

# Perspective

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

## A Message from the Section Chair

### The Young Lawyers Section— Where Tomorrow Begins Today

The Young Lawyers Section. What's that all about? How do I fit in? I've heard enough about the Bar Association, but is this for me? I need to do something outside the office, something, right? Is this it? Maybe, but I have enough to do already, don't I? Billable hours, drafting documents, the office. I'm not in law school anymore, that's for sure. I like this place, but it'd be nice to talk with someone else. Someone who understands. Someone going through the same thing. I really only have a few questions. Nothing crazy. That being said, what else is there? If I'm going to get involved, I want it to be worthwhile. I don't mind helping out, you know, but it would be nice to find something that works both ways. Something for something.

This story begins with a phone call. Simple enough. A phone call on an early fall day. Why not give this a shot? Just getting started, right? New career, new place, new everything. I've got the number for the Section Chair. We'll see where this goes.

I can say with all honesty that this doesn't go as planned. What begins as a simple phone call turns into something much more. It's something that as much as you give, gives back over and over again. The



credit always starts with someone else. In this case, my bosses. I was extremely fortunate to have the support of Walter Burke and

Tim Casserly from the outset. They were the ones who encouraged me to reach out and make that phone call. Get involved. See what's out there. Two people who have experienced the benefits of the Bar Association, served as leaders and understand the importance of working with your colleagues outside of the office. I called the Chair of the New York State Bar Association's Young Lawyers Section, Justina Cintron Perino. She welcomed me with open arms. "This is a great group, James. I think it is a great opportunity for you. Why don't you come to the Fall Meeting next month? I'll look forward to see-

ing you there and we can talk about ways to get involved with the Section." I guess I'll show up then. It always starts with showing up, right? Thanks, Justina. I wake up today a few years older and eternally grateful that I made that call. I met some great people at that first meeting, and returned to the office on the following Monday with some practical tips, both informal and directly applicable to everyday practice. The journey had begun and I continue to look forward to what lies ahead each day, each year.

It is truly an honor to serve as the Chair of the Young Lawyers Section. I have had the great fortune of serving as an officer with people like Sherry Levin Wallach, Tucker Stancliff and Phil Fortino. Now, I have the privilege of working with Michael Fox, Dana Syracuse and Lisa Schoenfeld, among many others. We continue to have the critical support of the leaders of the Association and the

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Bar staff. Our Section has been guided for many years by Megan O'Toole, our staff liaison, who has now passed the torch to Tiffany Bardwell. We couldn't be more thankful for their dedication to our cause.

The Young Lawyers Section serves as a bridge between law school and practice. Our members include attorneys in practice ten years or less, including law students. The diversity of our membership is our finest asset. We comprise attorneys from every part of the State and beyond, every practice area, and ethnicity. We offer continuing legal education programs geared to the interests of our members, mentoring programs, and pro-bono/community service opportunities. We have a large Executive Committee, with representatives to each district in New York State, liaisons to each substantive section of the Bar, and committee chairs (including the Mentoring Committee, the Diversity Committee, the Public Service and Pro-Bono Committee, the Membership Committee, etc.). This is your Section. There are countless opportunities to become active, whether as a participant or as a leader. We are committed to offering cutting-edge programs and meaningful initiatives. We are constantly adapting to the changes in our profession and providing our members with tangible benefits.

The theme of this year for our Section is "The Future is Now." While young attorneys are primarily focused on all that is involved with beginning a career in the law, we need to realize that there are opportunities at the present time that will have an immediate impact today, both in our personal lives and in the community as a whole. Our Section is focused on building bridges and forming lasting relationships. Our work is aimed at providing members with a firm foundation, which is manifested in our networking and

professional development initiatives, continuing legal education programs and community service projects.

A favorite musical artist of mine, Brad Paisley, released a song a few years ago entitled, "Welcome to the Future," which reflects on the wonder of the world in which we currently live where rapid societal change is the norm. As the song goes, "when I was 10 years old, I remember thinking how cool it would be...when we were going on a 8 hour drive, if I could just watch TV." Things that were only a dream a few years ago are now a reality. We must stay ahead of the curve and embrace change. The Bar Association believes in the power of change, and the YLS is dedicated to improving the profession's present and future. Earlier this year, the NYSBA released a report issued by the Task Force on the Future of the Legal Profession. The report addressed, among other things: (1) developments in the economics, structure and billing practices of private law firms; (2) changes in the model for educating and training new lawyers; (3) the pressure on lawyers seeking to find balance between their professional and personal lives; and (4) the implications of technology on the practice of law. Each section is relevant to young attorneys, and we must stay at the forefront of addressing the challenges facing our profession.

