

Perspective

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

A Message from the Section Chair

Our association and profession have made great strides to address the needs of women and minorities. The Young Lawyers Section plays an integral part in the Association's goals of diversity in our profession and equal access to our judicial system. Over the last 5 years the YLS has been the fastest growing and most diverse section of the New York State Bar Association. Our Section has assisted newly admitted attorneys as they face the unique challenges posed by balancing a career, family and personal life. An example of this took place at our Annual Meeting in January when we sponsored a "Bridge the Gap" program providing eight CLE credits on topics targeted to newly admitted attorneys. Over 150 attorneys took advantage of this program. At least one attendee brought along a peaceful, sleeping infant for part of the program. It was particularly heartening to know that we could provide an opportunity for this young parent to meet a professional obligation.

One of the most critical challenges facing our profession today arises

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Convert Stage Fright into Stage Might

By David J. Dempsey

According to most studies, people's number one fear is public speaking. Number two is death. Death is number two. Does that seem right? This means to the average person, if you have to go to a funeral, you're better off in the casket than doing the eulogy.

— Jerry Seinfeld

I have been speaking in courtrooms, boardrooms and classrooms for over twenty-five years, delivering more than a thousand presentations, opening statements and closing arguments, and I still become anxious every time I speak—every time. I am not alone. Speaking generates enormous anxiety for most attorneys, both young associates and battle-scarred veterans of the courtroom, and those who deny it either cannot be trusted in other matters or are simply dreadfully boring speakers but do not realize it.

This is not our fault. Law schools do a remarkable job teaching us how to think like attorneys, dissect issues and analyze thorny problems. Through the rigors of the Socratic method of teaching, we may learn to weather a violent onslaught of questioning and, if we are fortunate, sur-



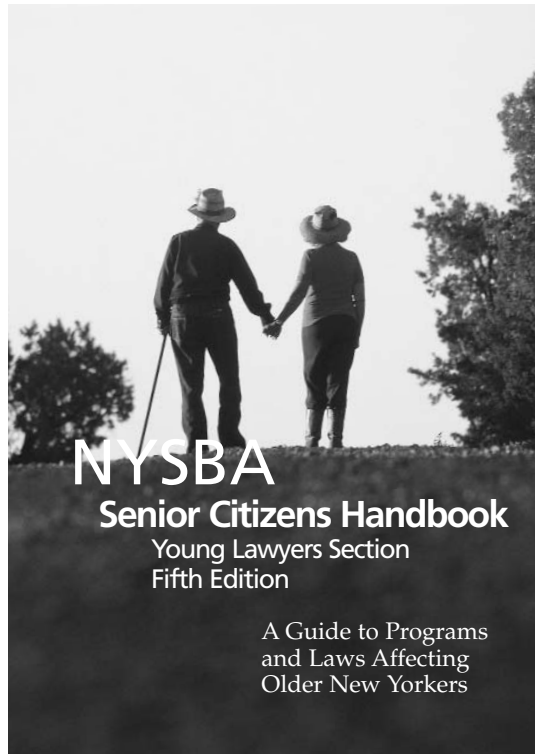
vive with a modicum of dignity. Unfortunately, however, law schools devote virtually no time to teaching attorneys how to forcefully advocate their positions and speak with confidence and conviction whenever and wherever they speak. Ironically, the ability to distill our message to its essence—and to deliver it with power, passion and persuasion—is critical to our profession. Without training, we are left to fend for our-

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From the Editor's Desk

"We're comin' out!"

— Al Pacino as John Milton in *The Devil's Advocate*

According to recent figures provided by the state bar, the Young Lawyers Section is now approximately 3,500 strong and growing. We



are among the largest Sections of the New York State Bar Association and are undisputedly the most diverse, having the most women and minority members. Having just completed a two-year term in the State Bar House of Delegates, I found it ironic how at each meeting sometimes volatile discussions arose concerning increasing diversity in the bar with little to no input sought from the YLS. This point was driven home at the recent April 2003 meeting where the House was scheduled to vote on increasing the delegate representation among *other* sections of the bar (limiting YLS representation to its current 4 members) and setting up a quota system in an effort to increase diversity. YLS Chair David Miranda spoke forcefully on this issue, his main point being that not only was the most diverse Section of the bar excluded from offering any input on the proposal, but that by increasing the number of YLS delegates, diversity can be improved. A lengthy debate ensued, which resulted in the issue being carried over to the June 2003 meeting for further discussion. The YLS is currently drafting a proposal to submit to the House in June to ensure the YLS has a more participatory role in such proposals

now and in the future. The YLS has prompted change in the Bar at various levels and there is no doubt our influence will continue to grow as our members "age out" and continue to force debate on issues effecting young lawyers and law students that other Sections might not be sensitive to.

In other matters, as this issue goes to press, I have just returned from our successful **United States Supreme Court Admissions Program** held in **Washington, D.C. on May 31 through June 2, 2003**. Over 30 members of the YLS were sworn in and were able to hear three decisions announced by the Court from Justices Thomas, Scalia and Stephens. After the swearing in, Justice Ginsburg paid a personal visit to the admittees and offered her congratulations while posing for a group picture. The group also met former presidential candidate and Senator Bob Dole on the way into the Supreme Court who spent time joking with our group, shaking hands and generously posing for photos. Judge Kenneth Starr, former Solicitor General and White House Independent Prosecutor, was the keynote speaker at the brunch following the ceremony. Judge Starr congratulated the new admittees and provided anecdotal stories about his experiences before the Supreme Court, all while expressing his great admiration and respect for that body. Once again, the Admissions Program proved memorable and gave the participants interesting stories to take home with them. I expect to have various pictures from the meeting included in the Fall issue. If you have a snapshot with one of the "celebrities" listed above that you'd like to see published, send it along.

And, speaking of interesting stories, feel free to keep responses to the popular **SOUND OFF!** column coming. I have to admit surprise at the number of positive responses I received for this issue's topic (see page 4). Besides the suggested topic for the next issue, any other comments of interest or questions on submissions can be sent via e-mail to: jamesrizzo9@juno.com. Complete back issues of *Perspective* can be found on the State Bar Web site: <http://www.nysba.org/young>. Please note that the deadline for all submissions (substantive articles, reviews, photos, artwork, **SOUND OFF!** responses, etc.) to the Fall 2003 issue is **August 22, 2003**.

Also, while I don't normally make book recommendations, if anyone is interested in getting a head start on some fun summer reading, I would recommend *A Confederacy of Dunces* by John Kennedy Toole. It is an intelligently written, humorous, albeit off-beat, *non-legal* work of fiction which also happened to win a Pulitzer Prize back in the 80s. The ironic tragedy of the book is that the talented author committed suicide at age 32, years before the book was published.

Finally, my very belated apologies to the hundreds of readers who wrote in to correct my misquote of *Hannibal* in the Spring 2001 issue (NOT!). Having recently viewed the DVD, the full quote should have read: "After all, as your mother tells you, and as my mother certainly told me, 'It is important,' she always used to say, 'always to try new things.'" Well said.

Lex non praecipit inutilia, quia inutilis labor stultus.

