

TLAW Empowerment Conference 2018



RIGHT TIME, RIGHT NOW!

Thursday, April 19, 2018 | 4:00 pm to 6:00 pm
Opening Reception | 6:00 pm to 7:30 pm

Friday, April 20, 2018 | 8:00 am to 4:15 pm

Nashville, Tennessee

www.tlaw.org



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Milana Hogan and Katherine Larkin-Wong, <i>Grit & Mindset</i> , 98 Women Lawyers Journal 2 (2013).	
The Law Office of Autumn Witt Boyd, <i>Five Minute Copyright, Trademark & Trade Secret Audit</i> (2018).	
The Law Office of Autumn Witt Boyd, <i>10 Step Road Map to Grow Your Business, Legally</i> (2017).	
Martha Middleton, <i>ABA's Grit Project aims to help women advance in the profession</i> , ABA Journal (2014).	
Ann Sartwell, <i>What's Up With Time's Up</i> , 18 Briefly (2018).	

Empowerment Conference 2018: *Right Time, Right Now!* Conference Schedule

THURSDAY, APRIL 19 TIME'S UP! BREAKING OUR SILENCE

3:30 p.m.	Registration Opens
4:00 p.m. to 4:05 p.m.	Welcome & Introductions Karen Crutchfield, TLAW President
4:05 p.m. to 4:50 p.m.	Time's Up! Now What Do We Do? (1.00 DUAL CLE CREDIT) Mary Dee Allen, Member, Wimberly Lawson
5:00 p.m. to 6:00 p.m.	How Courts, Law Schools, Law Firms, and Corporate Counsel Are Addressing Sexual Harassment in the Legal Profession and the Workplace (1.00 DUAL CLE CREDIT)
Panelists	The Honorable Chris Craft, Criminal Court Judge, 30th Judicial District Charles K. Grant, Shareholder, Baker Donelson Angela A. Ripper, Assistant Vice President & Special Counsel, Unum Group Melanie Wilson, Dean, University of Tennessee College of Law
Moderator	Lucian T. Pera, Partner, Adams and Reese LLP
6:00 p.m. to 7:30 p.m.	Opening Reception <i>Light refreshments will be provided—join us for socializing with your sisters in the law from across the State of Tennessee!</i>

Empowerment Conference 2018: *Right Time, Right Now!* Conference Schedule

FRIDAY, APRIL 20 | MORNING SESSION

8:00 a.m.	Registration Opens
8:15 a.m. to 8:45 a.m.	Networking with Coffee and Pastries
8:45 a.m. to 9:00 a.m.	Welcome & Introduction of Morning Keynote Karen Crutchfield, TLAW President
9:00 a.m. to 10:00 a.m. <i>Morning Keynote</i>	Hear. Us. Roar. Harnessing Lessons from the Past and Present to Forge the Future for Women in Law (1.00 GENERAL CLE CREDIT) Nicole N. Auerbach, Founder, Valorem Law Group
<i>10:00 a.m. to 10:15 a.m. Break</i>	
10:15 a.m. to 11:45 a.m.	Ready, Set, Let's Go! Gaining Elective Office and Appointive Positions (1.50 DUAL CLE CREDIT)
Panelists	The Honorable Charme Allen, District Attorney General, 6th Judicial District The Honorable Pam Fleenor, Chancellor, 11th Judicial District State of Tennessee Senator Sarah Kyle, District 30 The Honorable Valerie Smith, Circuit Court Judge, 30th Judicial District Maura Sullivan, Chief Operating Officer, City of Chattanooga
Moderator	Holly McCall, Owner and Principal, Morrigan Strategies LLC
<i>11:45 a.m. to 12:30 p.m. Break and Lunch</i>	
12:30 p.m. to 1:00 p.m. <i>Luncheon Keynote</i>	Grit: The Secret to Advancement (0.50 GENERAL CLE CREDIT) Mary Sharp, Founder, Sharp Law Firm

Empowerment Conference 2018: *Right Time, Right Now!* Conference Schedule

FRIDAY, APRIL 20 | AFTERNOON SESSION

1:00 p.m. to 2:30 p.m.	Getting to the Nitty Gritty (1.50 DUAL CLE CREDIT) Mary Sharp, Founder, Sharp Law Firm
2:30 p.m. to 4:00 pm	What to Do When You Don't Play Golf: How to Develop Tools and Resources to Take Your Practice to the Next Level (1.50 DUAL CLE CREDIT)
<i>Panelists</i>	Rebecca Adelman, Founding Shareholder, Hagwood Adelman Tipton Autumn Witt Boyd, Founder, The Law Office of Autumn Witt Boyd PLLC Lee Holcomb, Director of Attorney Managed Services, Sumati Caren Nichol, President, Evans Petree PC The Honorable Deborah Stevens, Circuit Court Judge, 6th Judicial District
<i>Moderator</i>	Patty Wise, Executive Director, Counsel on Call
4:00 pm to 4:15 pm	Closing Remarks

Conference Welcome

KAREN G. CRUTCHFIELD

TLAW President & Member, Wimberly Lawson Wright Daves & Jones, PLLC (Knoxville, TN)



Karen G. Crutchfield is a Member in the Knoxville, Tennessee office of Wimberly Lawson, which she joined in October 2013. Her law practice focuses on the defense of general civil litigation for businesses and employers, including contracts, construction, premises liability, products liability, professional liability, environmental and workers' compensation claims. Karen received a B.S. in Communications from the University of Tennessee, Knoxville, and a MSW with emphasis in Economic Development and Policy from Washington University in St. Louis. She received her Doctor of Jurisprudence from the University of Tennessee College of Law in 1994.

Karen is listed in the *Best Lawyers of America*® in the area of Workers' Compensation Law-Employers, and was named 2018 *Lawyer of the Year* by Best Lawyers for Workers' Compensation Law-Employers, Knoxville. She was selected to participate as a delegate to the OECD-NEA Nuclear Law Program in October of 2013, received the ETLAW *Spirit of Justice Award* in 2014, and has received the Tennessee Supreme Court *Attorney for Justice Award* from 2014-2017. In 2016, she was named to The Fellows of the American Bar Association, which admits only 1% of U.S. lawyers to its ranks. Karen is President of the Tennessee Lawyers Association for Women 2017-2018, currently serves on the Anderson County Economic Development Board, and is also an active member of other legal, professional, and community organizations.

Speaker,
Time's Up! Now What Do We Do?

MARY DEE ALLEN

*Member, Wimberly Lawson Wright Daves & Jones, PLLC
(Cookeville, TN)*



Mary Dee Allen is a Member in the Cookeville, Tennessee office of Wimberly Lawson Wright Daves & Jones, PLLC, which she joined in 2003. Mary Dee is a practicing trial attorney since 1992, handling primarily workers' compensation defense and employment discrimination defense, in state and federal Courts and administrative agencies.

She obtained an Associate's Degree in Nursing from Union University in 1988, a Bachelor's Degree in History from Union University in 1989, and a Doctor of Jurisprudence Degree from the University of Memphis in 1992. Mary Dee has an *AV Preeminent® Rating*, which is the highest possible rating given by Martindale-Hubbell, the leading independent attorney rating entity. She is a member of the Putnam County Bar Association, and of the Tennessee Lawyers' Association for Women (TLAW). Mary Dee is also the Legislative and Governmental Affairs Co-Chair of the Upper Cumberland Society for Human Resource Management, and a member of the Tennessee Society for Human Resource Management.

Panel Moderator,
*How Courts, Law Schools, Law Firms, and Corporate Counsel
Are Addressing Sexual Harassment and Discrimination in the
Legal Profession and the Workplace*

LUCIAN T. PERA

*Partner, Adams and Reese LLP
(Memphis, TN)*



Lucian T. Pera is a partner with the Memphis, Tennessee, office of Adams and Reese LLP. His practice includes civil trial work, including commercial litigation and media law, and he counsels and represents lawyers, law firms, and others on questions of legal ethics and the professional responsibility of lawyers. A Memphis native, he is a graduate of Princeton University and Vanderbilt University School of Law and served as a law clerk for U.S. Court of Appeals for the Sixth Circuit. Lucian joined Adams and Reese in 2006 to help open the firm's Memphis office, after practicing law for 20 years with Armstrong Allen, PLLC.

Lucian has served as president of the Association of Professional Responsibility Lawyers (APRL), the national membership organization of lawyers who work in the legal ethics arena. He has chaired and served as a member of the editorial board of the *ABA/BNA Lawyers' Manual on Professional Conduct*. He currently chairs the governing board of the ABA Center for Professional Responsibility. He currently serves as President of the Tennessee Coalition for Open Government.

He is a member of the American Law Institute, the American Bar Foundation, and is recognized in *The Best Lawyers in America* in the areas of First Amendment Law, Ethics and Professional Responsibility Law, Commercial Litigation, Health Care Law, and Legal Malpractice Law.

Lucian is a former American Bar Association Treasurer and has served on the ABA Board of Governors and Executive Committee. With the exception of three years in the late 1990s, he has been a member of the ABA House of Delegates since 1991. He currently serves as President of the Tennessee Bar Association.

Panelist,
*How Courts, Law Schools, Law Firms, and Corporate Counsel
Are Addressing Sexual Harassment and Discrimination in the
Legal Profession and the Workplace*

THE HONORABLE CHRIS CRAFT

*Criminal Court Judge, Division VIII, 30th Judicial District
(Shelby County, TN)*



Judge Chris Craft is Criminal Court Judge for the 30th Judicial District in Shelby County. He earned his J.D. from the University of Memphis Law School. He was in private practice in the firm of Craft and Craft from 1978-1982, and served as Assistant District Attorney from 1982 to 1994. He was the Senior Trial Prosecutor in the Major Violators Unit of that office from 1991 to 1994, when he was appointed Criminal Court Judge, and has been re-elected four times.

He received the first TLAP Judicial Volunteer of the Year Award in 2013 and the Dunavant Public Servant Award in 2014. He is the former Dean of the Tennessee Judicial Academy and Past President of the Leo Bearman, Sr., American Inns of Court. He currently serves as President of

the Tennessee Judicial Conference and chairs the Board of Judicial Conduct and the Committee on Tennessee Criminal Pattern Jury Instructions.

Panelist,
*How Courts, Law Schools, Law Firms, and Corporate Counsel
Are Addressing Sexual Harassment and Discrimination in the
Legal Profession and the Workplace*

CHARLES K. GRANT

*Shareholder, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
(Nashville, TN)*



Charles Grant is a shareholder at Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, and a member of the firm's Board of Directors. A veteran litigator, he has tried more than 50 jury trials to verdict in both federal and state courts, and has represented numerous clients in mediation and arbitration proceedings. Charles represents clients in complex employment litigation, including collective actions under the Fair Labor Standards Act, as well as business litigation matters. His clients also include licensed professionals, such as lawyers, physicians and dentists, whom he has represented before licensing boards.

Charles is a former board member and past president of the Nashville Bar Association, a former board member and past president of the Napier-Looby Bar Association, and a fellow of the Nashville and Tennessee Bar Foundations. He served for many years on the Tennessee Supreme Court Advisory Commission of the Rules of Practice and Procedure, as well as the Tennessee Supreme Court Disciplinary Hearing Committee, District V, and is a Master for the Harry Phillips American Inns of Court. Charles' community involvement includes serving as First Vice President of the Legal Aid Society of Middle Tennessee and the Cumberland and as a member of the Board of Directors for the YWCA of Nashville and Middle Tennessee.

Charles' speaking engagement topics have included FMLA and ADA issues, employment law under the Trump administration, workplace drug screening, and Title VII implications in today's employment arena.