Our Section strives to maintain a local presence, while at the same time offering programs that connect attorneys across our State. We will be holding several programs during the Association's Annual Meeting in New York City in January 2012, including a CLE program on Wednesday the 25th, a reception honoring the 2012 Outstanding Young Lawyer, and a two-day Bridging the Gap program on Thursday and Friday, the 26th and 27th. The 3rd Annual Trial Academy is set for March 21st-25th

at Cornell Law School, featuring a five-day intensive trial techniques program designed to teach, advance and improve the courtroom skills of young attorneys, with an emphasis on direct participation. This program provides young attorneys with an intimate setting of collective learning among colleagues and skilled, veteran practitioners. The YLS heads to Washington, D.C., on June 10th and 11th for the annual United States Supreme Court Admissions Program, where a group of attorneys will have the unique opportunity to become formally admitted to the Bar of the Supreme Court. The Section also gathers each October for its Fall Meeting in Albany at the NYSBA Bar Center. These larger programs are supplemented by many local programs, which include community service projects, mentoring programs and networking functions.

After all of the programs and events have concluded, the relationships and bonds formed between colleagues remain. The true value in our Section and the Association as a whole is the members. Skilled practitioners, caring mentors, lifelong friends. People looking to make a difference. The YLS is committed to being a part of the solution to present and future challenges. However, being a part of the solution requires both individual and collective responsibility. We must be proactive to be successful. We are often referred to and thought of as the future of the profession. While in one sense we are, in another sense we are critical to the present as well.

The Future is Now. We can and will make a difference: for each other, in our profession and in our communities. I am excited about what we as a Section can continue to accomplish, and look forward to working with you along the way.

**James R. Barnes**

# Ten Reasons Why Law School Is Still a Good Bet

By Glenn Truitt

You can hardly pick up a news magazine these days, let alone the latest report on law schools, without reading about the extraordinarily poor plight of modern day law students and law schools. Like much of the rest of the economy, the legal profession—including the legal education business—enjoyed unprecedented success and growth, followed by an inevitable decline and looming collapse when that growth could no longer be sustained. We have too many law schools, too many law students, and too many lawyers. Law school costs too much, law firms pay too little, and clients don't want to spend anymore. In all, law school seems like an even worse idea than it already did *before* the recession.

But in order for the economy (legal and otherwise) to rebound we must be willing to wager on ourselves once again. After all, we've been down this road before—only to come back stronger and better each time. And so in the interests of continuing to fuel that great and wondrous machine which turns out fresh-faced JDs in ever-greater numbers, here are **ten reasons why law school is still a good bet**:

1. **Law & Order becomes a comedy.** All those previously intriguing legal dramas you used to watch will now become exercises in mocking overpaid and under-informed "legal consultants" to the shows, who you can't *believe* would have missed obvious hearsay testimony in the script or who mispronounce Latin phrases. Who can't use a few more laughs these days?
2. **You'll be a *doctor* when you graduate.** Sure, it's not a *real* doctorate—you don't heal people, it only took you three years, and you didn't prepare a thesis (or any original writing at all, for that matter).

But hey, your degree says "doctorate" on it, and it just feels *good* to insist on people calling you "doctor," you know?

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*"[I]n the interests of continuing to fuel that great and wondrous machine which turns out fresh-faced JDs in ever-greater numbers, here are ten reasons why law school is still a good bet."*

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3. **You're not *really* alumni.** Everyone knows that when it comes to school affiliations, grad school doesn't count—unless you want it to. Law school is like a second chance to go to a cool school and claim it if you didn't go to one as an undergrad—and if you did, you can pretend like law school was just an unfortunate necessity and that you didn't even really know anyone on campus. Win-win!
4. **You get to carry a briefcase without looking like a tool.** A briefcase has to be the strongest indicia of legitimacy this side of a badge and a gun. But unlike that one awkward kid who carried one to class in high school—you'll be the *real thing*. A place to store pens, business cards, and the work you'll take home to not feel guilty but won't actually look at until you get back to your desk! Feel free to handcuff it to your wrist for greater effect.
5. **You'll finally be popular.** Remember that one guy at family get-togethers or when you're out with friends that everyone wants to talk to? Now that's you! People who

have hardly said two words to you before will now want to get your take on all kinds of legal issues, from divorce to traffic tickets and everything in between. You'll never be left alone again! And even better, because you're getting it late, you won't have to sign any yearbooks!