James S. Rizzo

"When a true genius appears in the world, you may know him by this sign, that the dunces are all in confederacy against him."

— Jonathan Swift

(Introduction to *A Confederacy of Dunces* by John Kennedy Toole)

SOUND OFF!

Young Lawyers Respond to the Question:

"DO YOU THINK LAW SCHOOL PREPARED YOU WELL FOR THE BAR EXAM AND THE PRACTICE OF LAW? WHY? WHY NOT?"

Disclaimer: The opinions expressed herein are the viewpoint of the authors alone and are not necessarily the view of the Young Lawyers Section or the New York State Bar Association.

"No, law school did not give me the practical experience I needed. I think law school should be structured like medical school, with your last year a clinical experience."

* * *

"Pieper prepared me for the bar exam. In two months of Pieper I learned more law than I learned in three years of law school."

Matt Loughran

* * *

"Of course, law school prepared me well for the bar exam and the practice of law. I obtained my law degree from the University of the Philippines College of Law in 1985. Law school was really tough and while I was a law student in the Philippines, our teachers really inculcated to us that there is no substitute for hard work. It really paid off. As aspiring lawyers, we were inspired by the quotation authored by Oliver Wendell Holmes boldly created in the entrance of our school which stated, 'The business of a law school is not sufficiently described when you merely say that it is to teach law or to make lawyers, it is to teach law in the grand manner and to make great lawyers.'

I took the Philippine Bar in 1987 and passed it. I then practiced law for more than ten years in the Philippines. In July 2001, I took the New York State Bar examination and also passed it. I am now working as an associate in a Manhattan law firm. All I can say is that with the rigorous training and hard work, no doubt, law school prepared me well for the bar exams and the practice of law."

Edgar Ariel L. Recto, Esq.
Woodside, New York

* * *

"Although I am grateful for the knowledge I attained while in law school, I think that many schools neglect one of the most important aspects of the legal practice, communication skills! As a law clerk in state court, I meet numerous attorneys whose writing skills are quite evident from their briefs and memorandums, but who lack the ability to move beyond the paper. Attorneys need to be able to communicate both on paper and with their colleagues and clients. The mass use of fax machines and e-mail has only curtailed one-on-one communication between parties. Every day, attorneys present themselves to the court that have never actually spoken to each other during the course of their case. Clients, too, complain to the court their feelings of ignorance and confusion because their attorneys fail to speak to them about the movement of their case. Law schools need to realize the importance of interpersonal skills in legal practice and help develop these skills from the first year on."

Kimberly E. Tracey
Tulane School of Law, Class of 2001

* * *

"While law school may be challenging and may improve a future lawyer's ability to think critically and write persuasively, law school does not adequately prepare students for the practice of law. Law school should focus more on the practical aspects of law, teaching its students how to prepare deeds and wills and how to file pleadings and conduct discovery. It is a travesty that a law student may graduate knowing what it means to have a fee simple interest in real property subject to condition subse-

quent and not have any idea how to prepare and file a deed."

Class of 1998, Syracuse Law

* * *

"Not really. No matter how much knowledge you acquire in law school, the multi-state portion of the bar simply cannot be passed without taking an extra bar exam class since the key to passing has as much to do with test-taking techniques and tricks as it does with the law. As for the state's exam, there are several subjects that are (or may be) essay topics but not required law school courses and, therefore, will only be learned in a bar exam course. Lastly, as for the practice of law, law school classes teach basic law and how to think about and analyze legal issues. But 99% of practicing law is knowing the CPLR and all the courts' and judges' rules and procedures, as well as negotiation techniques and how to bill well. With the exception of the first year class on civil procedure (i.e., CPLR), none of the other areas are really taught."

* * *

"I'm a 1994 graduate of Albany Law School, and I think the curriculum at Albany went a long way towards preparing me for the New York bar exam, ensuring that the bar review course was exactly that—a review of concepts I was already familiar with. Further, the fact that I was able to take a full year course on the NY CPLR at Albany allowed me to spend very little, if any, time studying NY procedure for the exam."

* * *

(Continued on page 21)

Tired of Long Hours, Law School Debt, or Maybe You Just Want to Congratulate a Colleague on a Recent Accomplishment?

If So, Then It is Time for You to . . .

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 is given for readers to comment on (see below). However, submissions are 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:**

**ARE YOU ABLE TO BALANCE THE DEMANDS OF YOUR
LEGAL WORKLOAD WITH YOUR PRIVATE LIFE?**

WHY? WHY NOT?

Due to format constraints, all comments should be brief (40-60 words maximum, i.e., what can be written in 5-10 minutes) 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!

And All Because of a Black Velvet Skirt . . .

By Odia Kagan

The one question I have always known the answer to was: "What do you want to do when you grow up?" Even when I was a little girl, I never wanted to be a princess or a ballerina. Since as far back as my memory goes (around age 3), I've always wanted to be a lawyer when I grow up.



True, at first I was mostly attracted by the black velvet skirts I thought women lawyers wore, but as I grew up, the dream remained and came true for the first time 19 years later when I was admitted to practice in Israel.

My first lawyer outfit was very different from the much coveted velvet skirt . . . and involved olive-green uniforms. As a Lieutenant in the Israeli Defense Forces Military Advocate General Corps, I practiced military and criminal law in the military tribunals and provided legal opinions on various topics of military and administrative law.

This was also the first time I got a glimpse of international practice and the great advantage of learning from the experience of other, older legal systems. As a legal assistant to the Military Advocate General, I conducted various comparative research with military and administrative law in the U.S. and UK. I learned more of the common and different aspects in a visit from the U.S. Air Force JAG at our headquarters, which I took an active part in organizing.

It was then I started to map my international direction. So, when I

completed my service in the military I joined the international department of Shavit Bar-On Inbar, a mid-sized commercial law firm in Tel-Aviv.

In mid-sized firms in Israel, as in firms of a similar size worldwide, your work is what you make of it. While you naturally take your first steps with the close supervision of a senior associate or partner, here, if you prove your capabilities, you can quickly spread your wings and fly on your own.

In my daily work I manage client files, personally conduct the daily contact with clients, compose and send the correspondence and answer their various queries and requests. I take an active and major part in meetings, conference calls and videoconferences.

"In mid-sized firms in Israel, as in firms of a similar size worldwide, your work is what you make of it."

Whereas the firm deals mostly with commercial and corporate practice areas, I still enjoy the diversity of various fields. Our clients' files include work in the general corporate area, including international acquisition transactions, agency and distribution, contractors, etc., as well as investments in the hi-tech area. Another field which I enjoy is antitrust litigation and representation.

The clients with whom I deal are very diverse. Our department deals both with large Israeli companies who have business overseas and with international clients, with long-term or one-time business in Israel.

Personally, I think this is the most exciting part of my work. Every morning I commute to Tel-Aviv, and travel the globe.

True, for now the visits have mostly been through cyberspace and fiber-optic telephone cables, but my billing statements bear the markings of visits in places such as London, Paris, Buenos Aires, Amsterdam, Hong Kong, the Virgin Islands, India, Cyprus, Slovenia, Delaware, Washington, D.C., and more.