Panelist,
*How Courts, Law Schools, Law Firms, and Corporate Counsel
Are Addressing Sexual Harassment and Discrimination in the
Legal Profession and the Workplace*

ANGELA A. RIPPER

*Assistant Vice President and Special Counsel, Unum Group
(Chattanooga, TN)*



Angela Ripper has worked for Unum Group for 21 years. In 2000, she helped build the Leave Management Center, a unit within Unum Group that administers FMLA and state leave laws for employers/customers which now covers 1.6 million lives and administers 227 state leave laws. She continues to provide legal support for the Leave Management Center and has done so since its inception. Angela speaks at seminars nationally on FMLA and ADA and is featured annually by DMEC with a representative from DOL to speak on FMLA. She is a certified trainer for SHRM and CE credit.

Angela advises HR on decisions ranging from initial hires to disciplinary actions to termination. She also advises on RIF's, reviews contracts, and advises the Leave Management Center on the FMLA and the ADA. Additionally, she negotiates contracts for service for the Leave Management Center.

Angela received her BA from the University of North Carolina at Chapel Hill in 1986 and her JD from the University of Tennessee College of Law in 1989. She is a member of the Tennessee Bar Association and the Chattanooga Bar Association. Angela served on the National Advisory Board of In-house Counsel for M. Lee Smith Publishers. She serves on the Finance Board for St. Jude Catholic Church. She is the past Chairperson of the school board for St. Jude Catholic School and served on the school board for Notre Dame High School.

Panelist,
*How Courts, Law Schools, Law Firms, and Corporate Counsel
Are Addressing Sexual Harassment and Discrimination in the
Legal Profession and the Workplace*

DEAN MELANIE WILSON

*Dean, University of Tennessee College of Law
(Knoxville, TN)*



Melanie Wilson began her tenure as dean of the College of Law in 2015. Wilson earned a JD (magna cum laude and Order of the Coif) from the University of Georgia School of Law. She holds a bachelor's degree in journalism with a minor in business, also from the University of Georgia.

She previously served as professor of law, associate dean for academic affairs, and director of diversity and inclusion at the University of Kansas School of Law.

Before entering academia, Wilson clerked for a federal district court judge and enjoyed thirteen years of sophisticated law practice in both the private and public sectors, including six years as an assistant United States attorney and four years as an assistant attorney general for the state of Georgia.

As an academic, Wilson has demonstrated an enthusiasm for both teaching and scholarship. She received the Howard M. and Susan Immel Award for Teaching Excellence at the University of Kansas School of Law in 2011 and was named Outstanding Woman Educator of 2015 by the University of Kansas. She also co-authored three books on criminal procedure and has published more than a dozen articles and essays addressing the Fourth and Sixth Amendments, as well as prosecutorial ethics.

Morning Keynote Speaker,
***Hear. Us. Roar. Harnessing Lessons from the Past and Present to
Forge the Future for Women in Law***

NICOLE N. AUERBACH

*Founder, Valorem Law Group
(Chicago, IL)*



Nicole Auerbach is one of the founders of Valorem Law Group, a nationally known alternative fee litigation firm that was formed by BigLaw refugees in January 2008 to give clients an alternative to the billable hour. Nicole has represented clients in litigation matters in federal and state courts and in arbitrations across the country since 2008 using AFAs. She is also the mastermind behind the firm's "second opinions" practice which provides an objective opinion to clients facing pivotal issues in their litigation. Prior to

forming Valorem, she practiced for nearly 15 years at an AmLaw 100 firm in Chicago, where she was a partner in the litigation department.

In 2017, Nicole was named one of the "Most Influential Women Attorneys in Chicago" by Crain's Publishing. Nicole was previously named "One of the Top 50 Women Lawyers in Illinois" by Illinois SuperLawyers and one of "Forty Illinois Attorneys Under 40 to Watch" by the Law Bulletin Publishing Company. She has been featured on *NPR* for her view of the "billable hour" and has spoken around the country about innovation in law (or the lack thereof), alternative fee arrangements and issues facing women in law. She authored: "Straight From the Top: Case Studies in the World of Litigation," and was a contributor to ABA Publishing's "The Road to Independence: 101 Women's Journeys to Starting Their Own Firms." Her 6-minute speech called "Tick Tock, Why Women Should Bash the Clock" from Reinvent Law Silicon Valley has been widely circulated. Nicole is a certified arbitrator through the American Arbitration Association. She is also a Fellow of the College of Law Practice Management.

In addition to her substantive work, in 2008, Nicole founded the Coalition of Women's Initiatives in Law, the only organization of its type in the country with chapters in Chicago and New York, made up of more than 120-member law firms and 30 corporations who collectively work to facilitate the advancement and development of women in law. Nicole sits on the Advisory Board of the Institute for Inclusion in the Legal Profession and on the Dean's Advisory Council for DePaul College of Law. In addition, she devotes time to *pro bono* work, previously helping unaccompanied children seeking asylum navigate the U.S. immigrant justice system, and more recently, helping the wrongfully convicted. In January 2014, in a career highlight, she helped exonerate a client who had spent 21 years in jail for a crime he did not commit. She went on to obtain a \$13.4 million verdict after a 5-week federal jury trial in the civil rights action for the same client.

Panel Moderator,
*Ready, Set, Let's Go! Gaining Elective Office
and Appointive Positions*

J. HOLLY MCCALL

*Owner and Principal, Morrigan Strategies, LLC
(Nashville, TN)*



J. Holly McCall is a veteran communications strategist with more than 30 years of experience in journalism, public relations, and politics. She is the owner and principal of Morrigan Strategies, LLC, a communications firm focusing on public affairs, crisis communication, and reputation management for CEOs and elected officials.

Recent clients and projects have included the Alliance for Healthcare Security, the Wilderness Society, and in 2016, the Hillary for America campaign, for which she served as Tennessee press secretary during the primary election. She has created media advocacy campaigns for projects as disparate as transit initiatives in Tennessee and for a consortium of Utah groups tasked with preventing storage of

depleted uranium in the West Utah desert.

Prior to launching her business in 2015, McCall worked as marketing and communications director for Metropolitan Nashville and Davidson County on special projects, including the Music City Center and the Metro Transit Authority's Amp bus rapid transit project. As a newspaper reporter, she covered municipal government for papers in Ohio, Missouri, and Tennessee.

McCall is a graduate of the University of Tennessee at Knoxville, with a major in political science and minor in journalism. She serves as recruitment chair for Emerge Tennessee, the premier candidate training program in the state for Democratic women. She's also chair of the Williamson County Democratic Party and the 7th Congressional District for the Tennessee Democratic Party. McCall is a member of the Heritage Foundation of Franklin and Williamson County, Williamson, Inc., Nashville Women's Political Collaborative. She has volunteered with Better Decisions, a non-profit program that provides mentoring for women in the Tennessee Prison for Women.

Panelist,
*Ready, Set, Let's Go! Gaining Elective Office
and Appointive Positions*

THE HONORABLE CHARME ALLEN

*District Attorney General, 6th Judicial District
(Knox County, TN)*



Charme P. Allen is a veteran prosecutor with nearly 30 years of experience with the Knox County District Attorney General's Office. In 2014, General Allen was elected as the district attorney general of the 6th Judicial District, and she is honored with the distinction of being the first female elected to this position in Knox County's history.

Following in the footsteps of her law enforcement family from Georgia, General Allen earned her Bachelor of Science Degree in Criminal Justice from West Georgia College in 1987 and her Doctor of Jurisprudence Degree from the University of Tennessee College of Law in 1990. Immediately thereafter, she became a full-time assistant district attorney general, pursuing her passion of seeking

justice and helping victims of crimes, with a special emphasis on child abuse prosecution for the majority of her career.

Since taking office, General Allen has implemented many new policies and procedures, and has created teams of special prosecution units, as well as a community affairs unit, in order to achieve her goal of being "Tough on Crime, Smart on Prevention." While overseeing a staff of more than 90 professionals, General Allen's role as the county's top law enforcement officer has given her the opportunity to address criminal justice issues on a larger scale.

General Allen relies upon her lifelong experiences with law enforcement to pursue a multi-dimensional approach to prosecution. Her model for successful prosecution not only involves enforcing the law and seeking punishment for crime, but it also requires a dedication to the prevention of crime at its source.

Panelist,
*Ready, Set, Let's Go! Gaining Elective Office
and Appointive Positions*

THE HONORABLE PAMELA A. FLEENOR

*Chancellor, 11th Judicial District
(Hamilton County, TN)*



Pamela A. Fleenor is a Chancellor in Part 1 of the Eleventh Judicial District of Tennessee. Part 1 has exclusive jurisdiction over conservatorship matters and delinquent tax cases in the Eleventh Judicial District. Chancellor Fleenor is a member of the executive committee of the Tennessee Judicial Conference and a member of the executive committee of the Tennessee Trial Judges Association.

She is a former trial practitioner at Duncan, Hatcher, Hixson & Fleenor, P.C.; Grant, Konvalinka & Harrison, P.C.; and Luther, Anderson, Cleary & Ruth. Chancellor Fleenor has taught various courses in the law in the MBA program at the University of Tennessee at Chattanooga and at Chattanooga State Community College. She has

also served as head of the compliance department of a local bank.

Chancellor Fleenor is a Chattanooga native. She earned her undergraduate degree at The University of Tennessee at Chattanooga, where she graduated magna cum laude. She was awarded the Chapin-Thomas Scholarship to the University of Cincinnati College of Law where she earned her Juris Doctor. She is a graduate of Leadership Chattanooga and a member of the Justices Brock and Cooper, American Inn of Court.

Chancellor Fleenor is a member of numerous civic organizations and of the Lookout Mountain Presbyterian Church. She is married to Phil Fleenor and they have two children: a son, Griff, who is a recent college graduate and a daughter, Michelle, who is a rising senior in college.

Panelist,
*Ready, Set, Let's Go! Gaining Elective Office
and Appointive Positions*

SENATOR SARA KYLE

*Senator, State of Tennessee District 30
(Memphis, TN)*



Senator Sara Kyle has dedicated her professional life to public service. She began her career as a public school teacher in Tennessee before becoming a legislative aide to Sen. Anna Belle Clement O'Brien. During her tenure working in the State Senate, she attended law school at night.

After graduating and clerking for the Tennessee Attorney General's office, she entered into private law practice. She served as a judge in Memphis City Court before being elected statewide to the Public Service Commission in 1994. In 1996, she was appointed to the

Tennessee Regulatory Authority (TRA), which succeeded the Public Service Commission as the utility regulator for Tennessee's consumers. She retired from the TRA in 2013.

Senator Kyle is the mother of four and is married to Shelby County Chancellor Jim Kyle. Her community service has been on various community and state organizations. Her service in public office has been as a Member of the following: Health and Welfare Committee; Judiciary Committee; and the Joint Fiscal Review Committee.

Panelist,
*Ready, Set, Let's Go! Gaining Elective Office
and Appointive Positions*

THE HONORABLE VALERIE L. SMITH

*Judge, Circuit Court Division III, 30th Judicial District
(Memphis, TN)*



Valerie L. Smith is the judge in Circuit Court Division III for the 30th Judicial District. She was appointed to the bench by Governor Bill Haslam in March 2016 and elected in August 2016. She is a graduate of the University of Memphis with a B.A. in 1997 and her J.D. in 2000. She served as an Assistant District Attorney and then practiced law privately with Nahon, Saharovich, and Trotz, PLC until her ascension to the bench.