6. **You'll get lawyer jokes.** You've been hearing jokes about lawyers for years—from your parents, in forwarded e-mails, at cocktail parties, etc. And while you laughed along, you never really understood why lawyers were so bad. But after law school and prolonged exposure to many lawyers, you'll finally understand why those jokes are so funny—because they're true!
7. **One word: Monogramming.** Look, you know deep down you always thought monogrammed clothing was pretty slick. I mean, here's a shirt that everyone will know is yours (aside from you being the one wearing it). And nothing turns a snot-rag into a handkerchief like your embroidered initials. But while getting monograms seemed a bit overboard when you were just an average Joe—it's completely ok when you're a lawyer. Let's see those cuffs, people!
8. **You'll have some very serious books.** Before law school, your bookcase was filled mostly with textbooks from the majors you abandoned in undergrad, the bad fiction you've been reading in an attempt to be aware of current pop culture, and back issues of your regrettable magazine choices. But after law school,



you'll have dozens of books that will instantly make your shelves seem like they're made of mahogany—even if they're from IKEA.

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*"[S]urvival in a down economy is all about knowing where to put your money, and what better place than the academic sweatshops that tirelessly stretch one year of curricula into three?"*

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**9. You'll be three years older.**

No one takes a 22-year-old seriously, unless they're the boss' kid, an actor or a singer. But let's face it, your parents aren't important, you couldn't reliably play the part of a CSI corpse, and you've been

banned from more than one karaoke bar. At 25, you'll finally be able to rent a car on your own and there's a chance you may not get carded everywhere you go. And hey, you'll know some law, too!

**10. You'll be in on the secret.**

What secret? You know, the one about how "hard" law school is, and how "tirelessly" you had to work to get through it. Now you'll know all about days that start at 10 a.m. and finish at 3 p.m., with like two hours of reading to do afterwards. Whew! You'll be able to smile inside at the ruse put on by other law students who claim hardship during their third year—when during yours, you spent more time at Starbucks than the law school and couldn't dependably name all of your

professors. But shhhhhh! Remember, as long as we keep it to ourselves, everyone will keep congratulating us just for finishing and nodding their heads in quiet approval of all of our hard work. And why shouldn't you get a little love—after all, those books didn't carry themselves to class!

In the end, survival in a down economy is all about knowing where to put your money, and what better place than the academic sweatshops that tirelessly stretch one year of curricula into three? Madoff Investment Securities, anyone?

**Glenn Truitt, Esq. is founder and principal of MyContractsGuy.com which offers legal services to businesses and individuals in the Nevada area. He is a 2005 graduate of Stanford Law School.**

## NEW YORK STATE BAR ASSOCIATION

# Annual Meeting

## January 23-28, 2012

### Hilton New York

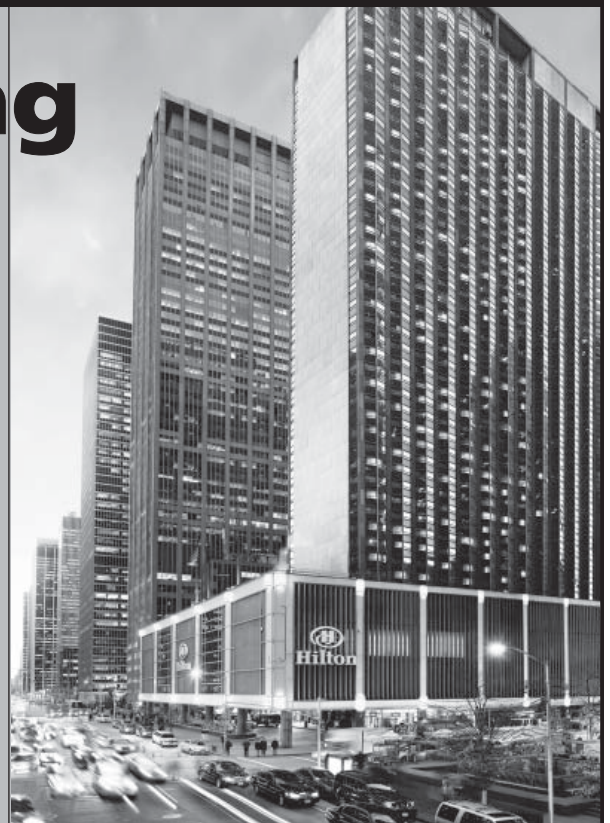
1335 Avenue of the Americas, New York City

### Young Lawyers Section Program Overview of Representation of Non-U.S. Citizens

Wednesday, January 25, 2012 • 9:00-12:15

### Bridging the Gap 2012 Transforming Preparation into Practice

Thursday and Friday, January 26-27, 2012  
9:00-5:00



To register, go to [www.nysba.org/am2012](http://www.nysba.org/am2012)