As part of this global practice, I often serve as instructing counsel for attorneys abroad. In these cases our clients generally seek to embark on a commercial transaction or commence litigation proceedings abroad and thus require the services of a foreign attorney, who is well versed in the local laws and procedures.

In this role I serve as the clients' "eyes" and "mouth." Being an attorney myself, I am able to present the case to the foreign attorneys efficiently and supply them with the necessary information and documentation from the client. I also relay back the information and advice received from the foreign attorney. Using my legal knowledge and acquaintance with my clients and their needs, I often contribute to the strategy and direction of the case.

Dealing with different countries on a daily basis opens a window to different legal systems and to different cultures. Often dealing with similar transactions in different countries, you learn of the various solutions provided by each legal system to the same problem, along with the advantages and disadvantages of each system. This information is often used for your client's benefit in structuring the future business in this country.

Communicating with foreign lawyers on a daily basis, you learn of their cultures and different tempos. While waiting for a reply to a query you sent, you sometimes learn that two weeks is normal response time for an e-mail in some places and that there really is no sense to call for an update during “siesta”. . .

In this aspect I have been able to put to practice a treasured collection of mine—my collection of bar admissions. Shortly after my admission to practice in Israel, I took the New York bar exam and was admitted to practice in New York. Having taken the exams necessary, I will be admitted to practice as a solicitor in England later this year, following the completion of the requisite two years of practice as an attorney. And as for the newest item in my collection, I have recently started studying for bar exams in New South Wales, Australia.

This collection is the first step toward my second dream of becoming an international lawyer. Having taken the time to learn these legal systems “from the inside,” I now have a better knowledge and understanding of their legal solutions and

can better explain to my clients what legal steps should be taken, and what they mean and why they are different from what they know of at home.

“Communicating with foreign lawyers on a daily basis, you learn of their cultures and different tempos.”

In addition, these studies have helped me in another unexpected way. Studying with other young lawyers for these exams, meeting and discussing these legal issues with them and later, being involved in the vocational organizations as a member, has provided me with a priceless network of friends and connections. These are people I can turn to with legal questions or whom I can ask for references to other lawyers in their country. Perhaps even more importantly, this is a great source of long friendships.

I believe that this is something we can work to improve both within the NYSBA and outside. I think a forum should be established in the

NYSBA addressing and connecting New York lawyers admitted to practice elsewhere throughout the world. This can be a place where we communicate, share opinions and provide assistance to each other, each with the laws of their own country.

In addition, I believe that closer connection can be formed with other bar associations worldwide. Such alliances, including visits of delegations and communication, would bring the legal communities closer together and improve cooperation.

In addition to my membership in the NYSBA, I am also an active member in several committees in the Israel Bar, including the Young Lawyers Committee and several committees on international relations between jurists and bar associations. I think that the first steps for such cooperation may be taken from these committees and I would be happy to contribute to getting this important project off the ground!

Odia Kagan is an associate in the Tel-Aviv, Israel, law firm of Shavit Bar-On Inbar and may be reached at okagan@sbilaw.com.

“Nothing in the world is worth having or worth doing unless it means effort, pain, difficulty ...I have never in my life envied a human being who led an easy life. I have envied a great many people who led difficult lives and led them well.”

— Theodore Roosevelt, Speech in Des Moines, Iowa, November 4, 1910

ETHICS MATTERS

Recently Enacted Rules Regarding Attorney's Fees and Disputes

By Mark S. Ochs

Introduction

For years, a retainer agreement or a writing confirming a fee arrangement has been required in contingent fee matters (22 N.Y.C.R.R. 603.7, 691.20, 806.13, 1022.31, 1200.11). In 1993, written retainer agreements were mandated in domestic relations matters (22 N.Y.C.R.R. 1400). Recently, the necessity of a writing was expanded with the enactment of the Letter of Engagement Rule, which went into effect on March 4, 2002 (22 N.Y.C.R.R. 1215).

Where fee disputes have arisen between attorney and client, county and local bar associations, under the supervision of the Appellate Division's grievance committees, have been empowered to resolve them (i.e., 22 N.Y.C.R.R. 806.6). In 1993, Part 136 of the Rules of the Chief Administrator created a procedure whereby a domestic relations client who had a fee dispute with his or her attorney could resolve the dispute by binding arbitration (22 N.Y.C.R.R. 136).

Fee dispute resolution has now been expanded beyond domestic relations cases with the enactment of Part 137 of the Rules of the Chief Administrator, which established a statewide Attorney-Client Fee Dispute Resolution Program and covers (where applicable) representation commenced on or after January 1, 2002 (22 N.Y.C.R.R. 137). This article summarizes these new rules.

22 N.Y.C.R.R. Part 1215— Written Letters of Engagement

An attorney who undertakes to represent a client and enters into an arrangement to charge or collect a fee, must provide the client with a written letter of engagement before commencement of the representation. For purposes of this rule, the client is defined as the entity that engages the attorney.

"An attorney who undertakes to represent a client and enters into an arrangement to charge or collect a fee, must provide the client with a written letter of engagement before commencement of the representation."

When it is impracticable to provide the letter of engagement, or the scope of services cannot be determined at the outset, the letter may be given within a reasonable time thereafter.

Once a letter has been provided, if there is a significant change in the scope of services or the fee charged, an updated letter of engagement should be provided.

The letter of engagement needs to address the scope of the legal services to be provided, the attorney's fees to be charged, expenses and billing practices and, where applicable, the client's right to arbitrate fee disputes.

An attorney may comply with the rule by entering into a signed written retainer agreement before or within a reasonable time after commencement of the representation, provided that agreement contains what would otherwise be included in a letter of engagement. One major way in which these documents differ is that a written retainer agreement needs to be signed by the attorney and client, whereas a letter of engagement needs only to be signed by the attorney.

The rule does not apply and a letter of engagement is not needed where:

- (1) the fee is expected to be less than \$3,000;
- (2) representation is the same general kind as previously rendered;
- (3) representation is in a domestic relations matter subject to Part 1400; or
- (4) the attorney is admitted to practice in another jurisdiction and has no office in New York, or no material portion of the services are to be rendered in New York.

"Nothing in the world is more dangerous than sincere ignorance and conscientious stupidity."

— Martin Luther King, Jr.

A sample letter of engagement is available on the New York State Bar Association's Web site (www.nysba.org/letterofengagement).

22 N.Y.C.R.R. Part 137—New York State Fee Dispute Resolution Program

The New York State Fee Dispute Resolution Program is intended to provide informal and expeditious resolution of fee disputes between attorneys and clients through arbitration and mediation. When requested by the client, it is mandatory for attorneys. The program applies to representation in any civil matter which begins on or after January 1, 2002. The provisions of this rule do not apply to:

- (1) criminal matters;
- (2) representation where the fee is less than \$1,000 or more than \$50,000 (unless the parties have otherwise agreed);
- (3) disputes involving substantial legal questions, including malpractice or misconduct;
- (4) claims for damages or affirmative relief other than adjustment of the fee;
- (5) where the fee has been determined pursuant to statute, rule or court order;
- (6) when no services have been rendered for more than two years;
- (7) where the attorney is admitted to practice in another jurisdiction, has no office in New York, or where no material portion of the services was rendered in New York; or
- (8) where the request for arbitration is made by a person who is not the client.

