NYSBA SPRING 2001

Perspective

A publication of the Young Lawyers Section
of the New York State Bar Association

A Message from the Section Chair

As I prepare to assume the Chair of the Young Lawyers Section, I am overwhelmed at an awesome and wonderful experience this next year can hold. It's an exciting opportunity to be able to meet young lawyers across the state and hear of their experiences, and I hope that I can meet many of you as this year progresses. The Young Lawyers Section is a difficult section to lead. Unlike the other substantive sections of the Bar, we have no common practice area to bind us. Our only link is that we are all relatively new to the practice of law compared to the rest of the bar. I hope that you will find your membership in the Section relevant to the issues facing you early in your practice, choosing a career path, balancing work and personal life, and finding ways to become a better lawyer. Even if you find that sharing and learning of these experiences does not benefit you personally, your involvement and interest in the section is important for another reason. We all need to be involved in shaping the future of our profession and there is no better way to do this

(Continued on page 20)

Convocation on the Face of the Profession

Remarks by the Honorable Judith S. Kaye, Chief Judge November 13, 2000 at Court of Appeals Hall

I think it's most appropriate for this historic Convocation to open in this historic place, which is in my experience the most beautiful courtroom in the world. It might interest you to know that this building, completed in 1842, was originally intended to house State offices. When it was later renovated and renamed for the Court of Appeals, then-Governor Whitman observed that the building would be devoted to "the noblest purpose to which a building or a life can be devoted, the administration of justice."

Today's Convocation is fully in keeping with that purpose, for the first time convening the courts, the organized bar and the law schools to brainstorm together about the future of our noble profession.

In New York, we certainly have come a long way from our profession's humble origins, when the entire colony had fewer than 20 lawyers, including a dancing master, a glover and a man under a death sentence for blasphemy.

From a day when we had fewer than 20 lawyers, New York now has more than 100,000. New York lawyers can be found throughout society. We have law firms of every size; lawyers in businesses and nonprofits; lawyers on the Web; large numbers in every level of government and public interest work; and, of course, lawyers in academia. And with 15 topnotch law schools in New York alone, today's lawyers unquestionably are much more sophisticat-

(Continued on page 21)

Inside

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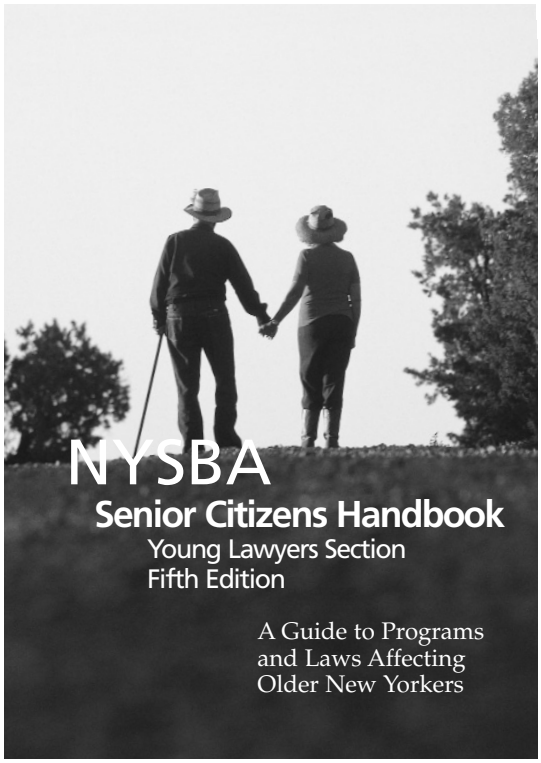

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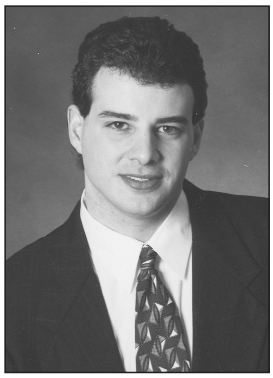
From the Editor's Desk

"Never be afraid to try new things. . . ."
—Hannibal



At the risk of exposing my warped since of humor, I could not resist utilizing the above quote to welcome you to the Spring issue of *Perspective* and, for those new members, to the Young Lawyers Section. Hopefully, the topics covered herein will give you a taste of some of the numerous activities, interests and various vocations of our members, although it is certainly no substitute for active participation in YLS events.

For this issue we have been honored with having our Chief Judge Judith S. Kaye personally submit and edit a text of a speech she delivered at Court of Appeals Hall on November 13, 2000, entitled "Convocation on the Face of the Profession." In the speech, Judge Kaye demonstrates her keen understanding of the myriad issues facing young lawyers today. When I approached Judge Kaye about the possibility of submitting an article, her sincere enthusiasm and support for our members was inspiring. Judge Kaye has been a good friend to our Section and we welcome the opportunity to continue this very productive relationship.

I also want to welcome Barbara Samel as the new Chair. For those new to the Section, Barb steadfastly handled the editorial duties of *Perspective* for quite a few years and is sure to do a similar stellar job as Chair of the Section.

I am again very pleased with the responses to "***SOUND OFF***" for this issue. I envision "***SOUND OFF***" as an open forum which can include any legal topic of your choice (movies, books, controversial laws, an interesting event, responses to previous comments, etc.), not just the suggested topic. One should also not be deterred by the thought that a lengthy response is needed, as quick one-liners are readily accepted. As you will note in her postscript, Judge Kaye would like to hear from our members either directly or via this magazine—what better reason is there to contribute to "***SOUND OFF***" than having our own Chief Judge seek your input? Please also feel free to submit suggested topics which you would like our members to respond to. Thank you to all of those who sent in your comments. More details of "***SOUND OFF***" can be found in the ad in this issue. Please send all comments via email to: jamesrizzo9@juno.com. **Please also note that the deadline for all submissions (substantive articles, reviews, *Sound Off* responses, etc.) to the Fall issue of *Perspective* is August 1, 2001**.

Finally, as this issue goes to print, I am pleased to report that a multitude of our members have chosen to take advantage of the YLS's U.S. Supreme Court Admissions Program to be held in Washington, D.C. on June 4, 2001. By all indications, it looks like the event will be "sold out." For those who have registered and plan to make the trip, I'm sure it will be a memorable experience and I look forward to co-sponsoring the event along with YLS Secretary-elect Greg Amoroso. Just think, with all the speculation about who might retire from the bench, one of the last motions heard by a retiring Justice may be your name being read as a proposed admittee!

"Hopefully, the topics covered herein will give you a taste of some of the numerous activities, interests and various vocations of our members, although it is certainly no substitute for active participation in YLS events."

I hope you enjoy this issue of *Perspective*. Your comments, suggestions and contributions are always welcome. *Lex prospicit, non respicit.*

James S. Rizzo

"The surest way to corrupt a youth is to instruct him to hold in higher esteem those who think alike than those who think differently."

—Friedrich Wilhelm Nietzsche,
German philosopher (1844-1900)

SOUND OFF

Young Lawyers Respond to the Question: "Should Lawyers in their First Five Years of Practice Be Forced to Perform Mandatory Pro Bono Services?"

"I am committed to performing pro bono services, and contribute at least three hours a week to a local non-profit organization. However, pro bono work should not be mandatory. Young lawyers work extremely hard for mediocre salaries. The secretaries in my office earn more than the associates. The price of law school is outrageous and I will be paying back student loans for the next thirty years—as will many of my colleagues. Job satisfaction is low throughout the legal profession. Earning the right to practice law is difficult and takes hard work, personal and professional sacrifice and commitment, and a great deal of money. Forcing young attorneys to provide pro bono services implies that we owe something for the privilege of practicing law when, in fact, we earned the right to do so. No one should be forced to work for free—even lawyers."

* * *

"NO. No lawyer should be mandated to do pro bono work at any time. When I took a clinic course in law school I tried to get a medical doctor to do pro bono for a client seeking political asylum in the U.S. I called about 15 doctors and ***NOT ONE*** *was willing to see my client "free of charge." Let me know when the AMA mandates pro bono for medical doctors. When they do it, then I'll think about it for us. The minute the public says something unflattering about lawyers, we run to the closest store, purchase whips and proceed to beat ourselves over the head! Sorry, but mandatory CLEs are one step behind in our continued self-flagellating."*

* * *

"No. Your time is your property, and you have the right to use it as you please unless you are hurting others. If the State wants to take your property from you, then it has to compensate you. That's why we have the Fifth Amendment. Interestingly, until about 100 years ago, the State did require mandatory pro bono publico. In about 1901, NYSBA lobbied to require that counties pay something for assigned counsel work. Currently, that is $40 or $25 per hour. A New York Supreme Court justice recently ruled that even this level of compensation was unconstitutionally too little."

