



NYSBA

Women's Community

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Career Advancement Speaking Effectively as a CLE Presenter

by Dawn Kirby, Esq.

Presenting CLEs can be extremely effective in growing your business, increasing your profile, making new friends and business connections, and sharpening your own knowledge of your practice area. Worried about public speaking? Well, follow these tips for a successful and stress-free experience.

1. Be Practical

I've always found that the best CLE materials include practical information. Things the attendees can use themselves in their practice. Specific forms, references to websites with relevant information, case law cites, copies of pleadings, real advice on how to get something done, not just the theory of what it is. If you teach them what it is AND show them how to do it, your materials will stand out to them. They will keep your materials handy for future use instead of chucking them in the circular file.

2. Buy More Shoes

Sorry, not those kind of shoes. Think about who your audience is. Put yourself in their shoes. What do they want to get out of your CLE? If you were a (matrimonial attorney, real estate attorney, financial advisor, accountant, new lawyer, experienced lawyer), what about this CLE will be relevant to your experience? Tailor the presentation to what the audience can relate to.

3. Don't Just Be Smart, Look Smart

First impressions are everything. You want the audience to see you as an expert in your field. Always look your best, it's important. If you wouldn't wear it to a job interview, don't wear it to speak at the CLE. I like to throw in something interesting -- a bold necklace, scarf, a bright collared shirt. You are both educating and entertaining. Visual interest is not the point of a CLE, but I think that it doesn't hurt.

4. BFFs

Relationship building is an important result of speaking at a CLE. Meet with the other speakers before the presentation. You will quickly bond, while learning about their practice and expertise. Working on a project like a CLE is an excellent way to form deeper connections with your colleagues in the bar association. You also have an opportunity to reach out to attendees during the networking period that frequently occurs before the CLE. Use this opportunity to form relationships. Although you may be the focus of the

evening, make it all about them. Find out what type of law they practice, personal items, ask them how their day went. Making a new friend during the networking period will lead to a more interactive and relaxed CLE presentation.

5. Can I Offer You My Seat?

To sit or to stand. I think either is fine. Figure out your style and go for it. Some people prefer to sit because it is easier to stay close to the microphone and read their own notes. I prefer to stand, and

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Also Available Online

www.nysba.org/NYSBAWomensResources

Featured Event
Show Me the Money:
Closing the Gender Gap
by Carol C. Villegas, Esq.



A Profile in Leadership

Ellen Makofsky, Esq.

by Nicole Levy

Ellen Makofsky is a founding partner of Raskin & Makofsky, LLP, an elder law and estate planning firm. She was named as one of the top 50 Women Super Lawyers in the New York Metro area in 2013. Ellen is NYSBA's secretary-elect, a co-chair of the Committee on Women in the Law, secretary of the Senior Lawyers Section, and a member of the Membership Committee.

Q: What do you like about elder law?

A: Clients seek me out because they have worrisome, complex problems. I enjoy using my analytical skills to help them resolve issues. Clients are really appreciative, and it makes me like coming to work every day.

Q: How has the bar association empowered you to become a better attorney?

A: In a variety of ways. When I first started in elder law, it was a brand new area of practice. NYSBA was a great place to share ideas and collaborate with other lawyers to figure out new ways to help our clients. As I became active in the bar association and the Elder Law Section, I became very active in advocating for different legislative changes. The idea of being part of a group that could actually change social policy in New York State was a wonderful idea.

Q: What are your tips for striking the much-talked-about work-life balance?

A: This is the most important thing for women and men. To me, my family has always come first. At Raskin and Makofsky, we're a "women-friendly" firm that allows and is supportive of flex time to achieve professional goals and to be there for family so that when the dance recital time comes, mom can go to the dance

recital. We've worked out a way for our staff to do what they need to do at home and in the office.

Q: Even seasoned professionals experience burnout and stress. What are your tried and true methods for coping?