She is an avid volunteer and serves on numerous boards including the Leo Bearman, Sr. Chapter of the American Inn of Court as well as the University of Memphis Law Alumni Board. She is a sustaining member of the Junior League of Memphis, a past board member of

SpayMemphis, and involved with Midtown Rotary.

Panelist,
*Ready, Set, Let's Go! Gaining Elective Office
and Appointive Positions*

MAURA BLACK SULLIVAN

*Chief Operating Officer, City of Chattanooga
(Chattanooga, TN)*



Maura Black Sullivan currently serves as the Chief Operating Officer of the City of Chattanooga for Mayor Andy Berke. In this role, she coordinates the operations of all divisions of Chattanooga city government, with over 2,500 employees and an annual operating budget in excess of \$200 million. Maura is a native of Memphis, Tennessee, where she worked in various government roles throughout her career, with each one advancing her career and growing her skills as an administrator. Maura has served as Deputy Chief Administrative Officer for Memphis, as Deputy Director of Planning and Development for Memphis and Shelby County, as Assistant Superintendent of Planning and Student Services for Shelby County Schools, as a special assistant for

the Honorable Harold E. Ford, Jr, Member of Congress, and as a family court mediator for the Shelby County Juvenile Court.

Maura has undergraduate and graduate degrees in public administration and international relations from the University of Memphis and attended law school there, as well. She has been recognized as Outstanding Alumnae from the University of Memphis College of Arts and Sciences, as well as receiving the Outstanding Student Award at both the undergraduate and graduate levels. In Memphis, Maura was very involved in the community, being honored to serve on many boards and helping in many community building endeavors; she served as an Election Commissioner and on the boards of the Brooks Museum of Art, Ballet Memphis, the Women's Foundation, Grace St Luke's Episcopal School, Community LIFT, SAVE, and Grace St Luke's Episcopal Church and Junior League of Memphis. She is looking forward to expanding her community activities in Chattanooga and has already started volunteering at her son's school, her church, and through Leadership TN and Emerge TN. Maura is married and she and her husband have a wonderful son, Jack.

**Lunch Keynote Speaker, *Grit: The Secret to Advancement*
Speaker, *Getting to the Nitty Gritty***

MARY SHARP

*Founder, Sharp Law Firm
(Beaufort, SC)*



Mary Sharp practices law in Beaufort, SC, where she founded Sharp Law Firm, LLC, in March, 2017. She represents clients in trial and appellate proceedings, in civil matters including those involving personal injury, business litigation, construction litigation, and insurance coverage. Mary is an experienced litigator and has tried more than 50 cases to verdict in South Carolina state and federal courts. She is also a certified mediator and

serves as a Municipal Court Judge for the City of Beaufort.

Mary is a past President of the Board of the National Conference of Women’s Bar Associations (NCWBA) and a past President of the South Carolina Women Lawyers Association. Mary previously served as NCWBA’s Liaison to the American Bar Association’s Commission on Women in the Profession. She served on the committee that developed The Grit Project Toolkit, the first of a series of projects that the Commission on Women implemented to educate women lawyers on the power of having a grit and growth mindset.

Mary currently serves on the South Carolina Bar Board of Governors and has served in the South Carolina Bar’s House of Delegates since 2006. She is also currently a member of the Board of Directors of the South Carolina Bar Foundation and currently serves as President of the Charleston, SC Chapter of the American Board of Trial Advocates, (ABOTA). She is also currently Chair of the Defense Research Institute (DRI) Alternative Dispute Resolution Committee.

In 2009, Mary was honored as a South Carolina “Leader in the Law” by South Carolina Lawyer’s Weekly in their inaugural year of presenting those awards. She has been recognized as a “Super Lawyer” in the area of civil litigation and is AV rated by Martindale Hubbell. In 2013, Mary was nominated and selected to participate as one of 44 leaders from across the Lowcountry in the

8th Riley Institute at Furman's Diversity Leaders Initiative. She also currently serves as a Fellow of the Litigation Counsel of America and a Fellow of the American Bar Foundation.

In addition to service to the legal community, Mary is also active in her community. She currently serves as President of the Board of Broad River Healthcare and on the Advisory Board of the Penn Center. She has also served as a past President of the Board of Lowcountry Legal Volunteers and as a past President of the Board of Friends of Caroline Hospice, as well as on the boards of the Historic Beaufort Foundation and the Child Abuse Prevention Association.

Mary received a B.A. in Business Administration from North Carolina State University in 1990, and a J.D. from the Wake Forest University School of Law in 1993.

Panel Moderator,
*What to Do When You Don't Play Golf: How to Develop Tools and
Resources to Take Your Practice to the Next Level*

PATTY WISE

*Executive Director, Counsel on Call
(Brentwood, TN)*



Patty Wise has been with Counsel On Call for 10 years, helping to take it from a regional presence to a leading national legal services provider. Patty serves in two roles for Counsel On Call: Vice President of Seconded Services and Executive Director of the Mid-America Region. Patty works closely with corporate clients and law firms to design and implement legal solutions, including: (i) Legal Operations functions; (ii) Managed Services of data-driven work; and (iii) Seconded attorney engagements. Patty is based in Counsel On Call's headquarters' office in Nashville.

Patty started her legal career with Troutman Sanders in Atlanta, where she practiced commercial litigation. She later joined Kennedy Covington in Charlotte, where she focused on securities litigation.

She graduated from Vanderbilt University School of Law, where Patty received the Junius L. Allison Award, given for the most significant contribution to the Legal Aid Society. Patty received her B.A. from Emory University, where she was a member of the national English honor society, Pi Sigma Alpha, and the national political science honor society, Sigma Tau Delta.

Panelist,
*What to Do When You Don't Play Golf: How to Develop Tools and
Resources to Take Your Practice to the Next Level*

REBECCA ADELMAN

*Founding Shareholder, Hagwood Adelman Tipton, PC
(Memphis, TN)*



Since 2001, Rebecca Adelman has been an entrepreneur, mother, a dedicated member of her community and a leader in the legal industry, and founded Adelman Law Firm PLC in that same year. She grew the firm for 16 years before expanding and founding Hagwood Adelman Tipton PC. She spearheaded the firm's business development and marketing committee and mentors its female team members.

Rebecca's success in business has not gone unnoticed. She was named Executive of the Year by the Memphis Business Journal for her legal work in health care and risk management and was a finalist in the Outside Counsel Professional of the Year for CLM. She is a thought leader in the health care and senior living industries, and for the past eight years she has been the legal writer for the Nursing and Assisted Living Professional.

She consistently demonstrates her dedication to helping women excel in the legal industry, and it is her personal mantra, "work-life being," that guides her. Long ago, Rebecca accepted that thriving requires finding a productive balance between work and life, then integrating the two. As a woman in a male-dominated profession, Rebecca understands that she must work hard to ensure that deserving, hardworking women continue to excel.

Rebecca's service is not exclusive to the legal industry. In Colorado, she personally founded the Chaffee County Montessori School, which is now a charter school with gold standard commendations. In Memphis, she volunteers with the Dorothy Day House of Hospitality, which strives to keep families together as they escape homelessness. Rebecca is also a partner with Spearman + Adams in the film *Me and the Light*, which shows how internationally renowned movement artist Lil' Buck and a community of Memphians are transforming their struggles by using art to heal their community. She is also the proud sole parent to a 16-year-old, Max.

Panelist,
*What to Do When You Don't Play Golf: How to Develop Tools and
Resources to Take Your Practice to the Next Level*

AUTUMN WITT BOYD

*Founder, Autumn Witt Boyd PLLC
(Chattanooga, TN)*



Autumn Witt Boyd is an experienced lawyer who helps ambitious entrepreneurs reach their big goals, faster and smarter. Together with her team at The Law Office of Autumn Witt Boyd PLLC, she guides online and e-commerce companies as they grow. The most valuable asset in their business is their copyrights and trademarks, and Autumn helps them understand, protect, and enforce their rights. Her firm offers full-service legal support to creative businesses.

Autumn loves helping creatives put together collaborations and partnerships, grow their brand with trademarks, and protect their content with copyrights. She writes and negotiates airtight contracts in plain English, and problem-solves to resolve disputes without going to court. But most of all Autumn is a trusted advisor whom entrepreneurs can rely on for practical advice when they need it.

Autumn also hosts the Legal Road Map® podcast, which teaches business owners about the legal issues they may face as they grow a profitable and sustainable business, why they're important, and how others in their shoes have handled them. She lives in Chattanooga, TN with her husband Dave, twin boys Sam and Tyson, and daughter Vivian.

Panelist,
*What to Do When You Don't Play Golf: How to Develop Tools and
Resources to Take Your Practice to the Next Level*

LEE HOLCOMB

*Director, Attorney Managed Services, Sumati
(Boise, ID)*



Lee Holcomb focuses her practice on cybersecurity, contract management, and eDiscovery. She brings together technology, businesses, and people to create start to finish legal solutions in contract management and eDiscovery. Lee has significant experience working with subject matter experts and industry leaders in contract risk management, she helps legal departments improve processes to save time and money.

Lee is a current member of The Sedona Conference WG-6 Membership Building Committee. She is a member of the Idaho & Tennessee Bar Associations, the Idaho Technology Council, and the Tennessee Lawyers' Association for Women. Recent speaking engagements include The Sedona Conference Panel on EU General Data Protection

Regulation, Jones Day in Houston and The Sedona Conference Panel – Return on Investment – Data Security Program Implementations, Microsoft campus in Redmond. Lee is certified as a specialist in eDiscovery by the Association of Certified eDiscovery Specialists.

Panelist,
*What to Do When You Don't Play Golf: How to Develop Tools and
Resources to Take Your Practice to the Next Level*

CAREN NICHOL

*President, Evans Petree
(Memphis, TN)*



As President of Evans Petree, Caren Nichol became the first female president of a large law firm in Memphis. She was selected by her peers for inclusion in The Best Lawyers in America 2018 in the fields of Commercial Litigation and Family Law Mediation for the sixth year, has been selected to the Mid-South Super Lawyers list in the area of Family Law, was named a Family Law Power Player in MBQ Magazine, and is listed by Super Lawyers as one of the top 50 Women Lawyers in the Mid-South.

Caren is licensed to practice law in Tennessee and Mississippi. Her litigation practice consists of a broad range of matters including business litigation, family law and appellate practice. She has been admitted to practice before the Tennessee Supreme Court and the Sixth Circuit and is a Rule 31 trained family law mediator and also trained in Collaborative Law. Her roles at the firm include marketing, client development and mentoring new lawyers. Caren received her undergraduate degree from the University of Texas and her Juris Doctorate degree from the University of Memphis.

Caren is a Fellow of both the Tennessee Bar Foundation and the Memphis and Shelby County Bar Foundation, where she served on the Board of Directors. She graduated from the inaugural class of the Tennessee Bar Association's Leadership Law Program. In 2006, Caren received the Sam A. Myar, Jr. Memorial Award for outstanding service to the legal profession and her community. She served on the Board of the Children's Museum of Memphis, is the legal correspondent for Fox 13 News in Memphis and is currently working on a 10-million-dollar capital campaign for the University of Memphis to renovate the Natatorium.

Panelist,
*What to Do When You Don't Play Golf: How to Develop Tools and
Resources to Take Your Practice to the Next Level*

THE HONORABLE DEBORAH STEVENS

*Circuit Court Judge, Division III, 30th Judicial District
(Knox County, TN)*



Deborah Stevens is a graduate of the University of Tennessee College of Law. She was appointed by Governor Haslam in March of 2013 to serve as a Circuit Court Judge for Knox County, Division III and then she was elected to the same position in 2014. Prior to joining the bench, she was a shareholder and the President/ Managing Shareholder of the law firm of Lewis, King, Krieg & Waldrop (now Lewis Thomason).