The rule applies even when the attorney has previously received part or all of the fee in question.

Any award is final and binding unless *de novo* review is sought,

although the attorney and client may agree at the outset to final and binding arbitration or to submit a fee dispute to a different arbitral forum.

Fee dispute resolution programs have been or are being established in each county or in a combination of counties. In their absence, the office of the Administrative Judge will administer the program. Each program shall establish written instructions and procedures and they are encouraged to include nonlawyers as arbitrators. Fee disputes may be referred to local programs by disciplinary authorities, bar associations, and employees and officers of the courts or judges. Venue is in the county in which the majority of the legal services were performed.

"The New York State Fee Dispute Resolution Program is intended to provide informal and expeditious resolution of fee disputes between attorneys and clients through arbitration and mediation."

Where the attorney and client cannot agree as to the attorney's fee, the attorney is to forward a written notice to the client, entitled "Notice of Client's Right to Arbitrate" and a "request for arbitration" by certified mail or by personal service. The client has 30 days to request arbitration. If the client does not do so, the attorney may commence suit to recover the fee and the client loses the right to pursue arbitration.

If suit is commenced, the attorney must allege in the complaint that the client received notice and did not file a timely request for arbitration or that the dispute is not otherwise covered by this rule.

The client may directly contact the arbitral body or contact the attor-

ney, who is obligated to refer the client to the arbitral body, which will forward the appropriate forms to the client.

The client files a request for arbitration form with the arbitral body, which sends the completed form to the attorney with an attorney fee response form to be completed and returned within 15 days of mailing along with a certification that a copy was served upon the client. The client may not withdraw after the attorney files a response. If so, the arbitration will proceed whether or not the client appears, and a decision will be made.

Upon receipt of the attorney's response, the arbitral body will designate an arbitrator to hear the dispute. Arbitrators must conduct a conflict of interest check prior to accepting a case. A person who has any personal bias regarding a party or the subject matter of the dispute, a financial interest in the subject matter of the dispute, or a close personal relationship or financial relationship with a party to the dispute shall not serve. The arbitrator should disclose any information that he or she has reason to believe may provide a basis for recusal. Either party may request the removal of an arbitrator based upon the arbitrator's personal or professional relationship to a party or counsel.

Disputes of less than \$6,000 are submitted to an attorney arbitrator. Disputes of \$6,000 or more will be heard by a panel of three including at least one nonlawyer. The parties must receive at least 15 days notice in writing of the time and place of the hearing and of the identity of the arbitrators.

If the attorney without good cause fails to respond to a request for arbitration or does not participate in the arbitration, the arbitration will proceed and a decision will be made.

Either party may participate in the arbitration without a personal appearance by submitting testimony

and exhibits by written declaration under penalty of perjury.

The hearing is conducted on a neutral site. It is not to be conducted in the office of any interested party unless all parties consent in writing.

The arbitrator will hear evidence, administer oaths and compel by subpoena the attendance of witnesses and the production of documents. Either party may be represented by counsel although the rules of evidence need not be observed.

The attorney has the burden to prove the reasonableness of the fee by a preponderance of the evidence and to produce documentation of the work performed and the billing history. The client may then present his or her account of the services rendered and time expended. Witnesses may be called by the parties with the client having the right of final reply. Any party may provide for a stenographic or other record at their own expense. The other party is entitled to a copy upon written request and payment of the expense.

Should the arbitrator or arbitral body become aware of evidence of professional misconduct on the part of the attorney during the fee dispute resolution process, it shall be referred to the appropriate grievance committee.

An arbitration award shall be issued no later than 30 days following the hearing. A party aggrieved by the award may commence an action on the merits of the fee dispute within 30 days after the award has been mailed. In any resulting litigation, the arbitrator may not be called as a witness nor can the arbitration award be admitted into evidence. A party who fails to participate in the hearing is not entitled to *de novo* review absent good cause for such failure.

If no action is commenced, the award becomes final and binding. If the award is in favor of the client and the attorney does not comply, the local program may appoint an

attorney pro bono to assist with enforcement. The program will first advise the attorney, in writing, of the obligation to comply and of the program's policy, if any, of appointing an attorney to assist the client pro bono.

All proceedings and hearings including all papers in the arbitration file are confidential, except to the extent necessary to take ancillary legal action with respect to a fee matter.

All attorneys are required to participate in the arbitration process and an attorney who, without good cause, fails to participate shall be referred to the appropriate grievance committee.

Fee dispute resolution programs are strongly encouraged to offer mediation. Mediation does not preclude arbitration and in the event the mediation does not resolve the dispute, arbitration will still be available. Mediation is voluntary for both the attorney and client.

Program rules, standards, forms and identification of local programs are available at <<http://www.courts.state.ny.us/feegov>>.

Conclusion

The use of a well-crafted letter of engagement will clarify the fee arrangement between attorney and client and hopefully avoid any later misunderstanding or disagreement. Where a dispute subsequently arises, a properly prepared letter of engagement or retainer agreement will aid the attorney greatly in establishing the nature and extent of the fee arrangement entered into with the client.

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

"They that can give up essential liberty to purchase a little temporary safety deserve neither liberty or safety."

— Benjamin Franklin

Represent the New York YLD at the ABA!

We encourage you to attend the August 2003 American Bar Association Annual Meeting in San Francisco and represent New York Young Lawyers as a member of the ABA Young Lawyers Division Assembly (YLD) on August 9th. The ABA meeting is a great opportunity for professional development, to fulfill your CLE requirements, and to make friends with lawyers from around the nation.

New York has the largest number of delegate positions in the ABA YLD Assembly, but has not been able

to fill its full quota in recent years. We want to send a full delegation to San Francisco where ABA YLD officers for the next few years will be chosen and important legal policy issues will be discussed. Let's have the voices of New York Young Lawyers heard loud and clear!

If you are interested in serving as a delegate, please contact New York's ABA YLD District Representative Jonathan Bing at (917) 971-2592 or JLBing@aol.com. We hope you can attend!