A: Every day I get to talk to people who have been very active, but I often see clients who are starting to have mental or physical problems. It has been a great lesson that you can do and do and do, and then one day you can't do it anymore. And you never know when that day is going to be. I really try to live my life so that I do every single thing that I want to do in life, and participating in the bar is one of those things. I like to work hard and play hard.

Q: Twenty years from now, as an attorney, a woman, and a mom, I'd like to see our profession . . .

A: Encourage women and allow women to have the same opportunities as their male colleagues.

Q: Are there any parting words of wisdom for negotiating salaries and promotions or for achieving pay equity?

A: Women have to value themselves, and many times there's something in their nature where women feel they always could have done better, and it tends to lead them to devalue themselves in a way where men don't fall into that same trap. You have to have a sense of your own value and what you're contributing, and then ask for the money. ∞



Practicing Law, Practically

Answering a Judge's Questions

by Hon. Arlene Gordon-Oliver

Court appearances provide key opportunities for oral advocacy. You can talk directly with a judge about your client's case, pointing out facts and law in a persuasive manner. Of course, the judge has a job to do – to administer justice. Your job is to maintain your credibility as an attorney. With all of these goals in mind, answering a judge's questions can be challenging. Here are some tips for anticipating and dealing with them.

1. Know your judge -- "hot bench" vs. "cold bench."

A. Hot bench

You can expect a "hot bench" if your judge has a reputation for reading all of the pleadings in advance and knowing the factual and legal issues. If you appear before a hot bench, the judge already will be aware of the details – both good and bad. The judge

may be more interested in the nuances of the case, and he/she may expect you to provide detailed answers to specific questions. In some situations, the judge already may have made a tentative decision, and he/she will be seeking confirmation or information that would convince him/her otherwise.

B. Cold bench

You can expect a "cold bench" if it is less likely that the judge will have read the pleadings in advance. If you appear before a cold bench, you may find that the judge is relying on you and your adversary to educate him/her about the case and the most pressing issues.

2. Answer the questions that are posed.

Whether you expect a hot bench or a cold bench, it is extremely

Practicing Law, Practically— Answering a Judge’s Questions (continued)

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important to focus on answering the judge’s questions effectively as a way of gaining his/her confidence – particularly if you are appearing before a judge for the first time.

Answer the questions that are asked, directly and succinctly. It is helpful to provide a brief summary of your answer – highlighting the salient facts and legal issues – and then to go into the details. Do not start with detailed information unless the judge asks specifically for details.

Do not attempt to circumvent the judge’s questions, even if the question is difficult or if you are not sure of the answer. Focus on answering the judge’s questions, instead of merely telling the judge what you want him/her to hear about your case.

Be sure that your answers are correct. If you provide an incorrect answer, the judge may think that you tried to mislead him/her or that you are unprepared. If you do not know the answer, tell the judge that you will need to do more research and investigation.

If you determine that you mistakenly provided an incorrect answer, alert the judge immediately. If you discover your mistake during the court appearance, then you have an obligation as an officer of the court to correct the record. If you discover your mistake after the court appearance, contact the judge’s clerk to request a hearing or conference to correct the record as soon as possible. It is likely that the judge will appreciate your efforts, and that you will maintain credibility with him/her.

3. Be prepared. Know the strengths and weaknesses of your case. Preparation is a must! A great deal of preparation may be difficult if you have a heavy caseload. However, it is essential for you to know your client’s case – both the good and the bad.

Be the first to let the judge know if there are weaknesses in your case. The judge will be more apt to listen to your analysis and argument about why your client should prevail. If your adversary is the first to alert the judge about your side’s weaknesses, the judge may be inclined to listen more keenly to your adversary, and you could lose credibility.

4. Do the math.

Some cases require mathematical calculations of damages and awards. A judge may ask you questions about calculations in your case. Many of us went to law school to avoid mathematical calculations because math is not our forte. However, we must review calculations before presenting them to a judge. Go over the numbers with your client beforehand, rather than waiting until you are in court to do so.

If you are appearing before a hot bench, the judge will have done the math in advance, and he/she may need some clarification. Be prepared to go over the calculations with the judge.