* * *

"Lawyers should only be forced to perform mandatory pro bono services when all other professions have a similar mandate. If we are required to perform free services, so should the medical profession!"

* * *

"Yes we should! As a new attorney, I feel strongly that giving back to the community is vital. Regardless of how busy we think we are, how much work we need to do, how little we may think it will help, we have to do pro bono work. There are so many people who are so much less fortunate than ourselves. Even with our heavy loan burdens, we are still a privileged group of people. There are Chinese-Americans working in sweatshops for $2.00 per hour, battered women needing help getting a restraining order against their batterers, tenants facing eviction from unscrupulous landlords who simply want to make more money—all need representation in court and we have got to help. Groups that defend the civil rights of minorities and guard our civil liberties also need our help to do the work they do.

Pro bono work really is quite rewarding. How often do we really make an impact on every day people's lives? And I feel it should be mandated. We can get so caught up in our professional lives that we are not able to make the necessary time to help others. Pro bono is about working with real people, with real problems. It puts so much into perspective. Only by mandating service will we able to really make the time to help others."

Glenn D. Magpantay, Esq.
Brooklyn, New York
New England School of Law, 1998

* * *

"Lawyers should not be forced to do pro bono work at all. Pro bono work is necessarily volunteer work. It is counter-intuitive to force someone to do a voluntary act. Moreover, by making pro bono work mandatory, you rob the lawyer of the ability to do a truly good act, i.e., CHOOSE to take time away from paying clients and give it to those in need who cannot pay."

James K. Lyder
Scarsdale, NY

* * *

"I practice patent law and work for the intellectual property firm of Darby & Darby, P.C. in Manhattan. Approximately 90% of my docket is presently litigation, while the remainder comprises transactional work and patent prosecution. As an aspiring trial attorney in the Big Apple I have often asked myself, "How do I get more litigation experience early in my career?" The answer is PRO BONO! I'm beginning to realize that the opportunities confronting me at work, e.g., taking and defending depositions, preparing for and attending trial and oral argument, etc., in combination with some pro bono work on the side could help refine my legal skills and make me a better trial attorney. If being "forced" to

perform pro bono means we will be better equipped to represent our clients when they need us, then perhaps that is just what we need. The REAL question is, "How do I find time to work, AND comply with a mandatory pro bono requirement?"

Frank Maldari, Esq.
E-Mail: fmaldari@darbylaw.com

* * *

"Yes. As long as lawyers in their last 5 years of practice are required to as well."

* * *

"For the past nine years that I've been admitted, I've volunteered an average of three times on cases, primarily with the Albany County Bar Association, for an average of 12 hours per year. I used to work with the Capital District Women's Bar Association, and one year I was the only male lawyer honored for volunteer work. Today, I continue with ACBA as well as the Damien Center. Pro bono is highly rewarding work, but it IS work. Nobody has ever forced me to do it. If someone did, I don't think I'd take as much pleasure from giving my time. The MCLE rules allow attorneys to use a limited number of hours towards the biennial registration requirement. That is a good incentive. The legal profession is the only one that its members freely give of their time. We should keep it voluntary."

Brian Logan, Esq.

* * *

"Yes, I believe lawyers should be made to perform mandatory pro bono work, not only in their first five years of practice but throughout the period they are registered to practice. However, the demand of mandatory pro bono work should be balanced against the lawyer's need to satisfy his/her financial commitments (especially the newly admitted one). As laudable as the idea of mandatory pro bono may seem, asking a fresh attorney who just dropped $60,000 or more to attend law school, has only been able to secure employment that will earn him/her $35,000–$45,000 per annum (before taxes) and whose school loans are about to become due, seems like asking a drowning man to come to the aid of others who have a life vest. The desire of the profession to provide pro bono work to the community must be balanced against the cost of obtaining the education. Until a balance is reached, the scale will always be tipped against pro bono services."

Albany, New York

* * *

"If the Bar Association is to institute Mandatory Pro Bono Services it would seem to me to be more productive to require it of attorneys who have been practicing for more than five years. To begin with, newly admitted attorneys have the pressures of finding employment, acclimating to the legal environment, school loans, and continuing legal education for newly admitted attorneys. Additionally, attorneys who have been admitted for more than five years have the benefit of greater experience to lend to the community. An attorney who has been admitted for a longer time should be able to complete the required task much more thoroughly with less effort."

* * *

"I don't know about this pro "Bono" thing. I mean, I watched that TV movie and I've got to say I'm pretty much pro Cher."

Jordon Davis, Esq.

* * *

"Yes, lawyers in their first years of practice are under so much pressure to produce "tangible" results and bill hours, that few may think they can afford to engage in pro bono services. Also, it is when lawyers are starting to take shape as practitioners that they should see pro bono services as a part of practicing."

Mirari M. Barriola, Esq.*
Houston, TX
*Licensed in New York only

Young Lawyers *SOUND OFF* on Other Issues

*"So now that we've heard from those people expressing their reaction to the cost of law school (*Perspective, *Fall 2000), what is the NYSBA going to do about it? Nothing is my guess."*

* * *

"Why does the judiciary excuse the procedural errors of older attorneys? What is the point of having procedures if they are not followed? Plus, judges will often belittle young lawyers for even raising procedural defects!"

* * *

"My name is Michael A. Fakhoury. I am an attorney in Dutchess County, NY. I would like to comment on last issue's editorial question ["Do you feel you have paid too much for Law School?"]. In short, no, I don't think I paid too much to go to law school. I attended and graduated from a New York law school in 1997. I must admit that I was a bit surprised and disappointed in the level and amount of mentoring and leadership available to students who have recently graduated. I worked long hours at a law firm and I was not paid very well (relative to the amount of time, money, effort and achievement and skills involved in graduating from law school). However, I clerked for a Federal Court Judge and last year I opened one of my two law offices. I am very satisfied and happy with my practice, hence, I don't think I paid "too much" to go to law school.

With that said, I do want to make one last comment. I think the real question that must be answered is whether going to law school (and perhaps choosing law as a career) was the right choice. The answer to that question is that it depends. Being an attorney depends upon the attorney. You get what you give! Obviously, an attorney chooses his/her career—so make the best of it. If you don't like your position, change it. Law, unlike the vast majority of careers, is very wide in scope. There are numerous job opportunities available to any

good attorney. Choose one and do it well. Let's change our reputation to many in society and continue to be honest and caring professionals. Thank you."

* * *

*"I have to wonder if the legislators and many supporters of "hate crime" legislation, no matter how well intended, ever read the novels "*1984*" or "*Brave New World*". Isn't the term "hate crime," as it is used legislatively, just a euphemism for "thought crime"? And who decides what thoughts are subject to extra punishment? Shouldn't all crimes against all people be subject to equal punishment? By enacting such legislation are we admitting that as a society our laws are inherently biased and not enforced with respect to certain groups? If laws are not being enforced equally, wouldn't it be more logical to publicly scrutinize those prosecutors and call for their removal? Also, who decides which groups are subject to these laws, and how can it be ensured that these groups are treated equally under the new laws? The questions and societal implications here are endless."*

* * *

"I would like to make a quick comment on the topic about the cost of law school. Although I cannot categorically state Yes or No to that question (since I studied and graduated in Nigeria), the stories I have heard from colleagues (and my findings from trying to attend a Masters Program) make me glad that I decided to finish my law school in Nigeria before coming to the U.S. The thought of spending over $50,000 to go into a profession that has one of the highest suicide and depression rates among professionals, makes me shiver. Then to top it off, unless you are from a rich or well connected family, you have the next 10-15 years of school loans to remind you of the fact that you spent too much for law school. Definitely, the cost of attending law school in this country is way too much and is unjustifiable."

Albany, New York

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SOUND OFF

Perspective is proud to offer a chance for our Section members to anonymously express their opinions, complaints and/or other assorted commentary on any number of subjects affecting young lawyers today. Each issue a primary topic will be given for readers to comment on (see below). However, submissions are strongly encouraged on any other recent topic of interest (controversial local, state or federal laws being considered, a new regulation affecting young attorneys, law school/bar exam/law firm war stories, an attorney or program you'd like to congratulate or publicize, etc.). Your name, location and/or law school information is encouraged, but will only be published if the author requests it. All responses will be published in the next issue of *Perspective*.