Early in her career, she was an attorney in a small practice handling a wide variety of matters including court appointed criminal cases, divorces and small bankruptcy matters. At Lewis King, she was one of a team of attorneys representing the Federal Deposit Insurance Corporation (FDIC) in numerous cases arising out of the failure of a number of banks in East Tennessee. Her law practice continued to evolve, and for the majority of her career, she was engaged by numerous international automotive and recreational vehicle manufacturers to serve as their national and regional trial counsel in the defense of product liability actions. In that role, she tried more than 100 cases in federal and state courts throughout the Southeast. In 1996, the National Law Journal named her to their annual list of the top ten litigators in the country.

She is an active member of the Knoxville Bar, where she co-chairs the Committee for Diversity in the Profession and is a member of the Hamilton Burnett Inn of Court. In 2012, she was awarded the prestigious Tennessee Bar Association President's Award for her role as Chair of the Special Task Force on Women in the Profession. Judge Stevens is a graduate of Leadership Knoxville class of 2007 and currently serves as the Past President of the Board of Directors of the YWCA Knoxville; a member of the Board of Directors of the Knoxville Area Urban League and she is a member of the advisory board for the University of Tennessee School of Law Leadership Foundation. She is a member of the Tennessee Trial Judges Association and also serves on the Tennessee Bar Association Committee on the Judiciary.

*Thank you to the members of the Planning
Committee for TLAW's Empowerment
Conference 2018: Right Time, Right Now!*

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*As always, TLAW is grateful for the assistance of its
Executive Director, Karol Lahrman.*



How to Get Involved in the Tennessee Lawyers' Association for Women

Feeling inspired by the Empowerment Conference and want to get more involved in TLAW? We don't blame you! Here is some information on how you can serve TLAW and women attorneys across the State of Tennessee.

TLAW's Background and Purpose

Founded in 1989, TLAW was formed for the purposes of achieving the full participation of women lawyers in the rights, privileges and benefits of the legal profession, increasing the number of women serving on the bench, providing opportunities for mutual support and fellowship, supporting the status and progress of women, and providing a source for continuing legal education.

TLAW's members span the state and benefit from the unique opportunities that TLAW provides for networking, career development, and experience and training for leadership positions that are useful in "rising to the top" on the fast track in other professional organizations. TLAW provides CLE and other programs of special interest to women lawyers.

Run for the Board of Directors

TLAW is guided by a [Board of Directors](#) in developing a vision for women attorneys in the State of Tennessee. TLAW members elect the organization's Officers and At Large Directors annually. The Board of Directors serve a one-year term starting July 1 and through June 30 of the following year, except that Board members nominated from local women's bar organizations serve two year terms. Serving on TLAW's Board of Directors provides invaluable professional development experience and connects the Directors with attorneys across the state and across practice areas. Directors are expected to participate in monthly conference calls and fulfill the duties of the Director role.

Join a Committee

In addition to Director positions, TLAW has a number of [Standing and Ad Hoc Committees](#), which assume various roles and responsibilities for the organization. Examples of Committees include Annual Meeting; Community Relations; Continuing Legal Education; Elected & Appointed Positions; Legislation; Membership & Local Organization Development; Publications; and Technology. Although Committee Chairs do not vote on Board actions, Committees are essential to the operation and success of TLAW.

Attend TLAW's Annual Meeting on June 15

The elections for TLAW's Board of Directors will be held at TLAW's Annual Meeting, scheduled for June 15, 2017 in Memphis, TN. Regardless of whether you want to throw your name in the hat for a position, we hope to see you at the Annual Meeting. If you have any questions about how to get involved, we encourage you to contact the TLAW Directors and Committee Members listed on the next page. You can also find a wealth of information on TLAW's website at www.tlaw.org.

TLAW BOARD OF DIRECTORS 2017-2018

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If you have questions about TLAW, the Empowerment Conference, or otherwise, you can also contact TLAW's Executive Director, Karol Lahrman, at karol.lahrman@tlaw.org or (615) 385-5300.

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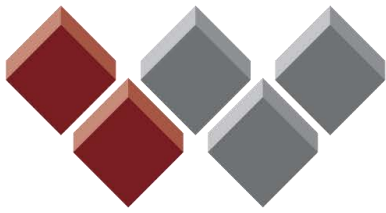
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CLE Materials

For your convenience,
several blank note pages follow
the CLE materials.

Gender and the Billable Hour

Nicole Nehama Auerbach

Founding Member, Valorem Law Group

Just because something has been done a certain way for a long time doesn't mean it is the best or the only way to do it. Consider the billable hour. Auerbach examines the impact that the billable hour as a basis for compensation has on women lawyers and their career progression and offers strategies combat the negative impact the billable hour can have on women lawyers.

For as long as I have been a lawyer—since 1993, if anyone is counting—the percentage of women graduating from law school has hovered right around the fifty percent mark. In fact, the year that I graduated was also the year with the highest percentage of women enrolled in law school—50.4%.¹ Although there has been an increase in the number of women partners in law firms since that time—13.4% in 1995 compared to 19.5% in 2011²—given that snail's pace of change, a 2012 Catalyst report on “Women in Law in the U.S.” estimated that it will take more than a woman lawyer's entire lifetime, if born in 2010, to achieve equality in the partnership ranks in law firms.

Academics and lawyers alike have grappled for years with the causes of the proverbial “leak in the pipeline” given the ample supply of women graduating law school and entering the ranks of lawyers in law firms. To this day, there is no consensus about why women are not achieving equality in partnership status, or, commensurately, in pay. Still, the search for the illusive “cause” continues.

A myriad of explanations, such as the existence of explicit or implicit bias—for example, that there are differences in the way women were raised or have learned to generate business—have all been explored, *ad nauseum*. However, a contributing factor of another kind—the role of the billable hour—has largely been overlooked. This may be because the billable hour is so inextricably intertwined with the law firm model and has been since long before women began achieving parity in terms of the total number graduating from law school. Whatever the reason, the billable hour cannot be ignored as one of if not *the* likely culprit contributing to the stagnant advancement of women in law firms today.

Disclaimer: This is probably the appropriate time for full disclosure. In 2008, I left my partner position in a large Chicago law firm to co-found a new firm designed to “kill the billable hour” by offering litigation representation using alternative fee arrangements. Admittedly, my obsession with the billable hour—or, put more accurately, with its demise—can be characterized as a strong bias. With that disclaimer out of the way, let me explain the basis for my belief that the billable hour model materially inhibits the advancement of women.

Under the traditional law firm model, a lawyer's value is measured by two tangible things: (1) hours billed; and (2) revenue generated by bringing in new business. Statistics show that, in general,

1. AMERICAN BAR ASSOCIATION, FIRST YEAR AND TOTAL J.D. ENROLLMENT BY GENDER 1947—2010 (2010), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/1947_2010_enrollment_by_gender.authcheckdam.pdf.

2. Due to the antiquated manner in which law firms report their partnership numbers, this “total number of partners” does not even paint the full picture, as the number of equity partners within the “grand total” are purposely hidden instead of broken out separately.



It follows that as external demands on women increase, the ability to meet billable hour demands becomes that much more unattainable.

women do not generate as much business in law firms as men.³ In fact, the disproportion is staggering.⁴ This means that most women must make their mark via the other method of measurement—by the number of hours billed per year. We all know that the number of hours available in any given day, week, or year is finite. The more things that require attention during those limited number of hours—for example, raising a family, caring for aged parents, sleeping, etc. . . .—the fewer hours available for billing. The fewer hours devoted to billing, the less valuable that lawyer is to the firm.

Despite great strides in the amount of time men devote to raising a family today compared to twenty or thirty years ago, women still bear the brunt of the responsibility for raising children and running a household—even women who work full time.⁵ Needing to care for elderly parents and children at the same time has also become more prevalent; hence the moniker, “the sandwich generation.”⁶ It follows that as external demands on women increase, the ability to meet billable hour demands becomes that much more unattainable. With both of the measures of value either unattainable or unsustainable, it is no wonder that women often settle for part-time or “contract lawyer” positions or drop out of firm life entirely.⁷ For women coming “up in the ranks,” seeing a dearth of women lawyers in the partnership ranks, particularly at the equity level, reaffirms the message that it simply cannot be done.

3. Almost half of large firms count no women at all among their top ten rainmakers. In 2011, a National Association of Women Lawyers (NAWL) Survey found that women partners constituted only sixteen percent of those partners who received credit for at least \$500,000 in business generation. See NAWL, REPORT OF THE SIXTH ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS (2011), available at <http://www.scribd.com/doc/72250477/NAWL-2011-Annual-Survey-Report-FINAL-Publication-Ready-11-9-11>.

4. The disparity in the generation of business is a topic worthy of discussion, but not the one I focus on today.

5. Kathy Wetters, *Work-Life Balance-Men share responsibility of raising children and caring for elderly parents*, RIGHTATHOME.NET, <http://www.rightathome.net/chiswsuburbs/blog/workplace-policies-fail-to-acknowledge-that-men-share-the-responsibility-of-raising-children-and-caring-for-elderly-parents/> (Oct. 31, 2010) (last visited Aug. 13, 2012) (as of 2010, childcare responsibilities were split two-thirds to women, one-third to men; adult daughters provide two-thirds of unpaid care for elderly parents; adult sons provide about one-third). See also ARLIE HOCHSCHILD, *THE SECOND SHIFT* (1989) (arguing that motherhood is a second shift of work at home, and inhibits women’s ability to succeed in the workforce).

6. *Id.*

7. See NAWL Report, *supra* note 3 (women represent fifty-five percent of all staff attorneys and thirty-four percent of the “of counsel” positions in law firms).

Ironically, even the natural by-products of mastering the juggling act of working while raising a family do not seem to help under the billable hour model. For example, being more efficient or more nurturing are two qualities that the billable hour disfavors. In fact, the more efficient a lawyer becomes under the billable hour model, the more work that must be undertaken to meet the billable hour minimums. (Never has the phrase “slow and steady wins the race” taken on such significance as in the traditional law firm world.) And because “nurturing” client relationships or internal client teams—a talent many women seem to have—is simply an “intangible” that rarely finds its way into the rigid calculation of a lawyer’s value to the firm, even this quality is disfavored in the billable environment.

Put another way, consider the qualities that are valued in a non-billable environment, such as one where a fixed-fee arrangement is in place. Being efficient becomes more valuable; doing only that which needs to be done helps maximize profits that are otherwise squandered by doing unnecessary things or spending more time than necessary on any given task. Being creative ranks equally high on the value scale, because “thinking outside of the box” and looking at things from a new perspective eliminates the weighty red tape that accompanies repetitively performing the same work the way without question. In the non-billable hour world, quality also reigns supreme over quantity.

Similarly, boiling the ocean to make a cup of tea or uncovering every stone simply to see what lies beneath is anathema under the non-billable hour model. Perhaps the most determinative factor to the value of a lawyer outside of the billable world is something rarely, if ever, looked at in the traditional law firm model—the results achieved.

When the formalistic measurements of value are eliminated, the incentive to reward quantity over quality falls by the wayside. For women who are disproportionately burdened by the many demands on the finite commodity of time, doing away with the billable hour—or that aspect of the measurement of value—shifts the focus to the measurement of the many intangible qualities that women have in spades. Perhaps when the billable hour model is finally dead—or at least maimed in a significant way—women will find it possible to not only persevere in law firms but also thrive.



When the formalistic measurements of value are eliminated, the incentive to reward quantity over quality falls by the wayside.

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Do you have the GRIT to go the distance?