If you are appearing before a cold bench, the judge may rely more on your representations that the numbers are correct.

Whether it is a hot bench or a cold bench, the judge will expect your calculations to be correct. If they are incorrect, the judge may not trust your representations about numbers in the future.



In conclusion, it is important to know your judge, to answer questions carefully, and to be prepared. Hopefully, these guidelines will help you to better represent your clients, communicate with judges, and maintain your credibility in the future.

Hon. Arlene Gordon-Oliver is a justice on the Greenburgh Town Court in Westchester County. She is a bankruptcy trustee in the U.S. Bankruptcy Court for the Southern District of New York, and the managing partner of Arlene Gordon-Oliver P.C. Arlene is NYSBA’s vice-president for the Ninth District. ∞

NYSBA Women’s Community Newsletter is Going Green

This will be the last hard-copy issue of *NYSBA Women’s Community*. Future issues will be e-mailed only to NYSBA women members, and they also will be available via our new NYSBA Community Resource Center for Women (www.nysba.org/NYSBAWomensResources). We hope you have enjoyed these complimentary three issues and that you will continue to enjoy future electronic issues.

Questions? Feedback?

We welcome your comments and suggestions. Please e-mail Patricia Wood at pwood@nysba.org.

Thank you!

Practicing Law, Practically

Tips for Picking the “Right” Jury in a Criminal Case

by Sherry Levin Wallach, Esq.

Picking a jury is an essential part of many criminal trials. Many attorneys believe that a case is won or lost during jury selection. Jury selection can be complex and unpredictable, so it is important for an attorney in a criminal case to prepare thoroughly, to understand the rules, and to be flexible. Here are a few tips along these lines for picking the “right” jury in your next criminal case.

1. Watch a more experienced attorney.

If you have never picked a jury, take the time to watch a more experienced attorney pick a jury before you do.

2. Know your case and the types of jurors that might be favorable.

It is important to develop a theory for your case and to have a strong grasp of both the good and bad issues so that you can communicate effectively with the prospective jurors.

Consider what types of people would be favorable to your client’s position, and look for those characteristics in the prospective jurors.

3. Learn the court’s rules for jury selection.

In a criminal case, the jury is selected in front of the assigned judge in a courtroom (unlike in civil cases, where juries are selected outside of the presence of judges). Prior to beginning jury selection, be sure to find out which method of jury selection will be used, along with any related rules, so that you can prepare accordingly.

4. Prepare an outline, not a script.

Having an outline is a better option than using a script because the idea is to converse with the prospective jurors and to be responsive to their answers. The prospective jurors should feel comfortable talking and expressing their opinions.

5. As part of your questioning, be sure to address the presumption of innocence, the burden of proof, and testimony from law enforcement officers.

In a criminal case, there are some areas you should be sure to address with prospective jurors. These include the presumption of innocence, the burden of proof which is beyond a reasonable doubt, and testimony from law enforcement officers. (These are just a few examples of important lines of questioning.)

When addressing the presumption of innocence from the perspective of the defense, you want to be sure that the prospective jurors understand that your client does not have to testify or present any witnesses. The prospective jurors must understand that even if your client does not testify, they can and must find him “not guilty” if the prosecution’s evidence does not prove the case beyond a reasonable doubt.

This leads nicely into the discussion regarding the burden of proof which is beyond a reasonable doubt. Be sure to defer to the judge’s instruction on the meaning of beyond a reasonable doubt. A defense attorney should discuss with the prospective jurors whether

they are able to find his/her client not guilty if the prosecutor does not meet this burden and if they are left with a reasonable doubt.

Another area of questioning that must be covered when picking a jury in a criminal case is the prospective jurors’ views of law enforcement witnesses. Prospective jurors should agree that they are able to hold these witnesses to the same standard as civilian witnesses. For example, a defense attorney wants jurors who will not assume that law enforcement witnesses are truthful just because of their professional roles. A prosecutor, on the other hand, may want jurors who accept that even law enforcement officers can make mistakes – and that making mistakes does not amount to being untruthful.