Sound Off Would Like Your Response to the Following Question:

WHAT DO YOU FEEL IS THE MOST IMPORTANT ISSUE FACING YOUNG LAWYERS TODAY?

Due to format constraints, all comments should be brief (30-60 words maximum) and should be sent to *Perspective's* Editor-in-Chief via e-mail at: jamesrizzo9@juno.com**.** *Perspective* reserves the right to edit responses and the right not to publish responses considered inappropriate.

We look forward to hearing from you!

The Practice of Health Law

By Melissa M. Zambri

I have found an increasing interest amongst law students and young attorneys regarding the field of health law. Many have approached me in recent months to ask me what exactly a health lawyer does. My relatives and family seem interested as well. Over the holidays, I constantly explain my functions as a health lawyer and explain away some misconceptions of the field. Mainly, I spend my holidays explaining that I do not practice medical malpractice, a field that health lawyers leave to the tort experts. This article seeks to describe some of the basic concepts surrounding the growing specialty of health law.

Health lawyers generally represent a myriad of health care providers including physicians, hospitals, clinics, home health agencies, laboratories, senior residences and assisted living facilities, health care trade associations, durable medical equipment providers, alcohol and substance abuse treatment facilities, physician practice management companies, mental health programs, medical transportation companies, and many others. Health care is one of the most regulated industries in the United States, and these providers are subject to a growing body of laws, rules, and regulations that impact every facet of their business.

The health lawyer can be involved in every aspect of a client's practice, addressing licensing issues, project development, mergers and acquisitions, tax issues, compliance with fraud and abuse and antitrust laws, patient care issues and reimbursement issues. Health lawyers assist providers with all types of contracting, many types of audits and investigations, and compliance programs. As such, the health lawyer deals with various types of law including, but not limited to, corporate, regulatory, contract, litigation, employment and real estate.

Providers have been under increasing scrutiny in recent years as both the federal and state governments have listed the elimination of health care fraud as a top priority. With that in mind, health lawyers have focused much attention to the prevention and correction of violations of the federal and state "fraud and abuse" laws, likened by the United States Department of Health and Human Services Office of the Inspector General to "preventive medicine." In an extremely oversimplified statement, providers may not receive kickbacks for referrals, nor may they refer patients for certain services to entities where the provider or a family member has a financial relationship. As you can imagine, these laws are conceptually difficult for providers to grasp. Every referral arrangement has the potential to be suspect under the laws. To make matters more confusing for health care clients, there are numerous exceptions, complex definitions, and lengthy regulations. Failure to follow the regulations can lead to criminal and/or civil penalties, and/or exclusion from participation in the Medicaid (federal and state funded insurance for the poor) and Medicare (federal funded insurance for the elderly) programs.

Confidentiality of medical information has also become an extremely important topic for health attorneys. In December 2000, the Department of Health and Human Services issued final privacy regulations related to patient medical records. The area of patient rights has become increasingly important to health care clients and to patients.

Health lawyers practice in a variety of settings, including large and small firms, in-house in larger institutions, and government. As the health care industry grows and evolves, there will be an increasing opportunity for attorneys interested in the field to pursue a career in health law. The work can be challenging and diverse, including traditional research and drafting, and also advising clients on many of their business decisions. Attorneys and law students interested in the field should consider membership in the New York State Bar Association's Health Law Section.

Melissa M. Zambri, is an associate in the Albany office of Hiscock and Barclay, LLP with offices in Albany, Syracuse and Buffalo. At Hiscock & Barclay, she is a member of the Health Care Services and Technology Group chaired by David P. Glasel, Esq. Ms. Zambri received her J.D. from Albany Law School, *cum laude*, her M.B.A. in Health Systems Administration from Union College's Graduate Management Institute, and her B.S. in finance from Siena College, *summa cum laude*.

"Life is what happens while you're busy making other plans."

—John Lennon

TECHNOTALK
Digital Millennium Copyright Act Clarified by Copyright Office

By David P. Miranda

In 2000, the U.S. Copyright Office, issued a ruling clarifying the Digital Millennium Copyright Act (DMCA), permitting, in certain instances, the circumvention of access control technologies.[1] The DMCA prohibits circumvention of access control technologies employed by or on behalf of copyright owners to protect their works, effective October 28, 2000, two years after the enactment of the DMCA.[2] Because the DMCA's prohibition against circumvention raised uncharted technological and legal issues, Congress delayed the implementation of the law in order to permit a determination of whether non-infringing uses of particular classes of copyrighted works might be affected.

During the two-year period between enactment and the effective date of the provision, Congress asked the Librarian of Congress to make a determination as to classes of works exempted from the prohibition, based upon a recommendation from the Copyright Office. After the solicitation of public comments and hearings, the Copyright Office determined that two exemptions were necessary. One exemption addresses compilations consisting of lists of Web sites blocked by filtering software applications, and the other exemption concerns the right to penetrate electronic barriers protecting copyrighted materials when the barriers are erected as a result of a malfunction.

Certain software products commonly known as "filtering software" or "blocking software" restrict users from visiting certain Internet Web sites. These software products include compilations of Web sites to which the software will deny access. This software is often used by schools, libraries and parents to prevent access to inappropriate materials on their computers. Manufacturers of filtering software encrypt the names of blocked Web sites which are protected by copyright law as compilations. In at least one instance an injunction was obtained against authors of a program that decrypted the listing of blocked Web sites.[3] Such acts of decryption would likely violate Section 1201(a)(1) of the DMCA without the exemption. The Copyright Office notes that there is legitimate non-infringing use of such compilations for the purposes of providing critique and comment on lists of Web sites blocked by filtering software. The Copyright Office finds that there is no alternative but to decrypt the encrypted list in order to learn what Web sites are included in the filtering software.

The second exemption is intended to exempt users of software who are prevented from accessing certain works contained in software or other databases because access control protections are not functioning in the way that they were intended. In particular, libraries and educational institutions stated they have experienced instances when materials protected by access controls have subsequently malfunctioned and they could not obtain timely relief from the copyright owner. The Copyright Office determined that circumvention of access controls in these instances should not have a significant effect on the market for the work, since copyright owners typically will already have been compensated for the use of the work.

The most significant aspect of the Copyright Office's recommendation may be its failure to provide an exemption for audio visual works on digital versatile discs (DVDs). The recommendation notes that more comments and testimony were submitted on the subject of motion pictures on DVDs and the technological measures employed to protect them, such as the Content Scrambling System (CSS), than on any other subject in this rule making.[4] CSS is an encryption system used on most commercially distributed DVDs. DVDs with CSS may be viewed only on properly licensed equipment. Some argued an exemption was necessary to permit the circumvention of CSS because it prevents the user from making otherwise non-infringing uses of lawfully acquired copies, such as excerpting parts of the material on a DVD for a film class which might be considered a fair use. The Copyright Office found, however, that any harm caused by the existence of access control measures used in DVDs could be avoided by obtaining a copy of the work on VHS tape. The Copyright Office also noted the recent decision in *Universal City Studios, Inc. v. Reimerdes*[5] that enjoined Internet Web site owners from posting or downloading computer software that decrypted digitally encrypted movies on DVDs or from including hyperlinks to other Web sites that made the decryption software available. That ruling rejected the argument that a separate portion of the DMCA[6] should be applied to permit reverse engineering of DVDs. The Copyright Office noted that the Universal City Studios case is on appeal and subsequent developments in that case or future

cases could make the need to fashion an exemption for DVDs moot. The Copyright Office stated that it would proceed with caution before creating an exemption to accommodate reverse engineering that goes beyond the scope of Congress' intentions.

The exemptions established by the Copyright Office will be effective until October 28, 2003. Prior to the expiration of that three year period, the Copyright Office will initiate a new rulemaking process to consider what classes of marks, if any, should be exempt from §1201 after October 28, 2003. Based upon the increasing use of and interest in DVDs, it is likely that the Copyright Office will again consider an exemption regarding DVD encryption technologies during its next rule making phase.

