigation Skills committee in order to hone my trial skills and see new and interesting approaches or strategies

to handling certain issues that always come up in many of my cases.

What is your favorite part about being a lawyer?

No day is the same! One day I may be inspecting a tractor trailer all day in the Alabama summer with an expert only to be deposing a witness or plaintiff the next day in an air-conditioned office. I can’t think of a time that I’ve gone a week without leaving the confines of my office to do something different.

When you are not practicing law, what do you enjoy doing?

I have a two-year old boy and a baby girl due in late September, so most of my time is spent chasing a toddler or getting ready for the new baby. I like to make time a few times a year to go to the beautiful Alabama gulf coast.

What has been your biggest success in your legal career thus far?

I got a defense verdict in my first solo jury trial a few years back in a particularly challenging premises liability case with some serious injuries. I don’t think my heart ever beat as fast as when I heard the jury knock with a verdict.

What is most important piece of advice you have been given related to practicing law?

Be trustworthy and honest with the other side. It takes your whole career to develop your reputation, but it can be lost

in an instant. Also, pick up the phone and call people. Don't primarily rely on emails, letters, or text messages!

What is the greatest sporting event you've ever been to?

The 2012 BCS National Championship game between Alabama and LSU in New Orleans. It was great to see Alabama beat LSU in New Orleans after losing to them in the regular season.

What was your very first job?

I was a camp counselor at Alpine Camp for Boys in Mentone, Alabama for 11 weeks one summer in college. I took care of a cabin full of 15- and 16 year-old boys, taking two trips for a week each on the Appalachian Trail with the boys in my cabin. It was one of the most fulfilling and challenging jobs I ever had.

What is a hidden talent you have that no one knows?

I am a classically trained opera singer. Unfortunately, I don't get to sing very often anymore unless it's Wheels on the Bus or Twinkle, Twinkle, Little Star.

Membership Minute

Recruiting: What's in It for You? (HINT: \$\$\$)

By Stephanie M. Wurdock



You're probably sick of hearing me talk about recruiting and rightfully so. I talk about it a lot.

But here's why— I am trying to help you earn money.

Specifically, I am trying to help you earn *hundreds* of dollars.

Yes. You read that correctly. . . .

For each person you recruit to join DRI, **you earn \$100** toward the registration fee for any DRI seminar.

PLUS, the person who recruits the most new members between June 25 and October 12 will receive an *extra* **\$100** CLE credit *and* a **\$100 gift card** to San Francisco-based company, Lyft.

You can *easily* win these prizes by recruiting just two or three people to join DRI.

To qualify, you *must* ensure that your "recruit" properly completes the referral section of the DRI application. Your recruit *must* write your name and "Young Lawyers Committee" or "YLC" on the "referral" portion of the application.

Your recruits do NOT have to be young lawyers; they simply have to indicate that they were *recruited by you on behalf of the YLC*.

So get out there, get recruiting, and start making that money.

Stephanie M. Wurdock is an associate healthcare litigation attorney at Sturgill, Turner, Barker & Moloney, PLLC in Lexington, Kentucky. She is the Co-Chair of the Membership for the Young Lawyers Committee and can be reached at swurdock@sturgillturner.com.

Friendly Bacteria

By Tracy J. Frazier



We like to think of our brain as the captain running the show from its perch above. But, more and more research is showing that the bacteria in our gut have a profound impact on many neurological functions and other systems in our bodies. The trillions of bacteria that form our gut microbiome (gut microbes outnumber other cells in our bodies ten to one) also directly communicate with our brain and nervous system. Depression, insomnia, and other conditions are now linked to gut health.

Because the practice of law is inherently stressful, we need our bodies (and brains) to be as well-equipped as possible to handle what is thrown our way.

To improve gut health, doctors recommend reducing sugar/processed foods, supplementing with a probiotic, and consuming other “pre-biotic” foods. These are foods that, while themselves do not increase health bacteria in the gut, make the gut a more friendly and hospitable environment for good bacteria. Eating fiber and a wide variety of plants, and judicious use of antibiotics, are also high on the list.

In case you need further convincing, here are some other ways in which scientists think the gut microbiome can affect the rest of our bodies:

- **Weight and Obesity.** According to Scientific American, evidence indicates that gut bacteria alter how we store fat, balance glucose, and respond to the hormones that make us feel hungry. Claudia Wallis, [How Gut Bacteria Help Make Us Fat and Thin: Intestinal Bacteria May Help Determine Whether We Are Lean or Obese, Sci. Am.](#) (June 1, 2014). Lean individuals tend to have a wider variety of microbes that specialize in breaking down bulky plant starches and fibers. *Id.*
- **Mental Illness.** Gut bacteria are involved in producing key hormones and neurotransmitters, such as serotonin, GABA, and dopamine. There appears to be a connection between anxiety and the absence of certain healthy gut microbes.
- **Immune System.** Microbes affect our immune system and may impact development of allergies, asthma, and rheumatoid arthritis.

Tracy Frazier is an attorney at Bullivant Houser Bailey, PC, in Portland, Oregon, where she focuses her practice on insurance coverage and employment law. Tracy is a Co-Vice Chair of the Wellness Subcommittee and can be reached at tracy.frazier@bullivant.com.

News & Announcements

Liam Felsen Achieves Defense Verdict in Complex Regional Pain Syndrome Trial

From June 11, 2018, to June 13, 2018, **Liam Felsen**, attorney at Frost Brown Todd, represented a UIM carrier at trial in a case arising out of a motor vehicle accident in the U.S. District Court for the Western District of Kentucky. The plaintiff was initially diagnosed with acute fractures in two fingers on her non-dominant hand, and she was later diagnosed with Complex Regional Pain Syndrome. The

plaintiff flatly refused a high dollar settlement offer during mediation, and the case proceeded to trial where plaintiff sought \$49,000 in medicals; \$200,000 in pain and suffering; and \$250,000 in impaired earning capacity. After a four-hour deliberation, the jury returned a verdict for \$5,000 in medicals, which was zeroed out due to setoffs, providing the UIM carrier with a defense verdict.

And The Defense Wins

Have you or one of your fellow young lawyers recently received an honor, a promotion, or a defense win? Contact the editors Candace Deer (CandaceDeer@proassurance.com), Shelley Napolitano (SNapolitano@maronmarvel.com), Taryn Harper (harpert@gtlaw.com), Anna Tombs (Anna.Tombs@mcmillan.ca), and Daniel Furshpan (Daniel.Furshpan@suffolkcountyny.gov) so we can share it in Raising the Bar!