# Recap of the Fall Conference

By Michael L. Fox



On Thursday and Friday, October 20 and 21, 2011, the YLS held its Fall Program and CLE at the Bar Center in Albany. The Section's business was conducted first at the Executive Committee meeting, held Thursday afternoon. Among the items on the agenda, a number of the Section's upcoming programs were discussed as well as our Section's interaction with the State Bar's other 24 Sections. After the Executive Committee meeting, we were graciously hosted at the New York State Court of Appeals Building, across the street from the Bar Center, where Judge Graffeo provided a detailed, behind-the-scenes tour of the Court building and the work of the Court. Our group was also addressed by Chief Judge Lippman, who welcomed us



in the courtroom. The tour was a terrific event, and we are grateful to Judge Graffeo and the Chief Judge for their time, courtesy, and warmth in welcoming us to the highest Court in our State. After the Court of Appeals tour, our Fall Program dinner was held at Jack's Oyster House in downtown Albany. It was a time for officers, members, staff and CLE presenters to enjoy a meal and networking. With several Past Chairs in attendance, the officers recognized our outgoing Section Liaison, Megan O'Toole, for all of her work with us over the last five years in building the Section membership and programming. Megan remains with us as Manager of NYSBA's Membership Services, but won't be working with our Section as much on a day-to-day basis. We also welcomed our new







Section Liaison, Tiffany Bardwell, whom we are all looking forward to working with.

On Friday, the Section held its full-day CLE program, which offered 8 credits including 2 ethics credits. The panels included state and federal judges, professors, and practitioners from across New York State. The panels covered topics including state and federal pleadings, discovery and

depositions, bankruptcy practice, jury selection, mediation and arbitration, and ethics in litigation/ethics in everyday practice. The Fall Program was a tremendous success, and we thank all of those who attended, including our CLE faculty. Several photographs of the day's activities are included with this article.

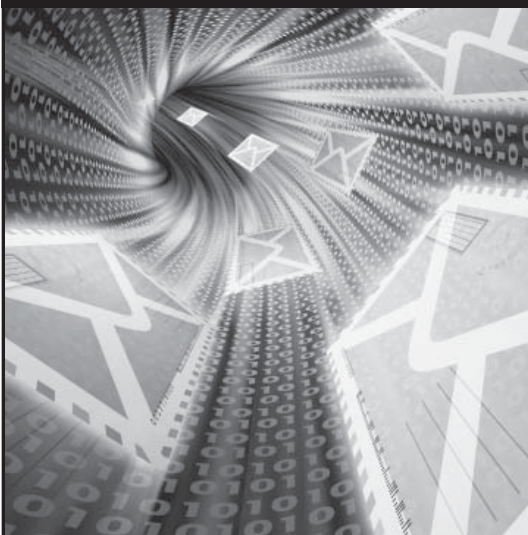
Keep an eye out for our future events, the next of which is the Section's Annual Meeting programming, being held Wednesday through Friday, January 25-27, 2012 at the Hilton New York. The Section will hold its Annual Executive Committee Meeting and elections, as well as a half-day CLE program on immigration law, and a 2-day Bridge-the-Gap CLE program. The annual

Outstanding Young Lawyer Award will also be presented that week. Please watch your mail and e-mail for more information. All Section members are welcome to any and all events, including the Executive Committee meetings. We hope to see everyone in January.

**Michael L. Fox is Chair-Elect of NYSBA's Young Lawyers Section.**



## Request for Articles



If you have written an article and would like to have it considered for publication in *Perspective*, please send it to the Editor-in-Chief:

Anting Jennifer Wang, Esq.  
Grais & Ellsworth  
40 East 52nd Street  
New York, NY 10022  
awang@graisellsworth.com

Articles should be submitted in electronic document format (pdfs are NOT acceptable), and include biographical information.

**[www.nysba.org/Perspective](http://www.nysba.org/Perspective)**

# Representing Overseas Clients—Tips for Attorneys

By Niles Yashwant Ameen

In a globalizing world, young attorneys may increasingly come into contact with overseas and internationally based clients. These clients may seek to transact business or conduct other activities in the United States or with U.S. persons and entities, and they may not be aware of particular features and aspects of the U.S. legal system and laws that affect their rights and actions.

Overseas clients expanding their business processes or engaging in litigation in the United States may increasingly become a source of business for law firms, including for young attorneys looking to gain additional clients or develop long-term client relationships. Therefore, attorneys who can adequately represent the needs of overseas clients have become increasingly in demand. This article offers insight and practice pointers useful for attorneys representing overseas clients.

## 1. Where Is the Client From?

Clients from certain jurisdictions may be more familiar with U.S. laws and legal principles than clients from other jurisdictions. Clients hailing from or based in predominantly “common law” jurisdictions (such as the United Kingdom, Canada, Australia, Singapore and Hong Kong) are likely to be more familiar with U.S. legal principles, especially in areas such as contracts, property, and corporate law, and perhaps also with evidentiary rules and criminal law principles.