6. Anticipate and strategize about unwelcome answers.

During each voir dire, you will get answers from prospective jurors that you do not want or do not expect. When this occurs, there are two things you must consider. First, can you challenge the prospective juror for cause based on his/her statement so as to avoid using a peremptory challenge? If not, you may want to question the prospective juror further in an attempt to establish a challenge for cause. Often, you can eliminate prospective jurors who are biased by using one’s bias to demonstrate a particular point to the others. Be aware that, depending on the issue, too many follow-up questions may hurt your case by creating new biases in the minds of the other prospective jurors.

7. Be mindful of the prohibition against race-based challenges.

A juror cannot be eliminated based on race. *Batson v. Kentucky*, 476 U.S. 79 (2014). If your adversary believes that your challenge to a perspective juror is based on race, he/she will challenge your decision to dismiss that person based on *Batson*. If this occurs, you must be able to explain the basis of your challenge. It is therefore imperative that you take detailed notes regarding the reasons for your peremptory challenge of every prospective juror in the case. Then, if your adversary makes a *Batson* challenge, you are prepared to properly defend it.

These suggestions are just the tip of the iceberg for the complex and unpredictable process of jury selection. In general, preparing thoroughly, understanding the rules, and being flexible are key for this important aspect of a criminal trial. Regardless of whether you believe that a case is won or lost during jury selection, one thing’s for sure – you never can predict the jury pool. ☞

Sherry Levin Wallach is a principal and partner of Wallach and Rendo LLP, where her practice focuses on criminal defense. She is a former prosecutor. Sherry serves in the following NYSBA capacities:

- (1) member-at-large on the Executive Committee;
- (2) Executive Committee liaison to the Committee to Ensure Quality of Mandated Representation;
- (3) Executive Committee liaison to the Trial Lawyers Section;
- (4) chair of the Membership Committee;
- (5) vice-chair of the Criminal Justice Section;
- (6) a member of the Task Force on Gun Violence; and
- (7) a member of the Committee on Animals and the Law.

Pathways to Leadership in NYSBA

by Claire P. Gutekunst, Esq.

You can become a leader in the New York State Bar Association through many routes. The key is to become active through a NYSBA committee or section or through your local bar association. I started as a member of the Committee on Women in the Law and rose to become NYSBA's first woman treasurer.

Now's a great time to get on a NYSBA committee because the president-elect will appoint new committee members this spring. (To apply, log in and go to www.nysba.org/joincommittee. If you need help logging in, e-mail webmaster@nysba.org or call 1-800-582-2452.) Once you're on a committee, join a subcommittee. Participate actively, and you may become subcommittee chair or even committee chair.

Another route to leadership is through one of NYSBA's 25 sections. Simply join a section, explore the section's webpage to see what committee interests you, and ask the section chair to appoint you to that committee. Contribute to the section's work, such as by drafting a report, and you may be able to become a committee chair. You may get on the section's executive committee as a committee chair, a regional representative, or a member-at-large, and ultimately you may be elected as a section officer.

You can get on NYSBA's governing body, the House of Delegates, in several ways. Many dele-

gates are appointed to represent their local bar associations. Each NYSBA section has between one and four delegates, usually current or former section chairs. The president also appoints 12 diversity delegates and two non-resident delegates, who generally have been active in NYSBA committees or sections.

Once you have demonstrated your leadership abilities, you can seek to move up the leadership ladder to NYSBA's Executive Committee. Vice-presidents are appointed by each judicial district, and three members-at-large represent the sections. If you have served on the House of Delegates or have been a section chair, you may run to become a member-at-large of the Executive Committee, or even an officer of NYSBA.

So, choose your route and go for it. At NYSBA, the sky's the limit!

Claire P. Gutekunst is an independent mediator and arbitrator at Gutekunst ADR. Claire is NYSBA's immediate past treasurer. She is a member of the Membership Committee, the Audit Committee, and the Committee on Diversity & Inclusion, the vice chair-elect of the Dispute Resolution Section, a member-at-large of the Commercial and Federal Litigation Section's Executive Committee, and a member of the editorial content board for NYSBA Women's Community.