Top Fifteen Ways to Have a Happy and Successful Life as a Lawyer

By A. Vincent Buzard

- 1) Find a practice area which you enjoy doing and is needed.
 - If the practice area is unique or unusual you can create a niche practice.
 - Make sure the practice area pays what you want.
 - Make sure the practice area is satisfying.
- 2) Set reasonable practice standards.
 - Learn what matters and what doesn't.
 - Watch people you admire to set standards.
 - Remember most problems can be solved if dealt with promptly.
- 3) Learn how to handle clients.
 - Don't just tell them the law.
 - Let clients see you care.
 - Develop a bedside manner.
 - Don't let clients abuse your time; know how to get off the phone without offending the client.
- 4) Set up systems for deadlines and statutes so that you don't try to carry them around in your head.
- 5) Learn the magic of a To Do List.
 - Every morning make a list of what you wish to accomplish that day.
 - Also have a weekly, monthly, yearly and long-term list.
- 6) Don't wait until the last minute to do what needs to be done. Procrastination only creates anxiety and increases likelihood for error.
- 7) Don't treat people who help you like a piece of equipment. Treat them like people.
- 8) Ask for help from partners.
- 9) Think positively and try to be around positive people.
 - Religious faith can help.
- 10) Learn the rules of civility, duty and professional conduct and follow the rules.
- Grant reasonable adjournments and requests.
- Don't get involved in unnecessary letter writing campaigns or personal attacks.
- 11) Engage in activities outside the firm and particularly consider Bar Association activities.
- 12) Be willing to make changes in your life.
 - Try to make what you are doing work, but if it isn't, don't waste your life.
- 13) Learn to develop business.
- 14) Spend time with your kids and spouse.
- 15) Realize you are engaged in a great profession which plays an indispensable role in the legal system which in turn is the foundation upon which our free society is built.

A. Vincent Buzard, a partner in the Rochester law firm of Harris Beach LLP, is Secretary of the New York State Bar Association.

"Civilization is the progress toward a society of privacy."

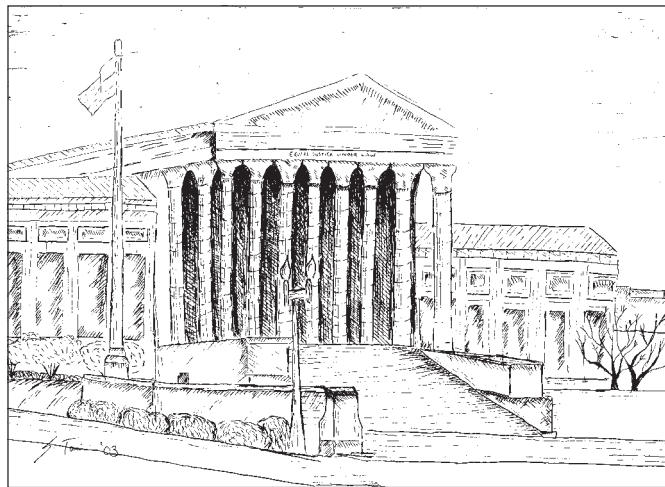
— Ayn Rand, American Author (1905-1982)

Young Lawyers Section News and Events

The YLS Annual Meeting Program was held on **January 22, 2003, in New York City**. In what has become something of a tradition, the program started with the ever popular and always well-attended “**CPLR Update**” by **David Siegel, Distinguished Professor of Law at Albany Law School of Union University**. The program continued with “**A View from the Jury Box**” covering such topics as: *How a Jury Views Attorneys*, *Tips on Jury Selection* and *Effective Trial Advocacy*. Panelists were Samuel H. Solomon, Chairman and CEO of DOAR, a litigation support and trial technology firm, Lynbrook; Dorothy K. Kagehiro, Ph.D., trial consultant for FTI Consulting, Washington, D.C.; and Ronald Madden, Managing Consultant, FTI Consulting, New York City. The moderator was former YLS Chair Susan R.L. Bernis, Esq., Royal & Sun Alliance, Farmington, Connecticut. YLS Treasurer Scott Kossove chaired the program. There was also a one-hour program entitled “**10 Hot Topics in an Hour**” with 10 five-minute presentations on various areas of law.

The **NYSBA Law Student Council** also featured several YLS members in their annual meeting program: “*Polishing Your Professional Edge: How to Market Yourself for Success After Law School*.” Sheila S. Boston, Esq., of Kaye Scholer, LLP, New York City, moderated the program. Panelists included Judith A. Bresler, Esq., of Cowan, DeBaets, Abrahams & Sheppard LLP, New York City; Catherine Hedgeman, Esq., Hiscock & Barclay LLP, Albany; James S. Rizzo, Esq., Corporation Counsel of Rome, New York; and Jeffrey A. Rosenbloom, Esq., Nixon Peabody LLP, Rochester, New York.

After the substantive events were over, YLS members attended the annual President’s Reception and then indulged at the variety-laden Bluesmoke restaurant before hitting the town. The next night a smaller group—hosted by local Scott Kossove—went off the beaten track and experienced an Italian restaurant serving “black spaghetti” with calamari. A unique experience indeed and, fortunately, everyone survived the meal.



Supreme Court of the United States
By Sarah Tallini

One final worthy mention about the Annual Meeting Program—be on the lookout for various State Bar ads featuring our very own YLS officers, Chair Greg Amoroso and Secretary Karen DeFio. Both signed away for eternity the exclusive use of their images, and any alterations of same (I am refraining from making sarcastic comments here), for a bit of modeling glory when they were asked to have their pictures taken in NYC. Apparently, that’s what spending too much time in the theatre district of New York City can do to you.

In other activities, and as mentioned in the *From the Editor’s Desk* column on page 3, the **United States Supreme Court Admissions Program** took place in **Washington,**

D.C. on May 31–June 2, 2003. The program saw over 30 lawyers from across the state become admitted to the bar of the U.S. Supreme Court. Newly anointed YLS Chair Gregory J. Amoroso and *Perspective* Editor James S. Rizzo Co-Chaired the event, with Amoroso making the motion for admission before the Court. Those in attendance saw Justices Thomas, Scalia and Stephens announce three decisions into the record. Only Justice Breyer was

absent from the bench during the proceedings. **Justice Ruth Bader Ginsburg** pleasantly surprised the group after the ceremony by greeting the group and having her picture taken with the new admittees. After exiting the Court, Former Solicitor General and Independent White House Prosecutor, the **Honorable Kenneth Starr** was the featured speaker at the celebratory brunch. Judge Starr impressed everyone with his wit and insight into the Supreme Court, recalling his more than 25 oral arguments before the Court. He described his experience arguing the famous flag-burning case

against William Kuntzler, where the late attorney persuaded Judge Starr to meet the actual flag burners seated in the courtroom. When Starr noticed that Kuntzler was not joining him, Kuntzler stated he was “too conservative” for them. Judge Starr also joked about how Chief Justice Rehnquist had to prod him into stating the very precise, requisite wording of the motion for admission when Judge Starr was moving a colleague’s admission before the bar of the Court. Having participated in the program twice before, once as an admittee and once as the movant, the 2003 event definitely kept up the tradition of establishing the ceremony as one of the most memorable events the YLS has to offer.

In local District Events, YLS members in the **5th District** recently co-sponsored a Winter Reception event on March 26, 2003, at the Corinthian Club in Syracuse. The YLS **7th District** also held a networking reception in cooperation with the Monroe County Young Lawyers and the Young Accountants Group at Matthews East End Grill in Rochester, New York on April 16, 2003. Watch for your *Electronically In Touch* e-mail/fax newsletter and check the YLS Web site (<http://www.nysba.org/young>)—follow links to the YLS page) for more up-to-date information on YLS activities and upcoming District Events near you.