Endnotes

1. 37 CFR Part 201. Exemption to prohibition on circumvention of copyright protection symptoms for access control technologies; Final Rule; Federal Register Vol. 65, No. 209 (October 27, 2000).
2. 17 USC § 1201(a)(1)(A).
3. *Micro Systems Software, Inc. v. Scandinavia Online*, Case No. 00-1503 (1st Circuit, September 27, 2000).
4. *Supra.*, footnote 1, III, E, No. 3.
5. *Universal City Studios, Inc. v. Reimerdes*, 111 F. Supp. 2d 294, 55 U.S.P.Q.2d 1873 (S.D.N.Y. 2000).
6. 17 USC § 1201(f).

David P. Miranda is Of Counsel to the Intellectual Property Law firm of Heslin & Rothenberg, P.C. in Albany, New York, Chair of the NYSBA's Electronic Communications Task Force and an Officer in the Young Lawyer's Section. He can be reached at dpm@hriplaw.com.

This article was originally published in the *Intellectual Property Law Journal* of the American Bar Association, Volume 19, No. 2, and is reprinted with permission.

"To err is human, but to really foul things up requires a computer."

—Paul Ehrlich, American scientist

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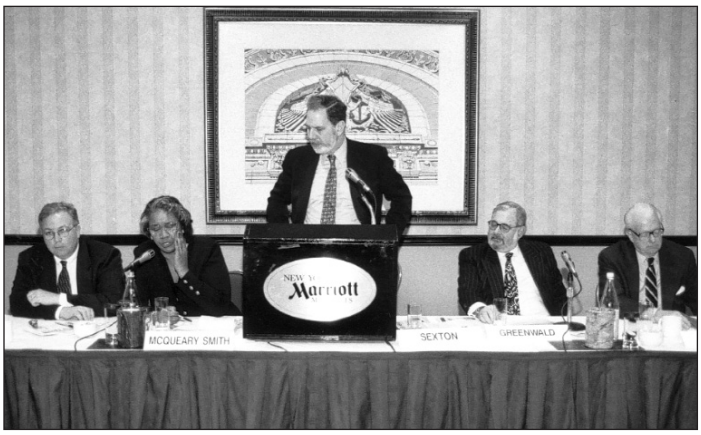
Young Lawyers Section News and Events

The Young Lawyers Section Fall meeting/MCLE program took place on November 3, 2000, at the Marriott Hotel in Albany. The MCLE program was entitled ***Climbing the Mountain—An Honest Appraisal of the Risks and Rewards You May Face in Your Chosen Area of Practice***. Panelists discussed their perspectives on the trials and triumphs of practicing law in their various fields. The panelists included Patrick LaPorta, Trust Officer at Trustco Bank; Teresa Donnellien, Esq., Law Offices of Teresa Donnellien, Saratoga; Jeffrey B. Schwartz, Honen & Wood, P.C., Albany; and Holly E. Steuerwald, Coordinator of Continuing Legal Education, Albany Law School Institute of Legal Studies. YLS Chair-elect Barbara J. Samel moderated the program.



Moderator John E. Sexton, Dean of New York University School of Law, and panelists (from left) Anthony P. Colavita, L'Abbate, Balkan, Colavita & Contini, L.L.P., Garden City; Professor Beverly McQueary Smith, Touro Law Center, Huntington; Laurence Greenwald, Stroock, Stroock & Lavan, New York; and Louis P. Craco, Chair, New York State Institute on Professionalism in the Law, spoke to attendees at the Young Lawyers Section Annual Meeting discussing the *Evolving Practice of Law.*

Attendees felt back in law school attending the YLS Annual Meeting Program. Professor Siegel's CPLR Update and a panel of highly respected attorneys and judges provided 3 hours of MCLE credit on the *Evolving Practice of Law*.

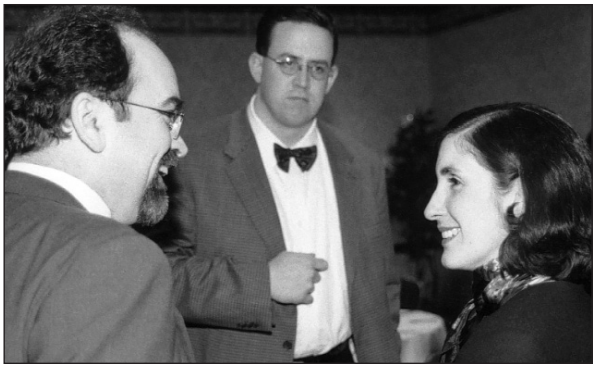
The 2001 NYSBA 124th Annual meeting took place at the Marriott Marquis in New York City on January 23-27, 2001. The YLS MCLE program consisted of two parts. The first program was the always popular ***CPLR Update*** featuring distinguished Professor of Law David D. Siegel from Albany Law School of Union University. The second program consisted of a panel discussing the topic of ***The Evolving Practice of Law***. Speakers included Laurence Greenwald, Esq., of Stroock, Stroock & Lavan, New York City; Professor Beverly McQueary Smith, Past President of the National Bar Association, Touro Law Center; and Anthony P. Colavita, Esq., a partner in the law firm of L'Abbate, Balkan, Colavita & Contini, LLP. Dean John E. Sexton of NYU Law School moderated the discussion. Program Chair was Scott Kossove, Esq., of L'Abbate, Balkan, Colavita & Contini, LLP. The program was followed by a reception honoring Catherine Cerulli as the recipient of the 2001 Outstanding Young Lawyer Award. Ms. Cerulli's impressive accomplishments are elaborated on page 13 of this issue.

The Annual Meeting also provided a fair amount of time for socializing. The first night, many members attended the State Bar's "President's Reception," which featured an open bar and an overabundance of shrimp cocktail—and many networking opportunities for those who could keep away from the buffet. Afterwards, YLS members headed off for dinner at the always excellent Carmine's restaurant. Once dinner was finished several groups, not wishing to waste a "night on the town" in the Big City, splintered off and explored the dark recesses of the City, visiting such establishments as *The Slaughtered Lamb*, the original *Jekyl & Hyde Club* and *The Blue Note* jazz club. Rumors that our Section Chair Scott Anglehart was spotted in a shiny, white stretch limo parading around the City in the wee hours of the morning have yet to be confirmed—although some credible sources have been located. The second night members attended dinner at the unique Churrascaria Plataforma, where special "stop"—"go" signals were given to guests to indicate whether you wanted more meat entrees cut onto your plate by the fast-moving waiters. This author was

David D. Siegel, Distinguished Professor of Law at Albany Law School, presented his CPLR Update to members attending the Young Lawyers Section Annual Meeting Program held during the NYSBA 124th Annual Meeting at the New York Marriott Marquis in January.

scolded for turning down an entrée while the "go" signal was still showing, a mistake surely not to be repeated. For those who have never attended the Annual Meeting, a good time is practically guaranteed.

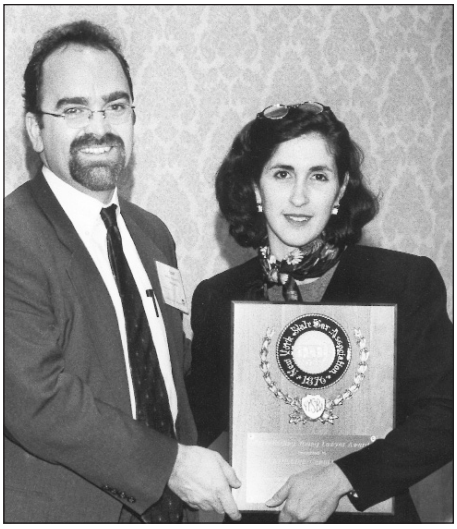
As many of you know, the YLS also has several ongoing projects such as the **Mentor Directory,** a valuable resource to help young lawyers with questions that arise in your daily practice, and the **Senior Citizens Handbook**. Both publications are "hot ticket" items and are a great example of the quality services the YLS Section provides both to young lawyers and the public. Also, for those who have a penchant for computer wizardry, the YLS welcomes your assistance in maintaining the YLS Web site located at: http://www.nysba.org/sections/young**.** If you are interested in working on any of these projects, please contact one of the Section officers for further details.



YLS Chairperson Scott M. Anglehart and Robert E. Gallagher, Jr., Chairperson of the Outstanding Young Lawyer Award Committee, chat with award recipient Catherine Cerulli during a reception held in her honor during the YLS Annual Meeting in January.

Finally, there were several YLS district events held over the summer and fall of 2000, including a pub outing in Glens Falls, a golf outing in Binghamton and a hockey game in Rochester. If you have a good idea for a district event or would like to assist in the planning of same, you should contact the YLS Executive Committee member and/or Alternate Executive Committee member for your judicial district.