What Do You Think About...?

by Richard Martin and Connie Schin

In February, we asked a sampling of women attorneys what professional resources and assistance would help them further their legal career. More than 400 shared their feedback.

We learned that more than 40% of the women lawyers who responded would like career coaching, local networking, and one-on-one mentoring opportunities. Other top choices include a legal job board and leadership opportunities.

Comments on this poll question include requests for information on flexible, part-time, and alternative work arrangements, such as job sharing. More information on non-legal careers, marketing, business development, and updates in technology also are sought.

Program and workshop topics – such as dealing with gender bias, dealing with partners, alternative legal careers, work/life balance, public speaking, and changing careers – also have been suggested.

What do you think? If you are a NYSBA member who wants to discuss this in our private online professional community, go to www.nysba.org/womenscommunity and click on the discussion entitled "What Resources Would Further Your Career – Women's Newsletter Survey." If you need help logging in, just e-mail us at webmaster@nysba.org, or call us at 1-800-582-2452. ∞

Richard Martin is NYSBA's Associate Executive Director, and Connie Schin is NYSBA's Marketing Manager.

A Benefit for Members

Clio Practice Management System

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Here's what long-time NYSBA Member James P. Duffy, III, has to say about Clio:

I have found Clio to be an outstanding product that makes it possible for me to keep track of virtually all of the information I need to run my practice regardless of where in the world I may be, so long as I have a reasonable Internet connection. As I travel extensively in my practice and am frequently in places like India, China, Europe, South America, etc., Clio's ability to



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To start your free trial offer or to find out more, go to www.nysba.org/clio, and log in to your NYSBA member account. If you need help logging in, please e-mail us at webmaster@nysba.org, or call us at 1-800-582-2452. ∞

Non-Members — Join NYSBA Today!

The New York State Bar Association offers exclusive tools and resources to help save you time and money, enhance your practice, advance your career, and link you with attorneys across the state and the globe. Enjoy professional development pathways, and take advantage of educational events to help you become an even better lawyer!

NYSBA offers many rewarding opportunities to make a real difference in the legal profession. **NEW** — we have recently added a new **FREE LEGAL RESEARCH** service for NYSBA members only through FastCase (which alone can save you hundreds of dollars each year)! And don't forget about NYSBA's new private online Women's Community — for NYSBA members only. It's at www.nysba.org/womenscommunity. The community offers an invaluable opportunity to get guidance from other NYSBA women members, share information, and participate in an exciting, exclusive online world! **Join NYSBA today:** call 1-800-582-2452 and mention code **JOINUS2014**, or visit www.nysba.org/joinus14.

Career Advancement— Speaking Effectively as a CLE Presenter (continued)

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even to walk around a bit if possible. I feel it projects authority, it allows people in the back to see you clearly, and it keeps the audience visually interested.

6. Get Engaged!

What's worse than sitting for two hours watching someone read off a piece of paper? Engage your audience. They will enjoy it more, and so will you. At the beginning of the program, tell everyone that you encourage questions. Questions on topic can help illustrate the point of law you are teaching. Often, people are at your CLE because they have a case that touches on your subject and they are not sure how to handle it. Be careful not to let the audience take over your presentation, but do interact with them. If there are too many questions, answer a few, and then say you have to move on to your next point but that you are happy to stay afterwards to address any specific questions people may have.

7. Everyone Loves a Good Story

Use examples of cases or transactions that you've handled in the

past. Relating a legal concept to a good story makes it stick in your audience's mind and gives them a bit of entertainment with their education.

8. Get Down to Business

One of the reasons we speak at CLEs is to generate new business or to make a new contact who could send us a matter in the future. Stay after the CLE, talk with people, offer to send them extra materials that may address their particular concerns. Follow up the next morning with anyone who gave you their business card. This often leads to new business.