Ongoing activities of the Section include committees on Bridge the Gap and Gateway Programs, Design and Update of the YLS Web page, Increase and Participation of Women and Minorities, Law Student Involvement and Public Service. There's also the YLS's two award-winning publications, the **Mentor Directory** and the **Senior Citizens Handbook, 5th Edition**. Both publications received honors for comprehensive efforts in public service and service to the profession by the American Bar Association. The Mentor Directory can be conveniently accessed online at <www.nysba.org/ylsmentor>. Another useful YLS publication is *Pitfalls of Practice*, a guide for new attorneys on common mistakes to avoid in various fields of law. Further, for those with a penchant for ghost writing, YLS offers *On the Case*, a one-page legal summary (written in layman's terms) intended to be used by media outlets on a specific area of law.

Finally, 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, please contact any of the Section officers listed on the back page of this newsletter.

Until next time ...

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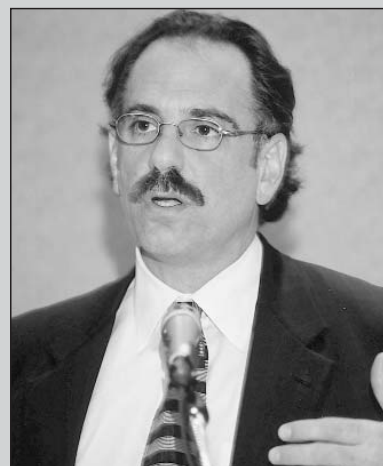
YLS Chairperson David P. Miranda, Heslin Rothenberg Farley & Mesiti, PC, Albany, welcomed speakers and participants to the 2003 YLS Annual Meeting Program, "CPLR Update and a View From the Jury Box."



Ms. Wolford's colleagues County Bar Association, R offer congratulations at



Elizabeth A. Wolford, Wolford & Leclair, LLP, Rochester, received the Young Lawyers Section Outstanding Young Lawyer Award for 2003. Presenting the award to Ms. Wolford during a reception held at the NYSBA Annual Meeting is YLS Chairperson David P. Miranda.



Samuel H. Solomon, Chairman and CEO of DOAR, Lynbrook, presented 10 habits to make you an effective leader and better litigator.



Members of the Greater Women Attorneys and the State of New York a to offer congratulations to

Scenes from Young Lawyers 2003 Annual Meeting January



representing the Monroe
Rochester, were present to
the Award presentation.



Dorothy K. Kagehiro, Trial Consultant for FTI Consulting in Washington, DC, offered suggestions to the program participants for improving their image and demeanor while in the courtroom.



from the Young Lawyers Section Annual Meeting November 22, 2003



Following in her father's footsteps—Elizabeth Wolford is congratulated by her father, attorney James S. Wolford, Wolford & Leclair, LLP, Rochester at the Award presentation.



Rochester Association for
the Women's Bar Association
also attended the reception
to Ms. Wolford.



David D. Siegel, Distinguished Professor of Law at Albany Law School, presented his annual CPLR Update during the Young Lawyers Section Annual Meeting.



ELIZABETH A. WOLFORD
2003
Outstanding Young Lawyer
Award Recipient



The New York State Bar Association Young Lawyers Section is pleased to honor Elizabeth A. Wolford with the 2003 Outstanding Young Lawyer Award. The award is presented annually to recognize the contributions 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.

Ms. Wolford, a partner in the law firm of Wolford & Leclair LLP, earned her law degree from Notre Dame Law School (1992) where she was an editor of the law review. Ms. Wolford concentrates her law practice in all areas of litigation, including commercial, healthcare, personal injury and employment litigation.

Judges and lawyers, including those who have been opposing counsel, cite Wolford's skills in organization, preparation and trial techniques. In her letter of recommendation, Supreme Court Justice Evelyn Frazee, said, "She exhibits outstanding leadership skills, legal abilities, and a sense of commitment to the bar and her clients. She has an understanding and appreciation for the need of each lawyer to contribute to the community and to maintain and improve the bar and the public's trust and confidence in it."

In addition to the Greater Rochester Association for Women Attorneys (she will assume its presidency in June 2003), her professional affiliations include the NYSBA, Monroe County Bar Association, Women's Bar Association of the State of New York, and the American Bar Association.

She has served as a mock trial tournament coach for East High School and recruited numerous Rochester lawyers to serve as mentors for young lawyers in Monroe County.

Wolford has handled two significant prisoners' rights cases on a pro bono basis; both involving representation of inmates alleging they had been beaten by guards in retaliation for complaints that had been filed.

Because of her work in inmate lawsuits, the U.S. District Court for the Western District of New York recognized Wolford with a Special Services Award.

Wolford also volunteers with the Volunteer Legal Services Project in Rochester where she handles several cases each year helping low-income clients with obtaining unemployment insurance, collections and other civil litigation problems.

David P. Miranda of Albany (Heslin Rothenberg Farley & Mesiti PC), chair of the 3,000-member Young Lawyers Section, said, "Elizabeth Wolford's selfless devotion to public service and commitment to professionalism are the hallmarks of a young lawyer. She is a prime example of a young lawyer who provides leadership in serving the public and the profession, and promoting excellence and fulfillment in the practice of law."

The significant contributions that Ms. Wolford has made to the organized bar, legal community and the public throughout Rochester make her a truly deserving recipient of the NYSBA Young Lawyer's Section Outstanding Young Lawyer Award.

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 YLS Chair Greg Amoroso at (315) 733-0419; Fax: (315) 724-8522; or e-mail: gamoroso@shskm.com.

REQUEST FOR ARTICLES

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

Please send to:

James S. Rizzo, Esq.
Office of the Corporation Counsel for the City of Rome
City Hall, 198 North Washington Street
Rome, New York 13440
Phone: (315) 339-7670
Fax: (315) 339-7788
E-mail: jamesrizzo9@juno.com

Articles can be sent as e-mail attachments to the address above, or submitted on a 3 1/2" floppy disk, in Microsoft Word format, along with a double-spaced, printed hard copy, 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*.

A Message from the Section Chair

(Continued from page 1)

from the ever-spiraling cost of legal education. A recent bankruptcy case from the Northern District of New York offers an example of the extreme financial difficulties newly admitted attorneys are faced with. (*In re **, 288 B.R. 36 (Bankr. N.D.N.Y. 2002)). The decision discusses the plight of a young attorney unable to balance the financial obligations of law school loans with his legal career. The attorney graduated from Syracuse University College of Law and was admitted to practice in New York in 1994. Eventually, he opened his own law practice in Syracuse, New York. He remained a solo practitioner from 1995 until 2001, specializing in civil rights, and supplementing his income by handling criminal defense and assigned counsel work. In December 2000, his parents' jewelry business was robbed. His parents' health deteriorated after the robbery and he had difficulty dealing with the fact that the individuals who robbed his father's store were the same type of individuals he had spent time defending in some instances. He found that he was very angry with clients accused of committing violent crimes, and he was no longer able to defend such individuals.