Watch for your "*In Touch*" fax newsletter for more information on upcoming district events near you.



Chairperson Scott M. Anglehart, Binghamton, presented the 2001 Young Lawyers Section Outstanding Young Lawyer Award to Catherine Cerulli.

Also, do not hesitate to express your interest in any Executive Committee, Alternate or Liaison positions which may currently be vacant. If further information is needed, feel free to contact any of the Section officers or our wonderful, hardworking State Bar Staff Liaison, Terry Scheid, at (518) 487-5537.

MARK YOUR CALENDARS!!!

June 4, 2001

Young Lawyers Section sponsors applicants for admission before the United State Supreme Count in Washington, DC

September 14 - 16, 2001

Young Lawyers Section Fall Meeting in Cooperation with the Labor & Employment Law Section
The Sagamore Hotel, Bolton Landing

In the ongoing effort to fulfill the mission of the YLS to be your *Bridge to the Profession and the NYSBA*, the Young Lawyers Section has joined with the Labor & Employment Law Section to present its Fall Meeting. If you have an interest or are building a practice in labor and employment law, this is the meeting for you! Watch your mail in the upcoming months for further details. Our Section intends to join other substantive sections of the bar at future meetings. If you have a suggestion for an upcoming section program that might be of interest to the YLS please let us know.

Catherine Cerulli

2001 Outstanding Young Lawyer Award Recipient

The New York State Bar Association Young Lawyers Section is pleased to honor Catherine Cerulli with the 2001 Outstanding Young Lawyer Award. The award is presented annually to recognize the contribution of a New York attorney admitted to practice less than 10 years who has made significant contributions to the betterment of the community and the legal profession.

Nominated by Eileen Buholtz of Rochester, a former president of the Greater Rochester Women's Bar Association, Ms. Cerulli is being honored for pioneering a domestic violence prevention program.

In 1997, she and her husband, attorney Christopher Thomas, started a Rochester-based organization called, "Legal Links" which is funded by the American Bar Association. The program's mission is to create partnerships between American and Russian cities with the unifying theme of how American law operates in a democratic society. For example, the first two Legal Links projects with Rochester's sister city of Novgorod, Russia helped the locals understand the concept of land registration and how civil money judgements are enforced. In its fifth year of existence, Legal Links now concentrates its efforts on domestic violence, as prevalent in Russia as in the U.S. with one marked difference, the number of homicides connected with domestic violence is greater.

While Ms. Cerulli's professional interests have become a global mission for her, she has not neglected the needs of western New York. She serves on the Rochester Police Department's Police Chief's Pre-Citizen Interaction Committee which studies the means and methods that the police and community should implement to reduce the city's homicide rate. The Chief Deputy Clerk of the Monroe County Family Court asked her to head the multi-disciplinary task force to observe and report on whether the domestic violence part was meeting its objectives—keeping domestic violence victims safe and holding batterers accountable.

Ms. Cerulli currently services as director of research for the University of Buffalo Law School Family Violence Clinic, which she co-founded. In her position, Cerulli trains law students and lawyers to represent domestic violence victims in court. She recently was approved for appointment to the faculty of the University of Rochester's Medical School as an adjunct assistant professor of psychiatry working on the overlap of domestic violence and mental health-related issues.

The significant contributions that Ms. Cerulli has made to the public service and legal community throughout the world make her a truly deserving recipient of the NYSBA Young Lawyer's Section Outstanding Young Lawyer Award.

ETHICS MATTERS
Sale of Law Practice

By Mark S. Ochs

Introduction

In the not too distant past it was common for a newly admitted attorney to join a law firm and spend his or her entire career there. Nowadays it is more likely that the attorney will move between firms or in and out of legal relationships a number of times. This may occur locally or throughout the state or country.

In the course of these career moves, the attorney may be faced with the need to sell an existing practice or have the opportunity to purchase another attorney's practice.

Former Prohibition Against Sale of Law Practice

Prior to May 22, 1996, the sale of a law practice was generally prohibited in the State of New York. The rationale for the prohibition was stated in 1943:

> Clients are not merchandise. Lawyers are not tradesmen. They have nothing to sell but personal service. An attempt, therefore, to barter in clients would appear to be inconsistent with the best concepts of our professional status.[1]

Efforts to sell a practice resulted, in some instances, in a disciplinary sanction or an unenforceable contract. In *In re Kaiser*[2] an attorney who entered into an agreement to sell his clients' files and his firm's good will was found to have:

> Engaged in the improper withdrawal from practice (DR[3] 2-110[A][2]);
>
> Failed to carry out contracts of employment with clients (DR 7-101[A][2]); and
>
> Engaged in conduct that adversely reflected on his fitness to practice law (DR 1-102 [A] [7]).

In *Raphael v. Shapiro*,[4] a contract for the sale of an attorney's interest and good will in an ongoing law practice was held to be void and unenforceable. The court found the following violations:

> Divulging without consent confidences and secrets of clients to a third party (EC[5] 4-6; DR 4-101);
>
> Failing to avoid foreseeable prejudice to the rights of clients, including giving due notice to them of his withdrawal or retirement (DR 2-110);
>
> Improperly dividing a legal fee with another lawyer who is not a partner or associate (DR 2-107);
>
> Receiving compensation for merely recommending a client for employment (DR 2-103(B) and [E]); and
>
> Improperly restricting an attorney's right to practice (DR 2-108[A]).

Enactment of the Rule Authorizing the Sale of a Law Practice

Disciplinary Rule 2-111, effective May 22, 1996, authorizes the sale of a law practice including good will. However, the disciplinary rule and the accompanying ethical considerations[6] significantly limit what can be sold and how the sale may be accomplished.

The New York rule differs from the ABA model rule[7] in that under the model rule the sale must be to a single purchaser and, except for clients who decide to take their business elsewhere or whose matters would create a conflict of interest, the purchaser is required to accept all client matters.

Who Can Sell a Law Practice and What Can Be Sold

An attorney may sell a practice only if he or she is retiring from the private practice of law. Where the attorney is missing, deceased or disabled, a personal representative may consummate the sale.

What Is Retirement

Retirement is the complete cessation of private practice in a geographical area. The attorney cannot sell a discrete portion of a practice (such as all personal injury, matrimonial or real property cases) and continue to practice in the same geographical area. The attorney must totally cease private practice in the county and city and any county or city contiguous thereto, in which the practice has been conducted.[8]

The sale may be to one or more attorneys and the parties may agree on reasonable restrictions on the seller's private practice of law, notwithstanding other provisions of the Code.[9]

Retirement does not prohibit the seller's employment on the staff of a public agency or a legal services entity. Retirement also includes election to a judicial position.[10]

Good Will

Although the sale of a law practice may include good will, even where it exists, the courts will honor an agreement, express or implied, that it not be considered as an asset being conveyed.[11]

Confidences and Secrets of Clients

The seller may provide prospective buyers with any information not protected as a confidence or secret under DR 4-101. Disclosure may include:

a. The identity of clients, unless the seller has reason to believe that the identity of a client or the fact of the representation itself constitutes a confidence or secret. In such a circumstance the client must be advised of the identity of the prospective buyer and consent obtained;

b. The status and general nature of the cases;

c. Information available in public court files; and

d. Financial terms of the attorney-client relationship and the status of the client's account.

The prospective buyer must treat information obtained in connection with the proposed sale as if the prospective buyer represented the client.

Conflicts Review

The seller needs to provide enough information to permit the prospective buyer to determine whether any conflicts of interest exist. Where this information includes client confidences or secrets, steps must be taken to protect same. Where a conflict is apparent, no further review of the particular case is allowed without the client's consent.

Consummating the Sale

Written notice of the sale is to be given jointly by the seller and the buyer to each of the seller's clients. The clients are to be notified that:

a. They may retain other counsel or retrieve their file;

b. Consent to the transfer of the case to the buyer will be presumed if the client does not act within 90 days of the notice;

c. If court rule or statute requires express approval by the client or a court, it must be complied with; and

d. The buyer will honor any existing fee arrangement.

The buyer(s) must disclose:

a. Identity;

b. Background;

c. Address;

d. Bar admissions;

e. Number of years in practice in the state;

f. Whether the buyer has ever been disciplined for professional misconduct;

g. Whether the buyer has ever been convicted of a crime; and

h. Whether the buyer currently intends to resell the practice.