However, clients from civil law jurisdictions such as continental Europe and South America may be less familiar with American legal concepts and principles, especially in the aforementioned legal areas, and may require an in-depth introduction to the various principles and theories underlying American law.

For example, evidentiary rules and principles may be significantly different in continental European jurisdictions than in the United States. A client may therefore need an enhanced explanation of why oral evidence he or she would consider important in a contract dispute in his or her country would be inadmissible in a U.S. legal proceeding due to the hearsay rule.

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*“Overseas clients expanding their business processes or engaging in litigation in the United States may increasingly become a source of business for law firms, including for young attorneys looking to gain additional clients or develop long-term client relationships.”*

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Further because judge-made law is a distinguishing feature of U.S. and common law jurisdictions, clients from non-common law jurisdictions may not appreciate the significance of attorneys looking to court decisions regarding a point of law or on a legal topic rather than being able to rely solely on a statute or code provision as may be done in civil law jurisdictions. This adds to the unpredictability of a legal outcome that a client from a civil law jurisdiction (e.g., a jurisdiction relying primarily on statutes and code provisions) may not be accustomed to.

## 2. Communicate and Clarify U.S. Legal Concepts with Your Client

Overseas clients may have little firsthand contact with the U.S. legal system, and may form opinions with

respect to American law and lawyers from external sources such as popular television and film, or from common public perceptions relayed through media or other social outlets. While many overseas clients are too sophisticated or knowledgeable to base views on stereotypes, it may be worth reassuring clients involved in litigation or business transactions that how things are done on TV (e.g., lawyers engaging in courtroom theatrics or questionable ethical behaviour out of court) does not correspond to the reality of conducting actual litigation, appearing in court or representing a client in a negotiation or business transaction in the United States.

In the litigation context, it should be made clear to the client that American lawyers are governed both by rules of professional conduct and by procedural rules such as Federal Rule of Civil Procedure 11, which can open attorneys to sanctions for abuse of the litigation process.

Clients may also be concerned about the reputedly high cost of retaining American legal representation. In the transactional context, for example, it may be worth reassuring a client concerned about fees that professional responsibility rules govern the “reasonableness” of attorney fees, and that clients will not be charged a fee that is unreasonable and against the rules of legal ethics. Certain clients may not be familiar with the hourly billing system used in the United States and may prefer alternative fee arrangements such as a fixed or period-based fee.

Similarly, overseas litigants may not be familiar with the majority rule in the U.S. which stipulates each party pays his or her own attorneys’ costs (commonly referred to as the “American Rule”). Other jurisdictions may utilize an alternative rule

in which the losing party pays the prevailing party's costs (commonly known as the "English Rule").

### 3. Explain the Nuances of the U.S. Legal System

Overseas clients, even those from common law jurisdictions with similarities to the United States, may find certain aspects of the legal system puzzling and difficult to understand. The existence of a federal structure in the United States may be new to certain clients, especially those from countries with unitary legal systems where there is no divide between federal and state. Even those from countries with a federal system of government may find the particularities of the U.S. bilateral system unique, novel and complex when contrasted with their own.

Clients may be surprised to learn that, for example, there may be tactical and strategic advantages to pursuing a claim in state rather than federal court, or defending a claim in federal court as opposed to a state forum. Forum selection might be beneficial to a client if a particular venue offers a strategic or tactical advantage, but it also may result in unwanted complexity and procedural burden if an opposing party is looking to gain an advantage by, for example, moving a case from state to federal court.

Civil litigants may also be unfamiliar with the use of depositions or similar legal devices (that may not be available in overseas jurisdictions) permitting live examination of witnesses before trial and before court proceedings. Litigants may not understand that during depositions they are under oath, and that they may be required to answer difficult and probing questions from attorneys looking to discredit potential

evidence. Business litigants may not be familiar with the requirement that they may have to provide an employee with knowledge of relevant subject matter to submit to a deposition under Federal Rule of Civil Procedure 30(b)(6) or under similar state rules.

Clients who are the target of criminal and regulatory investigations overseas may be surprised to learn that if the U.S. Justice Department chooses not to pursue a criminal investigation against them, a U.S. regulatory agency such as the Securities and Exchange Commission may still use its considerable extra-territorial jurisdiction to pursue a claim against a defendant in a civil proceeding. Clients from overseas jurisdictions may not be familiar with civil regulatory agencies extending their reach this far.

