# For The Defense™

dri™
The Voice of the Defense Bar
The magazine for defense, insurance and corporate counsel

June 2019



## TOXIC TORTS AND ENVIRONMENTAL LAW page 34

*Also in This Issue*

## GOVERNMENTAL LIABILITY page 8

**Lucid Legal Writing** page 67

**Helping Others Shine: Look Out for Number Two** page 68

*And More*

## Helping Others Shine

# Look Out for Number Two

**By Sharon D. Stuart**

Edith Wharton said, "There are two ways of spreading light: to be the candle or the mirror that reflects it." When it comes to business development, we lawyers who like to market consider ourselves to be the candle. It is a natural tendency to believe that since we are good marketers, no one else can do as well. And let's face it, we often want to keep the fruits of our marketing efforts for ourselves. We work hard to generate that business, so we protect our clients and potential clients from others with whom we might otherwise have to share.

As a lawyer who thoroughly enjoys business development, I want to make a different case—a case for stepping out of the limelight and being the mirror, for a change. I do not suggest this as some martyr effort. It is just the right thing to do. I don't know about you, but I fully intend to retire one day. And when I do, I don't expect the book of business that I have developed—that is to say, the clients that I have grown to know well, cherish as friends, and frankly, care deeply about—to disappear. If I have done my job, those clients, through their younger in-house lawyers, business people, and adjusters, will get to know and respect my younger colleagues, and the relationship will continue.

It is up to those of us with business, and those of us with access to potential business, to help our colleagues be the candle. My primary mentor, Tom Christian, had a gift for this. Tom was a shining star as a trial lawyer—as fine as there has ever been. He shone brightly in the legal community. He received virtually every accolade that he could receive. But I always got the feeling that Tom was happiest when he was the mirror, reflecting light. He didn't need to be the center of attention. He loved to empower those of us around him to succeed and then watch us do it. While there are many ways to help our colleagues succeed, I was lucky enough to experience firsthand three of the best, and frankly, the easiest ways, from Tom.

First, take your colleagues with you. Take them everywhere you can: to meetings, seminars, and conventions. Work the room with them. Introduce them to everyone you know. Help them get involved. But rather than keeping them in your shadow, help them cast their own. Some strategic planning before meetings can result in each of you preparing an agenda, taking your own paths, meeting new people, then getting together during the day to check in. You can make sure that your colleague is doing well, and each of you can meet the other's new acquaintances. Feeling a little overextended? That's a perfect time to ask a colleague to take on a leadership role in your organization. It will benefit both of you. This advice doesn't apply only to younger colleagues, by the way. We often forget about the cross-marketing opportunities within our firms. Use meetings and seminars to expand your firm's reach by introducing your clients and friends around the country to colleagues from different practice groups in your firm.

Second, give your colleagues face time with your clients. This starts with the greenest associate. It is ok to start small, but everyone has to start somewhere. One of the greatest mistakes that lawyers make is to believe (wrongly, by the way) that they are the only person worthy of communicating with their clients. Thank goodness Tom encouraged me to communicate with his clients. He let me report to everyone from individual insured clients to Fortune 500 general counsel, and on everything from the most mundane scheduling orders to the most critical strategy analyses. Tom taught me not only what to communicate, but how to do so appropriately. As a result, I got to know the clients personally and professionally, and they gained trust in me. I learned how to deal with difficult clients, and difficult situations. When Tom retired, I was prepared, and those client relationships continued seamlessly.

Finally, let your associates and young partners get all of the practical experience they can develop. Train them, work with them, and then give them some rope. Let them take depositions, interview witnesses, and appear in court every chance they can. Give them the opportunity to argue. You will be there lest something goes wrong, but it probably won't. Again, start small. Most of us can remember the first deposition that we took, the first summary judgment motion that we argued, and the first trial witness who we examined. We learned from those experiences, and our colleagues will, too. Even in this age when clients often will pay only for one lawyer,

**Women in the Law**, continued on page 70



■ Sharon D. Stuart is a partner in the Litigation Practice Group of Christian & Small LLP in Birmingham, Alabama. She handles complex business, insurance, and product liability cases in the state and federal courts and in arbitration. Ms. Stuart is active in DRI, the International Association of Defense Counsel, and the American Inns of Court. She is the immediate past president of the Alabama Defense Lawyers Association and serves as the chair of the DRI Women in the Law Committee SLDO Toolkit Working Group.

non-working hours was not unreasonable. *Id.* at 46.

Massachusetts is not alone in requiring employers to create accommodations for employees who use medicinal marijuana. In fact, Connecticut and Delaware have included requirements for employers to accommodate medical marijuana patients in their respective medical marijuana acts. Conn. Gen. Stat. §21a-408p; Del. Code tit. 16, §4905A. Last year, in *Noffsinger v. SSC Niantic Operating Company, LLC*, 338 F. Supp. 3d 78 (D. Conn. 2018), the U.S. District Court for the District of Connecticut held that the employer violated the anti-discrimination provision in Connecticut's Palliative Use of Marijuana Act (PUMA), when it rescinded the plaintiff's job offer after she tested positive for marijuana. *Id.* at 86. The *Norffsinger* court rejected the employer's argument that it was exempt from PUMA's anti-discrimination provision. The PUMA anti-discrimination provision allows an employer to choose not to hire or to discharge an employee who uses medical marijuana if it is "required by federal law or required to obtain federal funding." Conn. Gen. Stat. §21a-408p. The employer argued that the Drug Free Workplace Act (DFWA) mandates federal contractors, such as the employer, to maintain a drug-free work environment. *Id.* at 84. The court held that the DFWA does not require an employer to rescind a job offer because the DFWA does not require drug testing or prohibit federal contractors from employing people who use illegal drugs outside the workplace. *Id.*

It is important that employers confirm that their drug policy is in compliance with the laws in the states where their employees are located. As more people are prescribed medicinal marijuana, it is anticipated that states will enact more statutes to govern employers' rights within these states. Because there are no clear tests to determine whether an employee is under the influence during working hours, there are many questions that still need to be answered by the courts and state legislatures. FD

dri™

Sometimes, *One Ask* Is All It Takes



DRI is pleased to introduce our new Young Lawyers Membership Package for young lawyer members who are within five years of their bar date. Now you can plan your budget, plan your schedule, and plan to save nearly 20 percent!

**The Young Lawyers Membership Package has many advantages:**

- The convenience of a "one-time ask" to your firm administrator
- Simplified budget planning
- Protection from future price increases

**For more information** contact DRI Customer Service at custservice@dri.org or 312.795.1101 for more details on the DRI Young Lawyers Membership Packages today.

**Writers' Corner**, from page 67

free to use the more sensible and historically proven common law rule.… [T]hat is a liberty they may be wise to exercise." *Id.*

**Justices Gorsuch and Kavanaugh write for everyone.** Some appellate judges write in a way that only other judges and lawyers can fathom. But not Justices Gorsuch and Kavanaugh. If their early Supreme Court opinions are any indication, their opinions not only will guide judges, attorneys, and litigants for many years to come, but also will significantly contribute to the public's understanding of the legal system and the law. And any lawyer who wants to improve or refine his or her legal writing should make a habit of reading Justice Gorsuch's and Justice Kavanaugh's stunning opinions. FD

**Women in the Law**, from page 68

it is in senior lawyers' interest to take our associates to court, even if we cut our own time. If you don't give younger lawyers the experience, how will they be ready when it is "their turn"?

It is in your interest, and mine, to help our colleagues shine. Our clients, the courts before which we appear, and our legal communities need to see that our firms have a deep bench. After all, the first rule of effective succession planning is looking out for number two. FD