If the new representation would create a waivable conflict of interest, the buyer must obtain a written waiver from the client.

The fee charged by the buyer may not be increased unless permitted by a retainer agreement or specifically agreed to by the client.

In comparing the sale of a law practice to a merger, an opinion of the Association of the Bar of the City of New York noted that the express consent of clients to their matters being handled by a merged firm is not required, as it is with retirement under DR 2-111, but clients should be given notice of the merger if it would result in their matters being handled by a firm materially different from the one prior to the merger.[12]

Escrow and Record Keeping Considerations[13]

The sale of an attorney's law practice does not carry with it the seller's escrow account. Funds of clients whose cases are transferred will need to be released from the selling attorney's escrow account for deposit into the purchasing attorney's escrow account. Even where an entire practice is purchased, the buyer may not assume control of the seller's escrow account by changing the title and signatory cards.

Since only an attorney admitted in New York may be a signatory on an escrow account, non-attorneys, including the executor of an attorney's estate who is attempting to sell the decedent's practice may not sign escrow account checks.

When an attorney who is the sole signatory on an escrow account dies, neither the estate representative nor the estate attorney may issue checks from the deceased attorney's escrow account. An application needs to be made to Supreme Court for an order designating a successor signatory for the purpose of distrib-

"Time flies like an arrow. Fruit flies like a banana."

—Groucho Marx (1890–1977)

uting escrow funds to known parties and, where appropriate, for transfer of funds to the Lawyers' Fund for Client Protection for distribution or safeguarding.[14]

The sale of a practice may result in funds remaining in escrow on behalf of a client who cannot be located. In such a case the attorney should apply for an order directing payment of the attorney's fees and disbursements, with the balance to be delivered to the Lawyers' Fund for Client Protection for safeguarding and disbursement.[15]

If the sale results in the dissolution of the seller's law firm, the selling attorney must make arrangements for the maintenance of bookkeeping records required to be maintained under DR 9-102(D).[16]

Conclusion

While the sale of a law practice is authorized by the Code, both the buyer and seller need to be aware of the specific steps that must be taken to protect the interests of clients.

Endnotes

1. Association of the Bar of the City of New York Committee on Professional Ethics Opinion 633 (1943).
2. 108 A.D.2d 510, 489 N.Y.S.2d 735 (1st Dep't 1985).
3. Disciplinary Rules of the Code of Professional Responsibility, promulgated as joint rules of the Appellate Division of the Supreme Court and set forth in Part 1200 of Title 22 of New York Codes, Rules and Regulations (N.Y.C.R.R.).
4. 154 Misc. 2d 920, 587 N.Y.S.2d 68 (Supreme Ct., New York Co. 1992).
5. Ethical Considerations set forth in The Lawyer's Code of Professional Responsibility as adopted by the New York State Bar Association. They are not included in 22 N.Y.C.R.R. Part 1200.
6. EC 2-34 through 2-36.
7. American Bar Association Model Rules of Profession Conduct, Rule 1.17.
8. NYSBA Ethics Opinion #707 (1998).
9. *See* DR 2-108.
10. A newly elected judge may not sell a law practice for a price that is contingent upon the future success of the acquiring firm in attracting and retaining work from the judge's former clients. NYSBA Ethics Opinion #699 (1998).
11. *Dawson v. White & Case*, 88 N.Y.2d 666, 649 N.Y.S.2d 364 (1996); *See also McQuillan v. Kenyon & Kenyon*, 271 A.D.2d 511 (2d Dep't 2000). *Kaplan v. Schachter*, 261 A.D.2d 440 (2d Dep't 1999).
12. The Association of the Bar of the City of New York Committee on Professional and Judicial Ethics Formal Opinion #1999-04.
13. DR 9-102.
14. DR 9-102(G).
15. DR 9-102(F).
16. DR 9-102(H).

Mark S. Ochs is the Past President of the New York State Association of Disciplinary Attorneys and is a frequent lecturer at State Bar events. He has been the Chief Attorney for the Committee on Professional Standards since 1990.

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Book Briefs

By Michelle Levine

***WHEN WORK DOESN'T WORK ANYMORE: Women, Work, and Identity*,** by Elizabeth Perle McKenna. A Delta book published by Dell Publishing, 278 pages.

Are you stressed, tense and frustrated? Do you feel under pressure and pulled in too many directions? If you are like so many lawyers, you answered yes to these questions and this book will be worthwhile reading. While it will not provide any magical solutions, Ms. McKenna's work is a highly interesting exploration of a complex issue. How do we find balance between our work and personal lives? This familiar refrain poses a challenge to all of us, but is of particular concern to young lawyers. By all accounts, we are more attuned to the need for balance and are willing to demand it from our employers. Our success in achieving it may be another matter. The book's copyright date is 1997, and we seem no closer today to overcoming any of the problems outlined in Ms. McKenna's book.

Although the book focuses primarily upon women and their complicated relationship with work, its audience should not be restricted to the female gender alone. There is a chapter entitled "Men, Work, and Identity," and the book as a whole speaks to issues that confront young lawyers of both sexes. Also, the author and many of the women she interviewed are from the "baby-boomer" generation, but their thoughts and feelings resonated with this "thirtysomething." Everyone can find something valuable to take away from reading this book.

The author begins with her personal story. She had been a successful publishing executive who, for many years, loved her job. And then one day she quit. The tension and torment of leading a double life had taken its toll and she had to take action to salvage her sanity and her self. What Ms. McKenna had come to realize was that her work life and her personal life did not combine to create one satisfying life. Instead, they were separate lives, each competing for one hundred percent of her while she strove in vain to give one hundred percent of herself to each. Her self-esteem was but one casualty in this losing battle. Ultimately, she concluded that she had to sever what she did from who she was; she had to stop defining herself by her work.

In quitting her job, Ms. McKenna embarked on a brave journey to live more authentically and discovered that she was not alone in having the desire to do so. The author conducted many interviews with working women and spoke with such luminaries as Gloria Steinem and Anna Quindlen. The pages become mirrors as the reader relates to the various experiences Ms. McKenna and her interviewees share. In fact, one of the strengths of the book is how wonderfully non-judgmental the author is in presenting each woman's perspective. As Ms. McKenna makes clear in the introduction, this is not a book about staying home with your kids. The roiling conflict between the false promise of "having it all" and the harsh reality of trying to do so exists for women regardless of their marital status and whether or not they have children.

The culprit that Ms. McKenna unmasks is the working world itself. The author posits that the way we work is suited to men with wives at home to take care of their lives. We are still operating in a society that expects us to manage the home, and an entire generation of women took on the challenge of doing so while pursuing a career and then berated themselves for being unable to accomplish both satisfactorily. Striving to be superwoman brought many of us conventional success, but it was at the cost of our selves. Winning the game on men's terms was a Pyrrhic victory of the cruelest kind.

Ms. McKenna heralds the need for change and identifies the obstacles in our way. There is resistance to a true transformation of the workplace, both culturally and internally. Cultural resistance stems from a reluctance to change the existing structure because those in power do not perceive a need to change it. After all, it worked for them and if it isn't working for us, then the problem can be laid at our feet. Also, admitting a lack of balance between the professional and the personal means allowing for the possibility that they were not ideal parents and partners. But perhaps the most crucial source of cultural resistance is that society does not place value on the work of sustaining family relationships, of raising children, of nurturing friendships. These are not

"Time is the fire in which we burn."

—Gene Roddenberry

pursuits rewarded with a salary and thus are relegated to an inferior status.

This connection between value and money is part of the internal resistance to changing the workplace. We do not assign any more worth to our free time than society does. Although we say that our families and friends are the most important parts of our lives, our behavior indicates that work is what reigns supreme. Another way that money plays a role in preventing change is the fear of losing economic security. However, Ms. McKenna cautions that financial fears are not always based in financial fact. The difference between needs and wants has been lost on many of us, and we are working to support a lifestyle rather than for basic survival. That lifestyle also involves whatever social status is attached to our jobs. This powerful team of money and status impedes progress toward more balance.

It becomes a question of priorities and having the courage to identify yours and live by them. That is what Ms. McKenna did and the message she is trying to send. Certainly the themes she explores in this book are compelling and bear emphasis; however, what might have been intended as reinforcing a point often results in tedious repetition throughout the book (there were actually identical sentences just a few pages apart). Another shortcoming was the use of certain terms without defining them. For example, the phrase "hero system" is introduced and never placed in context. It is 150 pages later that the reader finally receives a clue as to the meaning of the term when Ms. McKenna discusses how men become more heroic and esteemed by society in direct proportion to how much of their lives they sacrifice for work. It seems the book might have benefited from better editing, but these are minor criticisms.