### 4. Conclusion

The increasing globalization of the world economy and indeed the legal world means that young attorneys may come into contact with overseas clients on an increasingly frequent basis. Understanding the perceptions and needs of these clients can make a young attorney better equipped to provide high-level and high-quality legal representation.

Attorneys may want to consider the legal tradition of the country of the client's home jurisdiction. Clients from jurisdictions with significantly different legal traditions from the United States may require a greater explanation regarding areas of U.S. law affecting their legal rights and remedies.

Lawyers may also want to reassure clients that certain popular perceptions of U.S. law and the legal

system are just that, and that strict procedural and ethical rules govern the real-world actions of attorneys. Clients worried about large fees and expenses connected with American legal representation may be reassured by ethics rules governing the "reasonableness" of attorney fees. Those clients unfamiliar and perhaps concerned with the hourly billing system may be reassured that other arrangements may be available to them.

Finally, overseas clients should be alerted to features of the U.S. legal system that they may find difficult to understand or complex. Clients involved in multi-jurisdiction litigation may need the technicalities of the dual state and federal civil litigation systems to be explained to them, and the requirements of litigation devices such as depositions should be explained to a client who has not experienced anything like these in his or her home jurisdiction. Finally, the ability of various regulatory agencies to extend their reach overseas should be explained to a client facing potential investigation or legal action by more than one regulatory agency (e.g., a civil investigation in addition to or instead of a Department of Justice criminal proceeding).

**Nilesh Yashwant Ameen, Esq.** is an attorney residing in New York, New York. He is admitted to the Bars of New York, the Ninth and Federal Circuit Courts of Appeals, and the Supreme Court of the United States. He holds an LL.M. in Comparative Law from the University of San Diego School of Law, and an LL.B. from the London School of Economics. He is also editor of the NYSBA Young Lawyers e-newsletter *Electronically-In-Touch*.

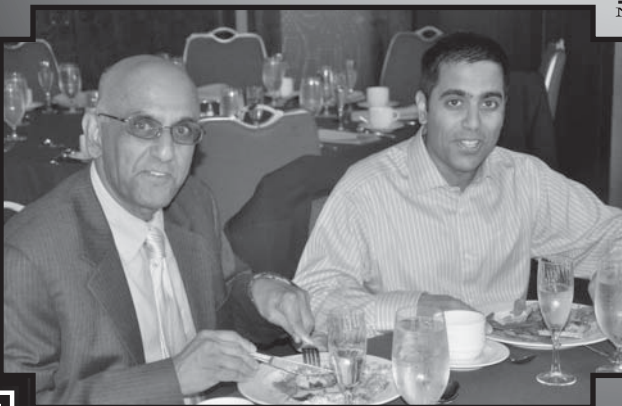


SCENES FROM THE  
**SUPREME COURT  
ADMISSION**

**JUNE 13, 2011  
WASHINGTON, DC**













# When Enough Is Enough

By Glenn Truitt

If you've worked at a law firm before, then you've spent countless nights wondering when you might be ready to leave the confines of the marble and pressboard jungle to venture out on your own. One thing that you can be sure of is that the firm is not going to let you know. The farmer isn't keen on letting his prize bull know when it's finally strong enough to jump the fence—he'd rather just rely on all the years when the bull wasn't able to successfully jump and its lingering fear of what might happen if it tried again. Chances are, however, you're asking yourself the *wrong questions*. While the *right questions* might not reveal any different result, it will give you the roadmap to the one road you're looking for: the one that leads out of the firm's front door.

## Wrong Question 1: Knowing Is Half the Battle

### Do I Know Enough?

If you think the difference between associates and partners, or associates and independent attorneys, is their relative knowledge levels, you need to talk to some more of them. Sure, when you first get there you know as much about practicing law as you do about practicing medicine. But in a couple of years you'll realize that you know as much law as everyone else and the partner's only advantage is having seen everything a few more times. If you were going to wait to start practicing law until you knew everything, you'd never start, and the same is true for practicing on your own. You don't know everything, you might not even know enough, but you're smart and you'll figure it out. No one, especially those on your client list, is expecting you to be perfect or have all the relevant statutes and cases memorized. They want you to be honest, careful and

reasonably skilled. The only knowledge standard they care about is whether or not you know more than *they* do about the law. So if you find yourself getting points and authorities from your clients, you might be better off practicing in a larger group for a while. Otherwise you likely know more than enough already.