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GRIT & MINDSET

Implications for women lawyers

Just as motivation, self-discipline and optimism can be nurtured, experts believe grit and mindset can be learned and developed

By Milana Hogan and Katherine Larkin-Wong

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This article resulted from the panel discussion *Dust Yourself Off and Keep on Going: Improving Your Grit & Mindset to Overcome the Challenges that Women Face in the Practice of Law* at NAWL's 2013 Annual Conference. The panel was based on Milana Hogan's research into two traits, grit and mindset, and their correlation with women's success in the law. Katherine Larkin-Wong discussed the implications of grit and mindset as a young associate and how you might view your career path – and incidents that occur in the life of every young associate – differently depending on your grit and mindset scores. Charmaine Slack also spoke on the panel and discussed how she saw grit and mindset applying to legal practice from a partner's perspective.

The response to the panel prompted the current Chairwoman of the ABA Commission on Women in the Profession, Bobbi Liebenberg, to make the "GRIT Project" the Commission's signature project for this year. Among other things, the GRIT Project will produce two "programs in a box." The first will provide training on grit and mindset for attorneys and will be designed so that firms, bar associations and other attorney organizations can teach their lawyers about the power of true grit and a growth mindset. The second will provide the same tools for a law school and law student audience.

This article offers an overview of the results of Hogan's research and a preview of the types of issues that the GRIT Project will be addressing this year. To read Hogan's full dissertation, go to: http://www.linkedin.com/profile/view?id=15541534&trk=nav_responsive_tab_profile (LinkedIn Premium account required).

IN THE PAST TWO DECADES, men and women have entered law firms as first year associates in roughly equal numbers. As of 2012, about 45 percent of incoming associates were female (*Report of the Seventh Annual NAWL National Survey on Retention and Promotion of Women in Law Firms*, 2012). There is, however, a gradual erosion of women that increases with seniority, and by the time women arrive at the most senior leadership levels – of counsel, nonequity and equity partners – they represent only 35 percent, 26 percent, and 15 percent, respectively (NAWL, 2012). These somewhat grim numbers have remained static for close to 30 years so it is clear that the significant number of women entering the profession – although there is some



Milana Hogan, top right, recently completed her doctorate in Education at the University of Pennsylvania. She earned her undergraduate degree at Brown University, Providence, R.I., and is currently the Director of Recruiting and Professional Development at Sullivan & Cromwell LLP in New York.

Katherine Larkin-Wong, bottom right, is a litigation associate in the San Francisco office of Latham & Watkins LLP. Her practice focuses on white collar and antitrust litigation. She is also the president of Ms. JD (www.ms-jd.org), a professional development organization dedicated to empowering young women lawyers and aspiring lawyers.

Hogan and Larkin-Wong, along with Carrie Hightman, are co-chairs of the ABA Commission on Women in the Profession's GRIT Project.

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Hogan's research focused on factors that don't involve luck

evidence that this number is on the decline – has not translated into staying power and equal advancement (NAWL, 2012).

Such stark and seemingly dismal statistics have led to a number of studies attempting to identify the obstacles and barriers that have led to this year-over-year failure to reduce the gender gap at the leadership level. While such studies represent important work, relatively little is known about the shared characteristics and competencies of the women who do manage to succeed in the law firm environment. What do these women leaders have in common, and what, if anything, can we learn from their journeys?

If you ask women at the top to describe factors that contributed most to their success, you're likely to hear a variety of answers, including finding the right mentor or sponsor, inheriting the right clients and taking advantage of opportunities to develop new business. But what about the factors that do not depend – at least in some small way – on good luck? What about the factors that one

Grittier individuals tend to work harder and longer than their peers and are more likely to engage in deliberate efforts to improve their performance.

has complete control over and can alter, or not, at an individual level? It is this latter set of traits that Hogan's research seeks to address. Specifically, her study considers how noncognitive traits like grit and a growth mindset impact female success in BigLaw.

Defining grit

Grit is defined as “perseverance and passion for long-term goals” (Duckworth, 2007, p. 1087). Angela Duckworth, a psychologist at the University of Pennsylvania, Philadelphia, has developed a 12-item self-report grit test (bit.ly/1a1Tt8Z) that measures grittiness on a scale

of 1 to 5. Using this and other measures, grit is shown to predict achievement, often above and beyond other metrics – such as GPA or rank of law school – that many law firm recruiting departments often look to first.

Among other things, the research on grit has shown that: 1) grittier individuals tend to work harder and longer than their peers and are more likely to engage in deliberate efforts to improve their performance, 2) grittier individuals are more likely to “stay the course” and not get distracted by immediate, short-term interests or needs and 3) having grit is particularly important in very challenging contexts.

What is mindset?

Carole Dweck, a psychologist at Stanford (Calif.) University, suggests that people generally have one of two mindsets – either a fixed mindset or a growth mindset. People with a fixed mindset believe their strengths are predetermined. They believe they have a certain amount of intelligence and talent and these gifts are immutable. In

contrast, people with a growth mindset see their abilities as flexible entities that can be developed through dedication and effort. They understand that no one has ever reached expert levels of performance – not Mozart, Einstein nor Tiger Woods – without years of practice and hard work, and many setbacks along the way. Research has shown that individuals with a growth

mindset tend to outperform those with a fixed mindset, and are also far less likely to get frustrated when things become challenging. Dweck argues that your mindset is a powerful tool that profoundly affects the way you lead your life and can determine whether you commit to, and accomplish, the things you set out to do.

Grit, Mindset and BigLaw

Given that almost all lawyers are expected to achieve at very high levels and to work long, sometimes grueling hours in a very challenging environment, it stands to reason that having grit and a growth mindset can help

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you to achieve success. Indeed, grit (or a synonym of grit) is often on the short list of answers successful women lawyers give when asked to describe the traits or behaviors that led to their success. While there is strong anecdotal evidence to support the power of these two traits, Hogan wanted to take things a step further by trying to answer the following questions: What is the nature of the relationship between grit and success, and mindset and success, for women lawyers currently practicing in BigLaw? Are successful women lawyers more likely than less successful women lawyers to have grit and growth mindsets? If so, how important are these traits and how much do they tell us about a lawyer's future prospects? Are grit and mindset more or less important to success when we account for other

important factors (i.e. whether or not a woman has children, her law school GPA, etc.)? Are grit and a growth mindset outcomes of – or precursors to – success?

Research methodology

To answer these questions, Hogan undertook a two-part, mixed methods study. The first part of the study consisted of a confidential, online survey that was sent to a random sampling of lawyers from firms in the AmLaw 200. In

Research has shown that individuals with a growth mindset tend to outperform those with a fixed mindset, and are also far less likely to get frustrated when things become challenging.

Drinker Biddle is proud to support the National Association of Women Lawyers and joins in celebrating women as leaders in the law.

At Drinker Biddle, our commitment to diversity is embodied in our dedication to providing exceptional value and service to our clients. We are proud of the achievements of our women lawyers and their exceptional contributions to our firm, the legal profession, and their communities, and we support their professional and personal growth.

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Jonathan I. Epstein and Andrew B. Joseph, Partners in Charge of the Princeton and Florham Park, N.J., offices, respectively.

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There is a statistically significant relationship between grit and success for women in BigLaw

total, the survey was completed by 477 women (a 25 percent response rate). Of those women, 35 percent were partners, and 65 percent were nonpartners, including counsel, specialists and associates at all levels of seniority. The survey asked roughly 60 questions, and included the administration of the grit test and the mindset scale. The survey also included questions that were designed to ascertain various measures of success, including the

Grit is a precursor to BigLaw success rather than an outcome of it.

message that the respondents had received at their last performance review and whether or not they were on partnership track.

The second part of the study was a series of phone interviews with women who had completed the survey. Interviewees were chosen based on their grit and mindset scores, and where they fell on the success spectrum, in order to make sure that the sample was

representative of as many different perspectives and outcomes as possible (i.e., women with high and low grit and mindset scores and high and low measures of success). Each semi-structured interview lasted approximately 30 to 60 minutes.

Once all of the data had been collected, Hogan built a series of models that looked at the impact of grit and mindset on different measures of success in order to ascertain what happens to the strength of these relationships when we account for other factors that have also been known to contribute to success.

Findings

The results showed a very strong, statistically significant relationship between grit and success for women in BigLaw. Specifically, the results showed that grit is related to several success measures including: the most recent message participants received at their performance reviews (e.g., “your performance was outstanding or your performance was average or below average”), and most significantly to the number of hours a lawyer works and her own perception of the quality of work she receives (e.g., “I get the best and most interesting work” or “I get

Average grit score for women in BigLaw:

3.94 (equates to ~ 80th percentile)

Average grit score for all women = 3.43

Women also have the edge when it comes to self-discipline

Decile	Men (N- 4,169)	Women (N - 6,972)
1	2.5	2.5
5	3.38	3.5
6	3.54	3.63
7	3.75	3.79
Women Lawyers	n/a	3.94
8	3.92	4
9	4.21	4.25
10	5	5
Mean (Standard Deviation)	3.37 (0.66)	3.43 (0.68)

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simple, routine work”). Furthermore, the data suggested that grit is a precursor to BigLaw success rather than an outcome of it. Finally, Hogan found that many successful female lawyers display growth mindset characteristics, and rely heavily on them to navigate challenging situations in the workplace (including their responses to negative feedback from senior lawyers, self-doubts, and the – sometimes overwhelming – pace and volume of the work itself).

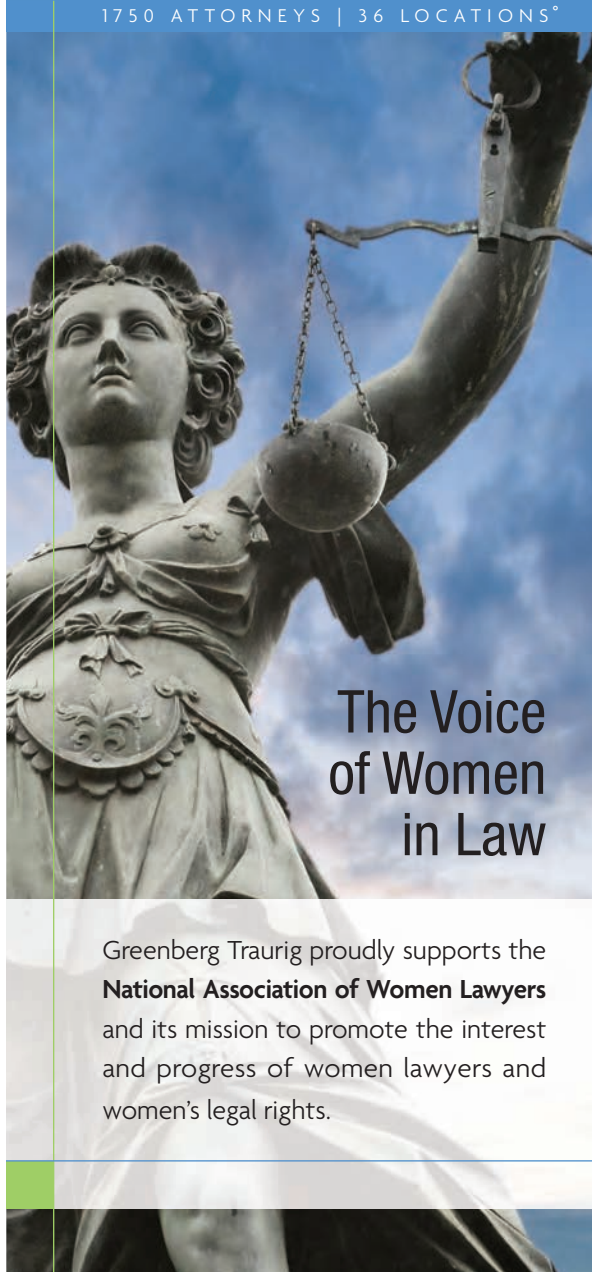
How firms can use grit and mindset in professional development and recruiting

The very best news about grit and mindset is that most experts believe they can be learned and developed given the right conditions (this is based on the fact that similar traits such as motivation, self-discipline and optimism are traits that can be nurtured and strengthened). Following are some preliminary ideas for ways firms may reinforce and strengthen grit and growth mindsets in their lawyers. Look for these ideas to be expanded and refined through the GRIT Project.