As a result of the decision to limit his practice in this manner, he experienced a decrease in income which, along with his difficulty in obtaining affordable malpractice insurance, caused him to close his law practice in July 2001. In August 2001, he and his wife moved to France to be with her father, who had suffered a stroke. In Bankruptcy Court he testified that he intended to allow his license to lapse as he no longer had an interest in pursuing a legal career. Unable to make all his student loan payments, he defaulted; however, even after defaulting, he continued to make some payments on the loans. In his petition, he lists student loan debt totaling \$146,294.28, which includes \$55,708.77 in principal and \$90,585.51 in interest. He argues that amortization of a nearly \$150,000 debt over 50 years, accruing at least eight percent

interest per year, would require him to pay approximately \$14,000 per year over a 50-year period. He sought to discharge his debt as an undue hardship under Bankruptcy Code because of his inability to continue the practice of law based upon the above circumstances. The court denied the requested discharge of debt, finding that the debtor failed to prove:

(1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for [himself] and [his] dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.

The court goes on to comment:

Debtor apparently has decided that he no longer wishes to pursue a legal career. He is certainly well within his rights to make such a choice. Nevertheless, as noted by the court in *Vinci*, "[t]he Debtor has apparently taken the position that she is absolved from paying her legal education loans if she is not gainfully employed as a lawyer. This is not the standard. Borrowers under the various guaranteed student loan programs are obligated to repay their loans even if they are unable to obtain employment in their chosen field of study." The Debtor directs the Court's attention to The National Bankruptcy Review Commission which allegedly recommended the repeal of Code § 523(a)(8) and to the concerns expressed by the New York State Bar Association president in regard to the

difficulty in obtaining attorneys who are able to work in public interest law, as the Debtor did for a time, because of the overwhelming debt owed by law school graduates. The Court is not unreceptive to such arguments. However, it is for the Congress to enact legislation to allow students to discharge their loans on less than a showing of undue hardship.

The court provides a well-reasoned analysis of the Bankruptcy Code and, although sympathetic to the attorney's plight, comes to the conclusion that the Bankruptcy Code provides no safe harbor for a mistaken career choice. One cannot read the decision without being concerned about how many other young attorneys are in similar, although perhaps less dramatic, situations whereby they would willingly give back their law degree if they could also be released from their debt obligations. The problem could be alleviated, in part, if law schools provided students with a better understanding of the realities of the legal marketplace and the obligations that arise from excessively large student loans. Instead, law school costs continue to escalate and students are encouraged to assume larger and larger debt obligations.

Despite the hardships that many newly admitted attorneys face, I am impressed by the level of commitment to pro bono and bar association activities by young lawyers within the New York State Bar Association. Many attorneys overcome great obstacles to live up to the NYSBA motto "Do the public good." As a profession, we must be ever-vigilant in our efforts to ensure that those wishing to pursue public service careers and causes are able to do so.

David P. Miranda, Chair

***The full case name, referencing the name of the debtor, is omitted.**

Convert Stage Fright into Stage Might

(Continued from page 1)

selves, and we are typically far less effective than we should be.

Speaking anxiety is often more intense for attorneys because we are the experts, directing the play and controlling the events. On television dramas like *Law & Order* or *The Practice*, the general public watches attorneys fearlessly and effortlessly argue motions or present opening statements and closing arguments, always unflappable and articulate. They see these actors speaking eloquently and arguing passionately and confidently, and they conclude that speaking is an inherent skill for attorneys. Unfortunately, with little preparation for the rigors and stresses of speaking, this unrealistic expectation only heightens our anxieties.

Courage is resistance to fear, mastery of fear—not absence of fear.

— Mark Twain

Although some attorneys do not recognize the importance of effective presentation skills, stage fright is much more than a small bump in the road to becoming a successful speaker. Furthermore, ignoring this weakness or avoiding presentations only intensifies the problem. Fear of speaking can quickly spiral out of control, crippling those who are otherwise engaging speakers and handicapping their careers. The only way to conquer stage fright is to confront it, so I have provided ten secrets to help you control your anxiety in front of any audience. Fortunately, none of these points involves anesthetizing yourself.

Ten Secrets to Mastering Stage Fright

1. It Is Perfectly Natural to Be Anxious

Even professional speakers and celebrities who make their living on stage are often terrified by speaking.

It is worse for attorneys, however, because we are often speaking in a hostile environment, before an irascible judge, an opposing counsel determined to up-end you at every opportunity or a client that has paid you an obscene amount of money (and whose happiness may be critical to your passage into the promised land of partnership). If trained professionals become nervous, it is perfectly natural for someone with less experience to feel anxious. The secret is to learn how to channel the anxiety in a positive fashion to enhance your message.

2. Our Worst Fears Are Rarely Realized

Our imaginations are incredibly vivid when we are preparing to speak. We visualize the worst occurring: hyperventilation, public humiliation, adverse verdicts and loss of self-esteem. We fear that if we are unmasked and our nervousness shows, clients may see us as imposters and wonder whether we are qualified to represent them. These fears are imaginary, often ludicrous, and they rarely materialize.

3. You Are Your Own Harsh Critic

Study videotapes of your presentations and you will be pleasantly surprised. When you are actually speaking, with all eyes scrutinizing your actions and clinging to your every word, it is intimidating and your anxiety is heightened. You become overly critical, certain that every blunder is glaring. Upon careful review of your presentation, however, you are generally pleasantly surprised by how poised you actually appear. Audiences, jurors and judges frequently do not realize that you are anxious (unless, of course, you are babbling incessantly, rocking violently or focusing your eye contact on the ceiling, perhaps praying for divine intervention!).

4. Listeners Sympathize and Empathize

Every member of the audience or jury has felt exactly as you do when you speak, so they either sympathize or empathize with you. Half of your listeners are looking at you with admiration and awe for having the courage to speak (something they have artfully avoided at all costs); the others are simply muttering, “There but for the grace of God go I.” Although the general perception is that speaking comes naturally to attorneys, your listeners understand the anxiety that speaking creates.

No passion so effectually robs the mind of all its powers of acting and reasoning as fear.

— Edmund Burke

5. Your Listeners Want You to Succeed

Whether your listeners have been compelled to hear you speak (jurors) or they have willingly appeared (clients or fellow attorneys), they are giving you their most precious commodity—their time. You have information that they want and you are the expert. Your listeners want you to present that information in a logical, concise and even entertaining fashion for the simple reason that it will benefit them.

6. Your Audience Has Never Heard Your Presentation

Attorneys often curse themselves, both mentally during a presentation and verbally afterwards, when they realize that they have forgotten a few words, a few lines or even an entire point in their presentation. Remember that most audience members, judges or jurors have not heard your presentation; no one monitors what you say line by line, word for word. Your listeners rarely know when you forget a point or misspeak. They do not know what you planned to say; they only know

what you said, which should reduce your stress because it affords you a sense of freedom to make a mistake with little risk.

Obstacles are those frightful things you see when you take your eyes off your goal.