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*"If you were going to wait to start practicing law until you knew everything, you'd never start, and the same is true for practicing on your own."*

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## Wrong Question 2: One is the Loneliest Number

### Can I Do It On My Own?

If you have had any sort of success at the firm you learned one thing very early: no one practices law alone—at least not very well. Not only do you need the help of other attorneys, you also need the help of a cadre of other professionals in your office to really do what you do. Remember that one kid who talked down to the secretaries? Even when he was a summer associate? How's he doing these days? And guess what—the same thing is true when you're in solo or small firm practice. Wondering how on Earth you're going to practice alone? You're not. Remember, you're not going to jail, rehab or leaving the country—you're only leaving the firm. The worst thing about being an attorney is also the best thing about being an attorney when it comes to solo practice: you'll know a lot of attorneys. If you think they're going to stop talking to you just because you're the one fortunate associate who actually made it out, you're dead wrong. Of course,

try to avoid going out "in a blaze of glory" (*i.e.*, burning bridges on your way out) no matter how badly you hated your work situation.

These attorney contacts are not just people to learn from, or to ask questions of when you get lost, need a form, etc. They are your virtual firm as well: experts in different fields that you can confidently refer inquiries to, for example, when a client's matter involves something outside of your practice area. Believe me, those attorneys will refer things back to you—and you won't look like a jerk for trying to do something that someone else can do better, faster and cheaper. So no, you can't do it on your own—but you won't have to.

## Wrong Question 3: Guarantees Are for Informercials

### Am I Going to Be OK?

Look, if you want a guarantee, buy a Maytag. If you want a job that's safe, stay at the firm. At the very bottom of this, the decision to practice on your own (or with a small firm) is a very big gamble—on yourself and your ability. Most advice out there for how to select your lawyer leans towards an overall "comfort level" with your attorney—and for you, that translates to confidence. Because clients are about to put their lives into your hands they want to feel like you know what you're talking about and, more importantly, that you're up to the task. If you don't feel like you're ready, you're probably not. If you feel like you're ready without a doubt, you're also probably not. But if you can answer these next few questions affirmatively, with just enough fear in your stomach to keep you working your butt off that first year—you are, in fact, going to be just fine.

## Right Question 1: Walking the Walk

### Can You Talk to Clients?

And I don't mean whether or not you can be conversational with them. But can you talk to them like you're really their lawyer? You've been training for years on what to say and how to say it—but after all that, it turns out the most important skill in talking to clients is not about talking but rather about listening. Listen to what clients say, and listen for what they don't say. And while your ethical obligations may not differ between a potential client and an actual client, the way you talk to them certainly does. Not everyone who thinks he or she needs a lawyer actually needs one. It's up to you to know the difference—from talking to them. If a client mentions "money trouble" during your initial conversation—chances are that this "trouble" will turn into paying-their-lawyer trouble at some point. What's more, sometimes you can point potential clients to a simple self-help solution that will save them money and earn you the sort of credibility that generates another call when they really do need some help.

Once they're real clients, you've got to be able to ask tough questions, and use your experience to know when you might not have the whole story. But most importantly, you must be able to deliver bad news. This may include, but is not limited to: telling clients they're wrong, taking responsibilities for errors/delays, and simply noticing them when things didn't necessarily go as planned. In addition to the fortitude required for this exercise (which is not only not taught in law school, but also not screened for in law school admissions or law firm recruiting) it also requires that you deliver, concurrently, an answer to the problem you're highlighting. Which brings us to the next question:

## Right Question 2: Is That Your Final Answer?

### Do You Think in Terms of Solutions or More Problems?

Unless you're planning on taking another bar exam, it's time to realize that your days of "issue spotting" are over. Do you know how many lawyers can assess a fact pattern and discern all the possible legal issues and potential defenses that might derive from it? All of them!

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*"You've been training for years on what to say and how to say it—but after all that, it turns out the most important skill in talking to clients is not about talking but rather about listening."*

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If you ever tried talking about your law school exams with someone who wasn't in law school, then you know how your clients will look at you when you start talking to them about their case in terms of all the problems you can locate. And yes, that look in their eye is the mounting recollection of why they don't like attorneys. People don't come to lawyers looking for help identifying their problems—they come looking for answers. Of course, identifying problems is an essential step in coming up with those solutions, but the ability to begin to develop those solutions in your head as you're identifying the problems is one of the easiest ways to know if you're "ready."

By far this is the most important "lawyering" skill that differentiates those who need to practice in a group from those who can practice on their own. And like most true lawyering skills, they don't teach it in law school. I'm not sure there's any reliable way to learn how to identify problems aside from a healthy

mix of observation and experience, nor if there's any dependable test to know whether you've got it or not. In a way, it's the difference between being an architect or a construction manager. Being able to manage the construction of a building requires knowledge of how it all goes together, and how to efficiently get it done—but the architect is the one who brings it into existence from thin air, and who turns the idea into the plans that allow the construction manager to do his or her job. There are a lot of great "construction manager" lawyers out there, who have a long and profitable practice. But it's also important to note that true architects are never going to truly be happy just managing construction.