1. Learn how to handle and learn from failure

Most successful people have failed repeatedly. Just ask Oprah Winfrey, J. K. Rowling, Venus Williams, Ruth Bader Ginsburg or any number of wildly successful athletes, business leaders, actors or women lawyers and they will all tell you about times when they struggled and weren’t sure they had what it takes to be successful. We need to teach lawyers how to deal with the negative emotions that go hand-in-hand with the inevitable setbacks, losses and failures that are a part of practicing law.

In general, most lawyers are not good at failing, because they are so used to succeeding, and it feels really foreign when things don’t work out the way they had planned. Stop for a second to think about the success one needs just to get into law school. Legal practice is often one of the first times that associates



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Long-term goals and a positive outlook go hand in hand

face serious and recurring challenges to their work product. (In re-reading our draft, we realized that this framework suggests something about our own “grit.” We define these moments not as “failures” but as challenges. Challenges are something one overcomes. Failure is an end. Challenge is just the beginning. This is one example of grit and a growth mindset.)

We can teach lawyers appropriate coping strategies such as distancing oneself from the loss, understanding the limits of what you can and cannot control, and even deep breathing and journaling to process negative emotions (this last suggestion may be a little “out there” for most law firms!). Understanding how to learn from failure goes hand in hand with grittiness and a growth mindset.

2. Learn how to receive criticism

Closely related to learning how to deal with failure is learning to receive criticism. This is key, because it allows

We can teach lawyers appropriate coping strategies such as distancing oneself from the loss, understanding the limits of what you can and cannot control, and even deep breathing and journaling to process negative emotions.

us to learn quickly without popping the enthusiasm bubble. Lawyers, at all stages of their careers, need to know how to digest constructive feedback and criticism, and how to act on the messages they are being given in order to improve their performance. Associates need to be able to take criticism from senior lawyers and focus on how to address it; partners need to be able to learn from a client about why they lost that particular pitch and bounce back from it. Gritty individuals who have growth mindsets are much more likely to respond well

when receiving this kind of advice, but even those who don't start out that way can develop these skills over time. “Fake it 'til you make it” is one way of developing your skills for internalizing and addressing criticism. It may very well be that, after a lot of practice believing that you can do something that feels impossible, eventually you will actually develop a growth mindset.

3. Praise efforts, not outcomes

As Dweck points out, you don't want to inadvertently send the wrong message about the importance of grit or growth mindset by overlooking these traits in the evaluation processes. Your evaluations shouldn't focus on only results. Instead, praise effort in addition to ability. Insert a category that evaluates lawyers on how persistent they are, or the extent to which they persevere in spite of challenging obstacles. Often, firms are afraid to do this, but we don't think it's really that risky. Biglaw

is largely populated with extremely smart overachievers. It's OK not to be so focused on results, at least early on in a lawyer's career while she is still building critical skills. It is far better for the firm to encourage effort and continuing to work on developing those lawyer skills because it will increase the likelihood of both the individual lawyer's success and the creation of more well-rounded lawyers at the firm. The alternative:

that lawyers, especially young lawyers, avoid tasks at which they believe they will not be successful, encourages lopsided development.

4. Be realistically optimistic

Recent research by Martin Seligman and colleagues has shown a link between optimism, grit and mindset. It makes sense. It's hard to set long-term goals and persevere, and to have a growth mindset, without having a positive outlook. We should make every effort to

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positively reinforce our lawyers, and to pursue programs that help them stay optimistic about their careers, even (and especially) when there is room for improvement.

5. Identify what you are passionate about

Grit is as much about passion as it is about perseverance. We should encourage lawyers to identify what they love to do and then pursue it with zeal. Too often, lawyers don't take the time to think about their passions because they are so focused on their immediate to-do lists. If you don't know what makes you happy, it's hard to pursue it, and if you're not passionate about what you're pursuing you won't be able to achieve the same levels of success.

6. Specialize

People who are highly successful tend to over-focus in one area. Sometimes that's OK. Don't worry so much about having the perfect balance when it comes to work. We cannot excel in every area. There is simply not enough

It's OK not to be so focused on results, at least early on in a lawyer's career while she is still building critical skills.



#68

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Don't worry so much about having the perfect balance when it comes to work

time in the day to be good at everything and to develop the necessary skills that will set you apart – so we should think about encouraging our lawyers to be the best that they can be at the things that they love. They are much more likely to stick around if they love their jobs and will be grateful that we've allowed them to make a career out of doing what they like most. Notably, we are not the only ones pushing this message. Sheryl Sandburg talks about the trade-offs women need to make for success in their careers in her blockbuster book *Lean In*. Larkin-Wong has also written about how these tenets apply to young lawyers (See Grover Cleveland and Katie Larkin-Wong, *10 Things Every New Lawyer Should Do – Right Now*, *The Careerist*, (Oct. 29, 2013) bit.ly/1m2Qw27.)

7. Don't assume that you can't do it

We should be reminding lawyers of this regularly, either through the review process or in meetings with professional development team members or career counselors. If a lawyer is hitting a wall, and having trouble getting past it, she should not be so quick to assume that it's because she lacks a certain ability or innate talent – it could just be that she doesn't have a particular skill set, but that doesn't mean she can't *develop* it. By way of example, when Hogan was training for the marathon, and she ran her first 20-mile training run, she

Introducing the idea that there are different mindsets which can significantly impact or detract from future success can have a huge impact on students and employees.

really started to panic at mile 19. She kept thinking, “If I am having this much trouble running 20 miles, how am I ever going to finish 26 miles?” Like many women who have attempted something that was not easy (e.g. the road to partnership) it was a really bad moment. She was

doubting herself. When she got home (after successfully running the 20 miles), she was feeling pretty defeated, and then her husband pointed out that she shouldn't feel discouraged because her training plan called for only 20 miles that day, not 26. Just because she couldn't run 26 miles on that particular day did not mean that she wouldn't be able to do it on race day. Training for something, learning about something, working towards something is a process. There are many little milestones along the way, and lawyers should try to focus on those, and not just on the endpoint. The feeling that you need to be perfect from Moment No. 1 is caustic both for individual lawyers and for firms. We should all strive for perfection and there is no doubt that mistakes in law can have serious consequences. However, we will make mistakes. The question is how we deal with them and that is something we should probably talk about more.

8. Try on a growth mindset

Another running story will help explain this one. A few years ago, Hogan was having trouble running hills. She read that if you force yourself to smile when running up a hill, it can actually make you feel better. She thought it seemed a little crazy, until she tried it: “Something about plastering on a fake smile while running up a mountain of a hill just struck me as hilarious, and then I really did start smiling and eventually even laughing. It was still painful – don't get me wrong – but at least it was enough of a distraction to make the experience more enjoyable.” Her experience is not unique: Science shows that often a physical action alone, such as smiling, or giving someone a hug or breaking into dance, can prompt feelings of happiness or love and affection, even if those feelings did not lead to the action in the first place. So, we should create the kind of environment where lawyers can practice having a growth mindset, and act like they would if they did have one, even if they don't really buy it yet: “Fake it 'til you make it.” Notably, while most lawyers are largely outside of the average on the grit scale, their mindset scores are much closer to the average. This fact suggests

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that developing a growth mindset may have the greatest impact on success for law firms and individual lawyers.

9. Educate

This may seem obvious, but we need to educate our lawyers about these traits and other traits that lead to success. Too many people simply do not know enough about them to make use of them. Science shows that, when it comes to mindset, simply introducing the idea that there are different mindsets which can significantly impact or detract from future success can have a huge impact on students and employees. For example, in one study, Dweck and colleagues introduced the idea of the brain as a muscle to junior high math students (in a 30-minute session) and those students went on to significantly outperform a control group of students

who were not introduced to this concept. This, by the way, is the fundamental belief behind the GRIT Project. We hope that by creating easy-to-use programs in a box that we will encourage law firms, bar associations, law schools and other organizations to begin teaching grit and mindset to the legal profession.

Grit and mindset are powerful and potentially critical traits, and if we want our lawyers – both men and women – to be successful practitioners, we need to make sure that they know as much about them as early in their careers as possible. ■

If you are interested in learning more about the GRIT Project, contact Katie Larkin-Wong at katherine.larkin-wong@lw.com or Milana Hogan at hoganm@sullcrom.com.

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GENDER HARASSMENT IN THE COURTROOM

Judge Chris Craft, 30th Judicial District at Memphis

Although one would think that a courtroom would ordinarily be one of the last places that gender harassment of attorneys might occur, this is not necessarily so. Unless the judge in that courtroom keeps a watchful eye, often a culture of bias, discrimination or harassment can be allowed to develop among the attorneys, clerks and other courtroom staff. This culture not only has an adverse effect on the aura of professionalism and fairness surrounding the law practiced in that courtroom, but also fosters an impression among some of the attorneys, the parties and among the attendant members of the public that some cases may be decided on reasons other than legal merit, such as personal bias or the “good ole boy” network. It is often the case that particularly salacious facts announced in a divorce case, or facts stipulated to in a sexual assault guilty plea, or testimony concerning a very intimate search of a person for contraband in a suppression hearing become a necessary part of a civil or criminal cause of action in court. These statements of fact not only may prove embarrassing to discuss, whether the attorney offering those facts is male or female, but also that attorney may become the subject of ill-conceived humor among the other attorneys, deputies and courtroom staff present, creating the feeling of a hostile work environment. It is the duty of the judge to stop all such behavior as soon as it is detected, and the duty of attorneys present to bring such behavior to the judge’s attention.

Sometimes the judge directly exhibits gender discrimination, whether consciously or unconsciously, by treating male and female attorneys, parties or witnesses differently. Sometimes the judge fails to bring to the attention of an attorney that the attorney is exhibiting gender discrimination. In either case, the judge is not only responsible for the judge’s own conduct, but also for the conduct of everyone else in the courtroom. “A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge’s direction and control.” Supreme Court Rule 10 (Code of Judicial Conduct), Canon II, Rule 2.8 (B).

If it becomes apparent that such conduct is made known to the judge (whether it is the judge’s own conduct or the conduct of other attorneys or courtroom staff), but the judge is unwilling to take any action to cure that conduct, it should be brought to the attention of the Board of Judicial Conduct, which is charged with enforcing the Code. The Board’s website and contact information can be found at <https://www.tncourts.gov/board-of-judicial-conduct>.

Below are 1) three of the Code of Judicial Conduct rules which directly impact and proscribe gender discrimination in the courtroom, and 2) a Resolution passed by the Conference of Chief Judges on 1/31/18 concerning workplace gender harassment.

RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Comment

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

RULE 2.3 Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

Rule 2.8 Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

CONFERENCE OF CHIEF JUSTICES

Resolution 2

In Support of Commitment to Awareness and Training on Workplace Harassment in the Judicial Branch

WHEREAS, the Conference of Chief Justices is committed to the rule of law and to strict observance of laws relating to conduct in the workplace; and

WHEREAS, the Conference of Chief Justices has historically championed gender equity in the state courts and in 1988 passed a resolution urging each Chief Justice to establish separate task forces devoted to the study of gender bias in the court system and minority concerns as they relate to the judicial system; and

WHEREAS, recent events have raised public awareness of pervasive sexual harassment in the workplace in government, the media, and private industry; and

WHEREAS, State codes of judicial conduct require judges, in the performance of their judicial duties, not to manifest bias or prejudice or engage in harassment (including sexual harassment) and not to permit court staff, court officials, or others subject to the judge's direction and control to do so; and

WHEREAS, a judicial disciplinary commission exists in every state to hold judges accountable; and

WHEREAS, as a separate branch of government, the judicial branch has the duty to protect its employees against harassment and intimidation in the workplace;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices encourages the judicial branch of each state, territory, and the District of Columbia to establish and maintain policies:

(1) to provide every judge and employee with training that addresses the various forms of workplace harassment, including sexual harassment, and related intimidation and reprisal that are prohibited by law; and

(2) to establish procedures for recognizing and responding to harassment and harassment complaints; and

BE IT FURTHER RESOLVED that the National Center for State Courts shall create a repository of resources that address workplace harassment in the state courts, including model policies and procedures.



FIVE-MINUTE COPYRIGHT, TRADEMARK & TRADE SECRET AUDIT

Did you know you could be making more money from your copyrights, trademarks, and trade secrets?

Intellectual property is probably the most valuable asset in your creative business. But most entrepreneurs don't know how to identify it. And you can't monetize what you can't find.

Use this 5-Minute Intellectual Property Audit worksheet to find out what intellectual property could be protected by trademark, copyright, or trade secret law.

1 *How do your customers identify your brand and know it's yours?*

List your company name; service names; product names; logos for your company, services, or products; slogan or tagline; domain name; catchphrase; or a signature color or packaging:

These brand identifiers may be protected under trademark law, assuming (1) no one else started using them before you did, and (2) they don't fall into a category that can't be protected, like a descriptive or generic name. You will earn common law rights in these trademarks just by using them in your business, and should consider registering with the U.S. Patent and Trademark Office if they identify a profitable and long-term part of your business. Listen to episodes 5 and 6 of the Legal Road Map® podcast to learn more:

<http://awbfirm.com/podcast/>

2 *What creative content have you, or your contractors or employees, created for your business?*

Include product or custom stock photos; website photos (but not those that you found and licensed from a stock photo site); website or marketing materials like sales page copy, brochures, and proposals; internal handbooks or manuals; graphics; blog posts; software or source code; podcast; videos; music; product labels; designs you print on items like coffee mugs or t-shirts; and artistic logos:

These creative works could be protected under copyright law. You will own the copyrights in any creative content you actually create, automatically, from the moment it is “fixed” in any medium like a computer file or paper, but in order to actually enforce your rights (file a lawsuit), you must register these works with the U.S. Copyright Office. And you may not actually own the copyrights in works that your contractors or employees create, unless you have an agreement in writing with them. Listen to episodes 5 and 7 of the Legal Road Map® podcast to learn more (<http://awbfirm.com/podcast/>).

**Note: copyright law does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed (you can protect the words you write in a book or speech to describe an idea or system, for example).*

3 *Do you sell or give away any educational products, like online or in-person courses, a structured group coaching program or mastermind, or a retreat?*

The content (course outlines, videos, slideshows, audio recordings) in these products may be protected under copyright law.

4 *Do you sell or give away any downloadable digital products? List any worksheets, workbooks, slide decks, checklists, audio files, opt-ins, course materials, software, stock photos, website templates, or similar items here:*

These products may also be protected under copyright law. However, if a photographer or designer worked on these products, you may not own the rights unless you have an agreement in writing.

5 *Have you written a book or e-book?*

Books are typically protected under copyright law. However, if a co-author, contributor, or designer helped you create any book content, you may not own the rights unless you have an agreement in writing.

6 *Do you have a signature program, method, or protocol that you teach to others?*

These programs typically involve both trademarks (the name, logo, and other identifying features) and copyrights (the content itself). This is likely one of the most valuable assets in your business and, if properly protected, could be used in a licensing or certification program that you sell to your students and fans. Listen to episodes 10, 19 and 21 of the Legal Road Map® podcast to learn more about licensing: <http://awbfirm.com/podcast/>.

7 *Do you have a special way of doing or creating things in your business that you keep confidential, or secret technical, financial, or market information?*

List any “secret sauce” in your business that you use to gain a competitive advantage and don’t want others to know about (think of the recipe for Coke, or a workbook you use to manage every client project but don’t actually share with clients):

Valuable trade secrets are protected by state and federal laws so long as you actually keep them secret. This requires putting protections in place like policies limiting who has access and rules about disclosure, nondisclosure agreements, or keeping information under lock and key.

Congratulations! You’ve have created an inventory of your business’s most valuable intellectual property. Ask yourself how your business would be impacted if a competitor copied or used any of these assets without your permission. Now you know what might be worth protecting as you can build a more profitable, sustainable business.

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10 STEP ROAD MAP TO GROW YOUR BUSINESS, LEGALLY

1. Use solid contracts, in writing signed by both parties, for your agreements. For example, use a contract with your:
 - clients
 - partners / founders / joint venturers / collaborators
 - investors
 - independent contractors or employees
 - in-person retreats or events
 - people you let view or use your copyrights or trademarks (ex.: blog, e-course or digital products, licensees)
 - photos or videos if you can see the person's face
 - affiliates / referral sources
2. Load the right documents on your website. You MUST have a privacy policy if you collect personal information (if you are selling products or services, or have an e-mail opt-in). You may also need:
 - terms and conditions (rules for website visitors);
 - terms of use (rules for digital product or course purchasers);
 - disclaimers; and/or
 - FTC-required disclosures (if you receive money or products to write about something)
3. Protect your brand with a trademark:
 - choose a great business or product name (fanciful or arbitrary, not generic or descriptive)
 - search for exact and similar wording to be sure it's not already being used by another business selling similar products or services:
 - Google
 - your state's online business and trademark registry
 - USPTO federal trademark registry (tess2.uspto.gov)
 - protect it with a federal trademark registration from the USPTO (start at www.uspto.gov/trademark, \$225-325 filing fee, hiring a lawyer to navigate the tricky, multi-step process is recommended).
4. Decide on the right corporate entity for you:
 - sole proprietor (if you're a solopreneur with low liability risk);
 - common law partnership (still put your agreement in writing!);
 - LLC or corporation (for companies with higher liability risk)

5. Get a free Employer ID Number (“EIN”) from the IRS, even if you don’t have employees.
This is like a social security number for your business, so you don’t have to use yours (even for a sole proprietor). Form an LLC or corporation before registering for an EIN (<https://sa.www4.irs.gov/modiein/individual/index.jsp>).
6. Register with your city, county, and state for a business license and taxes.
Check your state’s business registration website - usually but not always the Secretary of State - or contact your local SBA office for tips (<https://www.sba.gov/content/find-local-sba-office>).
7. Set up separate business bank accounts.
This will make keeping track of your business revenues and expenses, and calculating what you owe in taxes, a snap. You need your EIN for this step.
8. Get the right insurance coverage. Consider:
 - general liability;
 - professional liability, aka “errors and omissions” (for doctors, accountants, other professionals giving advice or providing services);
 - product liability; and/or
 - damage to business equipment
9. Protect your creative works and create value with U.S. copyright registration at www.copyright.gov (\$35-55 filing fee, a lawyer is helpful but most mistakes forgiven so long as you don’t intentionally misstate information).
10. Use other people’s content the right way to stay out of legal hot water.
Always ask permission and keep a record of where you found photos, videos, quotes, and other content that you use on your blog, website, other content and advertising. If you didn’t create it, you need permission.

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Autumn Witt Boyd hosts the Legal Road Map™ podcast, which helps business owners protect their rights and stay out of legal hot water, so they can confidently build their dream business. Autumn is an experienced lawyer who helps high-achieving and ambitious entrepreneurs solve their business, copyright, and trademark issues. She provides legal guidance as outside general counsel, copyright and trademark protection, contract negotiation, and problem solving. She loves helping entrepreneurs grow their dream business with smart collaborations and deals.

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YOUR ABA

ABA's Grit Project aims to help women advance in the profession

BY MARTHA MIDDLETON

NOVEMBER 2014 (/MAGAZINE/ISSUE/2014/11/)

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Alarmed by persistent evidence that women still are failing to enter the leadership ranks of the nation's largest law firms in adequate numbers, the ABA Commission on Women in the Profession has launched a project to teach female lawyers about some things they surely never studied in law school—grit and a positive mindset. Some researchers say those two traits applied simultaneously can play a crucial role in helping women advance in the profession.

The commission introduced the Grit Project in June. The project provides information on the science behind grit and mindset, and how those characteristics play an important role in career growth. The commission has introduced the Grit Project Program Toolkit as the first step in a series of efforts that can be adopted by law firms, bar associations and other groups to educate female lawyers on these important traits. The kit includes program agendas, discussion scenarios,



Roberta Liebenberg: The recent academic findings about grit and female lawyers' success are "truly transformative" and "hopeful for a critical mass of law firm leaders."

Photo courtesy of the ABA Commission on Women in the Profession.

Kaplan and Black in Philadelphia, describes the findings as "truly transformative" and "hopeful for a critical mass of law firm leaders." Learning and applying grit and a growth mindset will help female lawyers and law students drive their own success, take charge of their careers and realize their goals, she says.

Liebenberg named Hogan, Larkin-Wong and Carrie Hightman to co-chair the Grit Project. Hightman is a member of the commission and serves as chief legal officer and executive vice president of NiSource, an energy company in Merrillville, Indiana.

PowerPoints, handouts, and suggestions for further reading and learning opportunities. The commission also has been sponsoring a series of informational programs about grit and a growth mindset.

The project is based largely on research conducted by Milana Hogan while studying for a doctorate in education. Hogan is the director of recruiting and professional development at Sullivan & Cromwell in New York City. In an article (PDF) originally published last year in the *Women Lawyers Journal*, sponsored by the National Association of Women Lawyers, Hogan and co-author Katherine Larkin-Wong described a statistically significant relationship between grit and success for women in BigLaw firms. The findings were based on a combination of online surveys completed by 477 women employed at firms in the Am Law 200 and follow-up phone interviews. Larkin-Wong is an associate at Latham & Watkins in San Francisco who also is president of Ms. JD, a professional development organization dedicated to empowering young female lawyers and aspiring lawyers.

"Grit and mindset are powerful and potentially critical traits," wrote Hogan and Larkin-Wong in their article, "and if we want our lawyers—both men and women—to be successful practitioners, we need to make sure that they know as much about them as early in their careers as possible."

Their findings also were enough to convince Roberta D. Liebenberg to launch the Grit Project during her term as chair of the women's commission, which ended Aug. 31. Liebenberg, a senior partner at Fine,

But just what are grit and a positive mindset, and can they be learned?

THE MEANING OF IT ALL

Both concepts have been subjects of academic research. Angela L. Duckworth, a psychology professor at the University of Pennsylvania in Philadelphia, has described grit as "perseverance and passion for long-term goals," and she has developed a self-report test for measuring grittiness. And in their article, Hogan and Larkin-Wong point out that recent research indicates that grittier individuals tend to work longer and harder than their peers, are more likely to maintain their focus on long-term goals, and engage in deliberate efforts to improve their performance.

Meanwhile, Carol Dweck, a psychology professor at Stanford University, has explored the concept of mindset. She identifies two types of mindset: People with a fixed mindset believe their strengths are predetermined, while those with a growth mindset believe their abilities can be further developed.