Overall, *When Work Doesn't Work Anymore* is recommended reading. It may inspire young lawyers, both men and women, to enlarge their definition of success and begin incorporating personal values into their professional lives. After all, we are the future of the profession and if we join together as a community, we can become powerful agents for real change. There may come a day when "family friendly" is more than the latest buzzword in legal recruiting, when balance is truly valued. At the very least, reading the book may inspire you to start living by what you treasure, and we can effect change one person at a time.

Michelle Levine is an associate at Peluso & Touger, a firm in Manhattan, where she practices in the areas of civil litigation and criminal defense.

"History is not life. But since only life makes history, the union of the two is obvious."

—Louis D. Brandeis,
U.S. Supreme Court Justice (1856–1941)

REQUEST FOR ARTICLES

Perspective welcomes the submission of substantive articles, humor, artwork, photographs, anecdotes, book and movie reviews, ***SOUND OFF*** responses and quotes of timely interest to our Section, in addition to comments and suggestions for future issues.

Please send to:

James S. Rizzo
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City Hall, 198 North Washington Street
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Articles can be sent as an e-mail attachment, or submitted on a 3½" floppy disk, preferably in Microsoft Word format, along with a double-spaced, printed original, biographical information and a photograph (if desired). Please note that any articles previously published in another forum will need written permission from that publisher before they can be reprinted in Perspective.

Immediate Openings! Delegates to the American Bar Association Young Lawyer Division Assembly

The Young Lawyer Division Assembly is the principal policy-making body of the American Bar Association's Young Lawyer Division. The Assembly normally convenes twice a year at the ABA's Annual and Midyear Meetings and it is composed of delegates from across the nation. The Young Lawyers Section of the New York State Bar Association may appoint representative delegates to this Assembly. Future meetings will be held in San Diego, Chicago, Philadelphia and Washington, D.C.

The ABA offers a national platform to exchange ideas, discuss ethics, and explore important legal issues. The Assembly receives reports and acts upon resolutions and other matters presented to it both by YLD committees and other entities. In the past, issues debated have included amendments to the Model Rules of Professional Conduct; the enactment of uniform state laws regarding elder abuse; the enactment of federal legislation to eliminate unnecessary legal and functional barriers to electronic commerce; guidelines for multi-disciplinary practice; government spending on basic research and clinical trials to find a cure for breast cancer; and recommendations concerning biological evidence in criminal prosecutions.

For those interested, the position offers an opportunity for involvement in the American Bar Association without requiring a long-term commitment or additional work. A master list will be compiled of those individuals interested in serving as a delegate and those individuals will be polled prior to each meeting as to whether they can serve as a delegate for that particular meeting. Delegates will not be required to participate in floor debates or prepare written materials for the meetings.

All delegates must have their principal office in New York State, must be a member of the New York State Bar Association Young Lawyers Section or a county bar association, must be a member of the American Bar Association Young Lawyers Division, and must be registered for the meeting they will be attending as a delegate. If you are interested in this unique and exciting opportunity, please contact Barbara Samel at (518) 435-9990, or via E-mail at: bsamel@localnet.com.

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MK019

A Message from the Section Chair

(Continued from page 1)

than to be involved in shaping the policies and issues facing us.

There were a few reasons why I became active in the bar association and felt I could make an impact. My early experience in the profession was one of them—huge law school debt coupled with the fact that I left law school at a time when jobs were increasingly hard to find and salaries reflected too many lawyers in upstate New York, the lack of effective mentoring by older attorneys, and the unreasonable demands placed on time. In the March 2001 issue of the *ABA Journal*, the cover story reported that today's young lawyers are "shaking up the old-firm hierarchy with new demands" for salary increases, mentoring programs, and alternative work arrangements. The article found that young lawyers are no longer willing to work outrageous hours to succeed but are interested in their quality of life and I wholeheartedly agreed with its conclusions. Personally, I've always felt a bit lazy saying this as the usual thinking seems to be that success is measured by how overworked you are. The ABA article eased my anxiety a bit by showing that many young lawyers feel the same way. As we "graduate" from the Young Lawyers Section, and become the old guard, hopefully we can institute policies in firms to advance quality of life for all attorneys.

". . .young lawyers are no longer willing to work outrageous hours to succeed but are interested in their quality of life. . ."

Having started practicing in 1988 (I'm dating myself here), I still remember when the fax machine was not widely used, and e-mail and cell phones were not heard of. In many ways, I wish that we could return to those days. Because of their increased use, clients expect to have access to you at any time and, because they can get you information quickly, expect a response or work product just as quickly. This has further reduced the distinction between work hours and personal time and leads, for many attorneys, to the growing dissatisfaction with the practice of law. How technology has changed the practice of law is another important issue for our Section to consider and affect change. We can't eliminate technology, in many ways it has helped tremendously, but we can discuss how to best use technology to serve our clients and not have it take over our lives.

I also felt that women should be adequately represented in the leadership of the bar association and issues of importance to women should be addressed. For the first time, in the academic year 2000, more women entered law school than men. I am assuming the position of Chair at a rather odd time in my professional life, but one which other women in our Section may find themselves in. I have decided to work part time and spend the rest of my time raising my one-year-old son. I am grateful to have found a position that allows me the flexibility to do so. While this choice is certainly not for all women, the Young Lawyers Section should be a forum for providing information on part-time work, finding adequate childcare for full-time lawyers, and other unique issues of concern to women.

Well, enough about me. Whatever your philosophy or position, I hope that you feel that you have a home in the Young Lawyers Section and that we can consider issues of importance to you.

Barbara J. Samel

"Good laws lead to the making of better ones; bad ones bring about worse."

—Jean Jacques Rousseau

Convocation on the Face of the Profession

(Continued from page 1)

ed, better trained and better prepared than their forebears.

But the profession today also faces enormous challenges.

Just consider the mind-bending new substantive law issues society daily deposits on our doorstep—like the right to die, and custody of frozen embryos, and the very definition of family. Then add the challenges of modern technology and a global economy; the growing unmet need for legal services and access to justice; unrivaled competitive pressures; and now the raging issue of multidisciplinary practice.

Stir into the mix the loss of public respect over the last twenty years. Far too many Americans learn everything they know about lawyers and the justice system from the entertainment world—a world where once we were symbolized by Atticus Finch but today more likely find ourselves cast as the satanic "Devil's Advocate" or snack food for dinosaurs.

We seem to have grown accustomed to, accepting of, the steady drone of criticism, even within our own ranks, about the decline of professionalism.

Perhaps hardest hit by all of today's dramatic changes are new lawyers—the future of our profession.

I read recently in a law school publication that law students today should expect to enter one of the most stressful of all occupations. The article went on to describe a Johns Hopkins Medical School study of 104 occupations, concluding that lawyers were the *most* stressed, that they are more prone to depression than other professionals, and more likely than the public at large to turn to alcoholism. Not the kind of greeting most of us received in law school a few decades ago.

As a matter of fact, entering classes now look much different from what many of us encountered. Nearly half of first-year classes are female; indeed, this year more women than men applied to law school. And still classes are not sufficiently diverse. Although minority enrollments have increased markedly over the last 20 years, African-Americans remain only a minuscule percentage of the law student body—Asian-Americans and Hispanics even less. And, significantly, minority applications have not increased at all this year.

"Perhaps hardest hit by all of today's dramatic changes are new lawyers—the future of our profession."

Speaking of change at law schools, entering students today face an array of learning choices: traditional classes, seminars, externships, internships, clinical programs; courses over the Internet and in virtual classrooms; research on computers. The newly admitted lawyer is likely to be listed on a Web site, communicate by e-mail and cell phone, file documents electronically, and negotiate and draft agreements over the Web. All wonderful tools that happen also to increase expectations—more work, done faster, seven days a week, 24 hours a day.

And what of the cost of a law degree? Perhaps $125,000 at a private law school—a whopping 570% increase over the last 20 years, leading to substantial debt loads for many aspiring lawyers. Only ten years ago there was little relationship between debt burden and career choice. That equation is radically changed. Large New York City law firms today are paying law school graduates more than $125,000, with year-end bonuses of up to $40,000. That bonus alone exceeds the yearly salary of new lawyers at many places, including the Legal Aid Society. The Princeton Review Web site does this telling calculation: "Your monthly payments will be around $1,500. No problem, right? You'll be pulling in $2 million a year as a partner by then, so why worry?"