## Right Question 3: Being a Business Person

### Can You Sell Yourself?

Most lawyers treat the "business" side of the law like the staircase in the fancy building where they work. It's there because it has to be, but unless there's no way to avoid it (e.g., fire drills, etc.) they stay away from it. It's not as fancy as the "practice" side of the building and it's about as inviting as that one smelly corner in the parking garage. Ever since the kids from law school and the kids from business school started competing to see who was cooler on campus (for the record, the correct result from this competition is: neither), lawyers have felt like business is somehow beneath them, and—if they were sufficiently good at their jobs—something they wouldn't have to sully themselves with. There are two problems with this: (1) it's ridiculous and wrong—the business of law is both interesting and complex, just the sort of thing that lawyers generally like; and (2) attorneys often have little or no training in what's required to actually run a legal business.

Aside from the accounting, ancillary services, and human resources issues, the most important component of that business is sales. Because even if you're ready to leave from a professional point-of-view, if you can't sell yourself and your services, you're not ready to go anywhere. It's important to note that you are, in fact, selling both yourself and your services. And while they may be inextricably intertwined, clients care about both of them in different ways. Selling your services is about what you know and what you can do. Selling yourself is about who you are. You're not selling ice cream, shoes or insurance to potential clients. You're selling advice and counsel—through some of the most challenging matters in their lives. When you're on your own, you can't offer them the comfort of the collective—all you're going to have is you. Would you want to hire you for something like that?

The best way to know if you're ready to do this is if it happens naturally. If you're talking with someone and sales is the last thing on your mind and yet they honestly and seriously inquire as to whether you'd be able to help them—you are probably well on your way. If the thought of self-promotion makes you queasy, you're going to have an even harder

time dealing with billing, collections and other uncomfortable circumstances associated the business side of legal practice. You might be better off staying somewhere where that can be left to those with different personality characteristics.

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*"You're not selling ice cream, shoes or insurance to potential clients. You're selling advice and counsel—through some of the most challenging matters in their lives."*

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## The "One Morning" Effect

### How Do I Get There?

I am routinely asked by those who have determined they are not ready for solo or small-firm practice, how they can get there. And in reply I offer a beguiling and frustrating answer: it depends.

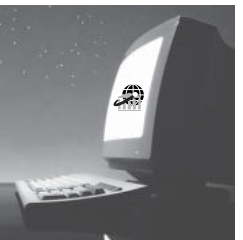
There is no common path to get to a place where you can confidently answer the questions above. The fact of the matter is that one morning, you'll wake up, and you'll know—or

as I like to call it: the "one morning" effect.

Certain personal and professional milestones are so completely subjective and personal, involving the accumulation of innumerable bits of knowledge, experience, wisdom, etc., that to try and set forth a general approach would be foolish. Indeed, some people have no business being in solo practice—though they may have followed a nearly identical career arc as someone who was ready years ago. And so what is truly important in determining when enough is enough and that it's time to slip the bonds of your white-shoe firm and tumble headfirst into the world of "small" practice is to simply keep in mind those questions you should be asking yourself and not to worry so much about directly looking for answers. Because like many great clients, you won't have to go looking for them. Instead, they'll come looking for you.

**Glenn Truitt, Esq. is founder and principal of MyContractsGuy.com which offers legal services to businesses and individuals in the Nevada area. He is a 2005 graduate of Stanford Law School.**

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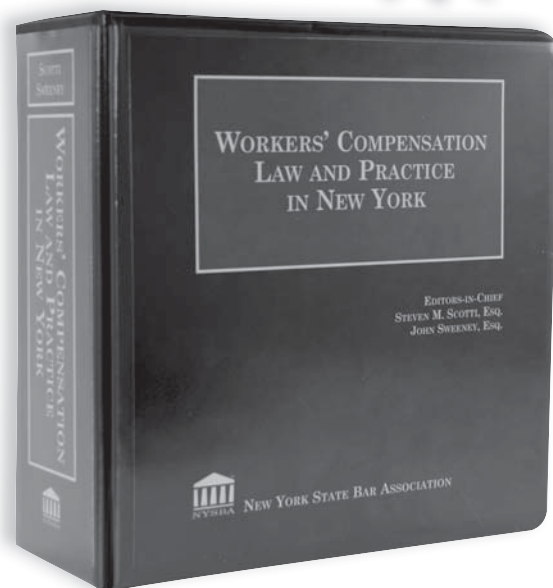
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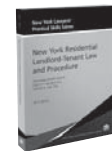


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ISSN 0743-6475 (print) ISSN 1933-8511 (online)

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