Picking up on this theme, Hogan told a webinar presented in June by the commission on women that "mindset is a really powerful tool that can impact on why people succeed. They don't need to assume that they don't have what it takes to succeed."

The good news is that mindset "is a very easy thing to change," Hogan said, especially given recent research supporting the notion that there is no ceiling when one is making a deliberate effort to improve performance. "The brain is really a muscle," Hogan told webinar participants. "The harder you work at it, the bigger and better it becomes—and the smarter you can become," and ultimately be more successful, she said.

DETERMINATION AND DIALOGUE

Michele Coleman Mayes, the new chair of the Commission on Women in the Profession, offered a personal perspective during the webinar on the importance of mindset to building a successful career. Early on in her career, Mayes says, she announced that she wanted to be a general counsel, "and the response was: 'You've got to be kidding.'" But instead of accepting that response as reality, she looked at it as the beginning of a dialogue and asked other lawyers what steps she could take to attain her goal. She went on to serve as general counsel for two corporations, and in 2012 she was appointed vice president and general counsel for the New York Public Library.

Hogan emphasized that having grit does not mean that female lawyers have to work harder. But they do "have to feel good and passionate" about what they are doing because it is that passion that allows them to sustain grit. And passion doesn't always precede grit, she noted, but often follows it. "So if you don't have it at the outset," she said, "you don't need to panic."

Surprisingly, so-called Type A personalities aren't always the ones who demonstrate the most grit. In part, this is because those personalities are focused on control and being perfectionists, and are less comfortable making mistakes. "A lot of times in the practice of law you have no control, you're not in the driver's seat," Hogan said, so the female lawyer with grit will be more comfortable with feedback and

with failure.

The response to the Grit Project has been quick and enthusiastic. In June, the Bar Association of San Francisco presented a program on grit and mindset to more than 50 women (and one man), says Kallie Donahoe, the Barristers Club director at the bar. The project was featured in October at a program sponsored by the Vanguard Group in Philadelphia, and it's on the schedule for NALP's annual education conference in April. Liebenberg, who is on tap to speak about the project at some law schools in the coming months, notes that a number of schools have shown interest in incorporating grit principles into their curriculum.

The need for such efforts is evident in statistics charting the advancement of women in the legal profession. The Eighth Annual Survey on Retention and Promotion of Women in Law Firms, published earlier this year by the National Association of Women Lawyers, reports that while more than 40 percent of law school graduates since the mid-1980s have been women, fewer than 20 percent of the equity partners in the typical law firm are women, a number that is largely unchanged over the past few years. "Advancing women in law firms is not a universal goal for Am Law 200 firms," the report states. While some firms are taking positive steps to address the obstacles facing women seeking to advance, "too many firms continue to fail to recognize that facilitating the advancement of their women lawyers also redounds to the benefit of the firms themselves as well as their clients," states the report.

"There is good work being done by some firms, but if it was effective we would see more women as partners or promoted," Hightman says.

"It's well-intentioned but difficult. It doesn't come naturally."

This article originally appeared in the November 2014 issue of the ABA Journal with this headline: "True Grit: A new ABA project helps women learn personal characteristics that will help them advance."



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Briefly

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BY ANN SARTWELL

What's Up with Time's Up?

Someone is definitely training your employees about what harassment is and how to fight it. Make sure your own organizational message is clear, sincere, and backed up by appropriate action.

The EEOC recently released data for the fiscal year ending September 30, 2017 indicating an overall decrease in charges and a drop in sex discrimination and sex harassment charges as a percentage of overall filings. <https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm> In Tennessee, sexual harassment filings actually increased by a total number of two. Mississippi saw a slight increase as well. In Georgia, the change was slightly more marked. There, 36 additional complaints were filed in the fiscal year which just ended as compared to the previous year.

What happened *after* September 30th, and what will it mean for employers? The Harvey Weinstein story broke on October 5th. Alyssa Milano's tweet reignited Tarana Burke's #MeToo hashtag on October 15th, and the news has been dominated ever since by stories of unchecked sexual misconduct, much of it workplace related.

Launched January 1, 2018 in the days leading up to the Golden Globe awards, the Time's Up initiative, a response to the #MeToo wave, declared war on sexual assault, harassment and inequality in the workplace. Hollywood scandals and arguments aside, it's a big mistake to discount the movement's potential impact. Time's Up dominated social media in early January and its website quickly morphed beyond a banner page, logo and manifesto. Visit the site at <https://www.timesupnow.com/>

LEGAL FUND

19,000 donors raised \$20 million by February, much of it in \$20-\$100 increments. Several individuals, including Reese Witherspoon, Jennifer Aniston and Meryl Streep, donated \$500,000

each. The National Women’s Law Center (NWLC) will administer the fund, anticipated to facilitate charges or cases on behalf of low-wage earners or complex litigation. The legal initiative is spearheaded by attorneys Tina Tchen (former Chief of Staff to Michelle Obama) and Roberta Kaplan (whose clients include Edith Windsor, the plaintiff in the Supreme Court case invalidating the Defense of Marriage Act, Airbnb, and the Minnesota Vikings, to name a few), and is aided by top public relations professionals.

NETWORK OF LAWYERS

But that’s not all. The NWLC is also the home to the Legal Network for Gender Equity, a national network of more than 300 attorneys who agree to provide at least one free consultation and to consider representing individuals who claim to have experienced sex discrimination. That initiative predated the Time’s Up launch, but recent events substantially boosted its profile.

LITIGATION ORIENTED EMPLOYEE RESOURCES

Consider just one of the “additional trusted resources” linked to the Time’s Up page. Betterbrave.com is the brainchild of Tammy Cho, Grace Choi and Annie Shin, successful tech colleagues who are all under 30. Easy to navigate, attractively uncluttered in design, and packed with direct language tailored to specific situations, the site is a virtual instruction manual for individuals who believe they have been harassed, discriminated or retaliated against at work. Cho and her friends developed Betterbrave.com in the wake of Susan Fowler’s stinging indictment of Uber and its HR Department’s response to her complaints of sexual harassment. Cho makes no apology for the site’s emphasis on “lawyering up.” “We heard a lot of stories where HR mishandled the case.”

LEGISLATIVE EFFORTS

Employers cannot assume that this issue is a “blue state” or “big city” phenomenon. Gretchen Carlson, whose \$20 million settlement with 21st Century Fox brought Roger Ailes’ tenure to an end, published “Be Fierce” on September 26th, 2017. That bestseller contains a detailed 12 step “how to” guide to stopping harassment, complete with very specific tips. She also lobbied for the introduction of the *Ending Forced Arbitration of Sexual Harassment Act of 2017* in December of 2017, a bipartisan, bicameral bill introduced by Representative Cheri Bustos (D-IL) and Senator Kirsten Gillibrand (D-NY). Senators Lindsey Graham (R-SC), Lisa Murkowski (R-AK), Kamala Harris (D-CA), and U.S. Representatives Walter Jones (R-NC), Elise Stefanik (R-NY), and Pramila Jayapal (D-WA) are cosponsors. The bill has not yet made significant headway toward passage, but it bears watching.

COMPLACENCY IS NOT AN OPTION

It’s foolish to believe that the most serious forms of misconduct are historic artifacts or confined to the news, entertainment and restaurant industries. The EEOC announced a lawsuit in February against SMX, a light industrial staffing company. It alleges that a supervisor who was reported on multiple occasions called an employee “baby,” told her she was “sexy,” asked her for oral sex in exchange for overtime, and exposed his genitals...and that he was not fired.

WHAT TO DO?

Focus on what matters. There is no substitute for honest, direct communication. Listen up so your employees will speak up (before and hopefully instead of “lawyering up”). Ironically, some practical lessons may come from some of the farmworkers whose open letter of support to Hollywood insiders sparked the Time’s Up launch itself.

The Coalition of Immokalee Farmworkers negotiated agreements with buyers that account for more than 90% of Florida’s tomato industry production to protect workers against workplace sexual misconduct. Key features of the Fair Food Program code’s implementation include a 24-hour hotline and multi-pronged worker training. Every new worker gets a take home pamphlet on their first day and watches a video before beginning work. After beginning work, each worker receives worker-to worker training in the field. Additionally, an outside firm conducts annual unannounced onsite audits of select sites, surveying at least 50% of workers, crew leaders and supervisors. Many more supervisors who have violated the policies have been disciplined rather than fired, but terminations do happen. Growers understand that continued access to key customers depends on their commitment to enforcement. This program is successful because it includes:

- Multiple training methodologies and consistent messaging, including in-person training with emphasis on shared responsibility for a safe, productive work environment;
- Multiple reporting mechanisms;
- Effective investigatory procedures and remedial actions, with financial incentives tied to key actors’ roles; and
- Regular climate/cultural surveys

PUTTING BEHAVIOR INTO PERSPECTIVE

Not all workplace conduct is the same. “Aristotle distinguished between mistakes and wickedness. So can we,” says Kathleen Kelley Reardon, Professor Emerita, University of Southern California Marshall School of Business, who proposes the following Male to Female Spectrum of Sexual Misconduct at Work (January 22, 2018 Draft 2) as one tool employers could adapt for their own use:

- **Non-offensive** (Common remarks on such things as hair style and dress): “You look nice today,” “I like your haircut,” “Nice outfit,” “That’s a good color on you,” “You look lovely.”
- **Awkward/Mildly Offensive** (Comments involving or implying gender distinctions unfavorable to women): “You would say that as a woman,” “I suppose it’s a woman’s prerogative to change her mind;” “We can’t speak frankly around you women anymore.”
- **Offensive** (Gender-insensitive or superior manner): Holding a woman’s arm while talking to her; uninvited hugs; patronizing, dismissive or exclusionary behavior; making stereotypical jokes about women, blondes, brunettes, red-heads, etc.; implying or stating that women are distracted by family.

- **Highly Offensive** (Intentionally denigrating): Joking or implications about a woman's intellect or skills being limited due to her gender; labels like "ice queen" or "female mafia;" comments on physical attributes used to embarrass, insult or demean.
- **Evident Sexual Misconduct** (Usually crude or physically intrusive): Looking a woman up and down in a sexually suggestive manner; grabbing, unwelcome holding, touching or kissing; ignoring a woman's expressed disinterest in a personal or intimate relationship; crude jokes that demean women; describing women with such terms as "slut" or "frigid."
- **Egregious Sexual Misconduct** (Typically involves coercion, sexual abuse, or assault): Overt sexual behavior while a woman is present; pressing against a woman suggestively; threatening or implying career damage to a woman who refuses to engage in sex or sexual behavior; forcing or coercing a woman to have sex.

The spectrum framework has multiple potential applications. Trainers can point to specific problematic behaviors shy of outright assault that could lead to discipline. Employer representatives can utilize the framework to keep expectations about potential consequences for policy violations realistic for both the accuser and the accused. It could also help organizations identify where their real vulnerabilities lie. If a large factory's reported pattern of mildly offensive or gender insensitive remarks suddenly spikes into highly insensitive remarks or incidences of crude or physically intrusive behavior, there may still be a narrow window of opportunity to avert the kind of conflict that leads to litigation.

While the spectrum brings questions of severity into focus, what it does not do is bring insight into the *context* and *frequency* of individual behavior. Reardon herself acknowledges that the tool is only a conversation starter, not the last word, on workplace misconduct. Bill's single, intemperate, vulgar outburst at a coworker with whom he has a legitimate source of conflict is a different matter than John's habitual, widely broadcast, sneering references to "little girls" and "their feminine intuition." Those additional factors are critical in distinguishing between mistakes, wickedness, and the sometimes messy ground between.

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