Not much opportunity for public interest work. Not much opportunity for private interests either, I'd say.

Perhaps the zenith, or nadir, of it all is the much heralded disenchantment and disillusionment among new lawyers—unhappy, unfulfilled, leaving the profession for greener pastures outside the law. Despite the megabucks, mass market books on alternative careers for lawyers and stress management for lawyers have become a cottage industry. As former Governor Mario Cuomo recently lamented,

> a significant number of young associates choose to leave [large law] firms for other situations. Sometimes they're enticed by the lure of excitement and quick riches in the dot com world, the way some were seduced by the investment banks in the eighties. But increasingly, they are lured by a more elusive search for 'meaningfulness.'

Is it any wonder, then, that we all have so willingly, enthusiastically, expectantly, gathered here today? Perhaps we will, together, give meaning to that elusive quality of "meaningfulness." Perhaps we will, together, be able to convey for the next generation of lawyers the many rich sources of individual satisfaction in the legal profession. Perhaps we will, together, identify, invigorate the values that lead to a proud, effective profession and morally satisfying individual life.

All across the country, courts, the organized bar and academia—and groups like the Conference of Chief Justices and National Conference of Bar Presidents—are encouraging gatherings like this on just such critical issues facing the profession. In New York, those same concerns led to the formation of an authoritative, independent, permanent Judicial Institute on Professionalism, one of today's hosts, to assure that these concerns receive continuous attention. I am grateful to Lou Craco, Chair, and each of the Institute's members for taking on this important project. And I am confident that these same concerns led as well to the decision of our co-host, friend and neighbor, the State Bar Association, to join with us in sponsoring this conference. And again, I am grateful to Paul Michael Hassett, State Bar President, and his colleagues for all of their help.

So yes, it's entirely fitting that we gather here today in this historic courtroom for the inauguration of a thoughtful, historic collaboration among the various constituents of the profession, including the bench, bar and academy.

The easy part of these opening thoughts has for me been to summarize the distressing news about lawyers—it's all around us. But the truth is there is much, much more that is good about the legal profession. And I don't just mean the heroic past of the American bar in fighting injustice. I mean the overwhelming efforts every single day of upright, dedicated lawyers securing rights for people and ideals of this great nation.

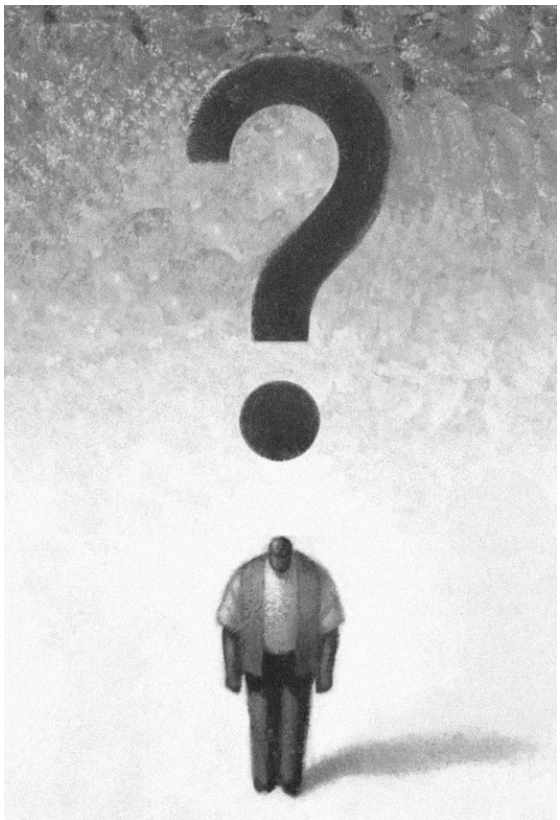
I have great faith in our ability, as a profession, to meet the challenge of change, preserving what is best about the past while being creative and open to the future to assure that we continue to serve the needs of an evolving society.

And I have great hopes for this Convocation. We may not ask or answer all the questions today and tomorrow, but I know that we will begin an important dialogue about values and influences that shape our profession—and I look forward to continuing the conversation with you.

A Postscript for "Young Lawyers"

In the interest of advancing this dialogue, please let me hear from you. How do you feel about the present state of the profession? Does it match the vision you had when you became a lawyer? What should we be doing? I'd enjoy hearing from you either through a Letter to the Editor or, if you prefer, directly, at Court of Appeals Hall, Albany, New York 12207.

Editor's Note: **Please feel free to send any responses or comments to the Young Lawyers *"Sound Off"* forum, via email at jamesrizzo9@juno.com.**



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Can Those Who Write Articles for Your Section Newsletter Get MCLE Credit? How Do They Do So? What About Editors of Newsletters?

Under New York's Mandatory CLE Rule, MCLE credits may be earned for legal research-based writing, directed to an attorney audience. This might take the form of an article for a periodical, such as your Section's newsletter. The applicable portion of the MCLE Rule, at Part 1500.22(h), says:

> Credit may be earned for legal research-based writing upon application to the CLE Board, provided the activity (i) produced material published or to be published in the form of an article, chapter or book written, in whole or in substantial part, by the applicant, and (ii) contributed substantially to the continuing legal education of the applicant and other attorneys. Authorship of articles for general circulation, newspapers or magazines directed to a nonlawyer audience does not qualify for CLE credit. Allocation of credit of jointly authored publications should be divided between or among the joint authors to reflect the proportional effort devoted to the research and writing of the publication.

Further explanation of this portion of the Rule is provided in the Regulations and Guidelines which pertain to the Rule. At Section 3.c.9 of those Regulations and Guidelines, one finds the specific criteria and procedure for earning credits for writing. In brief, they are as follows:

- the writing must be legal research-based
- the writing must be such that it contributes substantially to the continuing legal education of the author and other attorneys
- it must be published or accepted for publication

  it must have been written in whole or in substantial part by the applicant
- one credit is given for each hour of research or writing, up to a maximum of 12 credits
- only a maximum or 12 credit hours may be earned for writing in any one reporting cycle
- articles written for general circulation, newspapers and magazines directed at a nonlawyer audience don't qualify for credit
- only writings published or accepted for publication after January 1, 1998 can be used to earn credits
- credits (a maximum of 12) can be earned for updates and revisions of materials previously granted credit within any one reporting cycle
- **NO CREDIT CAN BE EARNED FOR EDITING SUCH WRITINGS** (this has particular relevance to Editors of Section newsletters)
- allocation of credit for jointly authored publications shall be divided between or among the joint authors to reflect the proportional effort devoted to the research or writing of the publication
- only attorneys admitted more than 24 months may earn credits for writing

In order to receive credit, the applicant must send a copy of the writing to the New York State Continuing Legal Education Board (hereafter, Board), 25 Beaver Street, 11th floor, NYC, NY 10004. A cover letter should be sent with the materials, and should include the following supporting documentation indicating:

- the legal research-based writing has been published or has been accepted for publication (after Jan. 1, 1998)
- how the writing substantially contributed to the continuing legal education of the author and other attorneys
- the time spent on research or writing
- a calculation of New York CLE credits earned and a breakdown of categories of credit (for the senior bar—those beyond the first 24 months of admission—there are two categories of credit: (1) ethics and professionalism; and (2) everything else (skills, practice management and traditional areas of practice)

After review of the correspondence and materials, the Board will notify the applicant by first class mail of its decision and the number of credits earned. Copies of the MCLE Rules and the Regulations and Guidelines can be downloaded from the Unified Court System web site (http://www.courts.state.ny.us/mcle.htm) or obtained by calling the New York State Continuing Legal Education Board at (212) 428-2105 (for calls outside of New York City, toll-free at 1-877-NYS-4CLE). Questions about MCLE requirements may also be directed to the Board by e-mail at: CLE@courts.state.ny.us.

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All life is an experiment."

—Oliver Wendell Holmes, Jr., U.S. Supreme Court Justice (1841–1935)

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"'In my youth,' said his father, 'I took to the law,
And argued each case with my wife;
And the muscular strength, which it gave to my jaw,
Has lasted the rest of my life.'"

—Lewis Carroll,
Alice's Adventures in Wonderland

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