Keep these tips in mind as you prepare your next CLE presentation. Hopefully, they will benefit you and your audience as well. ∞

Dawn Kirby is a partner at DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, and a frequent CLE presenter. She is a member of NYSBA's House of Delegates and Committee on Women in the Law, and an alternate member of the Nominating Committee.

Women's Wellness

The Insidious Nature of Depression

by Patricia Spataro

It starts small . . . You wake up too early a couple of days and can't get back to sleep. Once in a while, you can't muster up any interest in getting out of bed and going to work. Then you're surprised that you no longer want to do the things you enjoy doing. These feelings pass, and your life feels normal again. But then there comes a time when, without warning, and sometimes, without obvious reason, they come back and don't go away. Several months pass, and you can't shake the sadness that you feel every day, all day. You find that you can't meet your obligations. And you just don't care.

Some form of clinical depression may be at the root of these issues.

Perhaps you find yourself asking "how did this happen?" Depression can occur as a result of unmanaged stress, like demanding clients and long hours at work, or untenable situations, such as a difficult marriage, problem child, or sick parent. Depression also can occur as the result of changes in the body's chemical and hormonal balance or other medical problems. Regardless, doing nothing is not an option.

Consider taking action if you experience feelings of hopelessness, a loss of interest in things you normally enjoy, constant fatigue, an inability to concentrate, changes in eating and sleeping habits, and thoughts of not wanting to go on that last longer than two weeks.

Online Resources

Be Social, Be Savvy, Be Safe

by Barbara Beauchamp

In your regular life, you likely take steps to ensure your personal safety. You carry your purse in a way that makes it hard to snatch. You walk in groups and have your keys out and at the ready in parking lots. You most likely consider yourself to be pretty savvy about personal safety, and the idea of inviting a predator to your door is probably preposterous.

After a long day, you might spend some time decompressing on Pinterest, catching up with friends on Facebook, or getting the latest social news on Twitter. If you are simply consuming social media, you are fine. Once you start sharing on social media, you need to be as savvy as if you were walking alone in a sketchy part of town.

It is critically important to know and understand how your smart phone (or other digital device) works. Every digital image contains a plethora of data (known as "metadata"), and, unless you change the settings on your device, some of that data identifies your geographic location. If you post an adorable picture of your youngster at t-ball, you might be inviting unsavory characters directly to your home. For the most part, predators no longer hunt in person – they do it online, using location data embedded in photos posted on social media.

Self-help strategies are important. In fact, many studies indicate that simple steps can relieve depression. For example, exercise produces similar results to taking an antidepressant – without the side effects. Here are some self-help ideas to consider:

1. Accept situations you can't change.
2. Confront situations that are within your power to change.
3. Connect with supportive colleagues, friends, and family members.
4. Eat right and exercise.
5. Get professional help.

The last is not the least. If you feel that you can't take any steps to help yourself, it is time to speak to a professional and perhaps consider medication. Self-help strategies are essential to recovery, and medication can stabilize you and provide enough symptom relief to allow you to try these steps.

For a free, confidential consultation, please call me – Patricia Spataro – at 1-800-255-0569. ☎

Patricia Spataro is the director of NYSBA's Lawyer Assistance Program.



Here are some safety tips for sharing information online:

1. Learn to use the privacy settings on your social accounts and digital devices, such as smart phones and digital cameras.
2. Be very protective of your own image and any images of loved ones that might appear online. Make it clear to everyone that you don't want pictures of your family posted online without your permission.
3. Learn how to untag yourself in other people's posts.
4. Consider using private social communities and professional networking sites as alternatives to some forms of social media. (For private social communities, always read the terms of service.)

Keep these tips in mind to maximize your safety. And, for secure communications with fellow NYSBA members, keep our private online professional networks in mind. To get started, just go to <http://communities.nysba.org>. ☎

Barbara Beauchamp is NYSBA's Manager of Internet Services.



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Women's Community

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Connecting women attorneys with NYSBA and with each other for professional success.

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