— Henry Ford

7. Visualize Speaking Success

Frequently harried, we often devote most of our energy to mastering the facts and the law and very little energy preparing to speak. We seldom spend any time visualizing the outcome of our presentation. As a result, the presentation for which we have so diligently prepared for months, even years, is often presented in a flat, flavorless and fruitless manner. We simply utter words rather than speak with confidence and conviction. Excellent attorneys visualize the exact outcome they expect: jurors nodding in agreement; the jury foreperson announcing a favorable verdict; and audience members persuaded by their words. Visualization is the first step in achieving any goal, and picturing a successful presentation will help provide the confidence necessary for you to reach your advocating ambitions.

8. Seize Every Opportunity to Speak

The more frequently you speak, the more confident you become. The fear of the unknown evaporates and your confidence builds with each successful presentation. Refine your speaking skills before non-threatening groups such as Rotary Clubs or church groups, not before clients, prospective clients, judges or juries. This practice will give you a treasure trove of successful speaking experiences that will bolster your confidence.

Success covers a multitude of blunders.

— George Bernard Shaw

9. Prepare Early and Thoroughly

Professional speech consultants and psychologists agree that being thoroughly prepared to speak dramatically reduces anxiety. But what does that mean? Obviously you must know the facts and the law, understand the nuances and the weaknesses in your presentation and anticipate the questions (there is always a contrary viewpoint). But intellectual preparation alone is insufficient. You must master your delivery by repeatedly practicing your presentation in the same manner you plan to deliver it. Simulate the speaking experience to prepare for the actual presentation. This focused and detailed preparation will pay rich dividends.

10. Act Confident!

The physical appearance of most attorneys as they speak eliminates any doubt that they are nervous. Their faces are taut; their demeanors are solemn; their knuckles are white from clinging to their legal pad, the lectern or their hands; their arms are tightly folded against their chests and their movements are stiff, constrained and unnatural. No audience will decide that you are confident when you send these blaring nonverbal messages. You should project instead a relaxed, confident demeanor. Assume the behavior that you want to reflect. Walk to the lectern confidently, not tentatively; pause before you begin; look at the audience or jury; smile; plant yourself erect and still. Doing these things will help you appear and feel more confident.

The human brain is a wonderful thing. It operates from the moment you're born until the moment you get up to make a speech.

— Anonymous

Nothing will completely eliminate your speaking anxiety, but visualizing success coupled with focused preparation and practice will help you harness your nervous energy and enhance your delivery. Review these keys to mastering your anxiety and you will take gigantic strides towards converting your *Stage Fright* into *Stage Might*.

David J. Dempsey, Esq., is a trial attorney and general partner in the Atlanta law firm of Coleman & Dempsey, a professor of public speaking at Oglethorpe University, and an award-winning speaker. He is the author of the recently released book, *Legally Speaking: 40 Powerful Presentation Principles Lawyers Need to Know* (Miranda Publishing, 2002), and founder of Dempsey Communications, LLC, a presentation skills training firm dedicated to helping lawyers speak with power, passion and persuasion in every forum. David can be reached through <<http://www.legallyspeakingonline.com>> or at 1-800-729-2791.

"Greatness lies not in being strong, but in the right use of strength."

— Henry Ward Beecher

SOUND OFF!

"DO YOU THINK LAW SCHOOL PREPARED YOU WELL FOR THE BAR EXAM AND THE PRACTICE OF LAW? WHY? WHY NOT?"

(Continued from page 4)

"NO! I passed, thank God, however I felt ill prepared. I think that being forced to take classes that are on the exam would make studying for the Bar Exam MUCH easier even though many people would hate some of the classes. The stress of studying for the Bar could have been partially alleviated. Since your grades after 1st year are historically inconsequential, having to take classes you may not enjoy and therefore may not excel in, is not a main concern.

I would have rather taken trusts and estates while in school and hated it, than taken Law and Literature, which I enjoyed but can never use except at a cocktail party. Had I been forced to take classes that are on the exam I would have many more teachers to thank than I do.

Law school is not supposed to be a dream. There are already required courses, adding a few would not change the curriculum substantially and would help prepare students for the Bar well in advance."

* * *

"I think that law school prepared me for the way the practice of law SHOULD be. So often, when I am practicing law in the courts today, I find that substantive law is far less important than politics, pettiness, and misplaced principle. This is, plainly speaking, not only unjust, but also an embarrassment to the 'system'."

* * *

"No. Law school taught me the history and structure of our law and legal system. I learned a little bit about the 'basic' categories of law (Torts, Contracts, Property, Criminal Law) and a lot about how to think in a different way. I was exposed to many different areas of the law (most of which never show up on the Bar Exam) and had the opportunity for 'real world' clinical experiences as well. Each law school class (hopefully)

prepared you for its exam, and possibly for the next level of that class. In my opinion, my law school did absolutely nothing to prepare me for the Bar Exam.

If law schools had anything to do with preparing for the Bar exam, Bar-Bri and Pieper would have gone out of business long ago. It is the same with the GRE, the MCAT or the SAT. You don't prepare for these exams by going to school for a degree. You prepare for these exams by paying a lot of money to people who have studied **the exams** themselves and not necessarily the substantive material on which the exam is based. You are taught strategy—but it is exam strategy, not trial strategy or research strategy. The latter of which, are left to the law school.

The Bar Exam is an exercise in time management and rote memorization. You spend six to eight weeks cramming as much data as possible into your brain, and then spend two (or three) days vomiting it out in meticulously controlled time segments. Once it is over, nothing of value is left and you feel drained, but relieved. Sort of like a warped version of the television show 'Fear Factor.'

I went to law school to learn what I needed to know about the law. I went to Bar-Bri to learn what I needed to know about the Bar Exam. Each one did their job well, particularly because neither one tried to do both jobs.

I would like to see law school expand to four years. Three years for learning about the law and one year to learn about being a lawyer (practical skills) and passing the bar exam. Until then, Bar-Bri has nothing to worry about."

Eric M. Saidel, Esq.
Hawthorne, New York

* * *

"I attended law school in both the U.S. and Canada and do not think that either school prepared me for the practice of law particularly well. I credit my early

preparation for becoming a lawyer to my 'articling' experience in Canada. It is a requirement of the bar of Ontario that after graduation every law student complete a year of work experience in a law firm or other legal office before becoming a lawyer. During this year (currently the requirement is only 9 months long), the 'student-at-law' is expected to 'rotate' through several different practice areas and is mentored by experienced attorneys. Having actually worked in a practice area prior to taking on the full responsibilities of practicing law really made a difference in my early abilities as a lawyer.

It is my opinion that the New York Bar 'transitional' CLE credit requirements (which really is a waste of time and money for recently admitted attorneys who have sat through three years of law classes already) should be revoked and a Canadian style 'articling' or internship requirement be implemented instead. The result would be better prepared young attorneys who have experience and knowledge of the actual practice of law (which is a very different thing than a knowledge of the law itself)."

* * *

"The best way to prepare for the New York State Bar exam is threefold. First, attend a Canadian law school. Second, take a good New York bar exam preparatory course. Third, kill yourself for two months preparing to write the exam."

* * *

"Law school does not prepare one for the Bar, but that's fine. Law school and the Bar have different foci. Law school is designed to develop your mind (through learning to structure and reason and exposure to ideas of the world) in anticipation of practicing law or doing just about anything else in this world. The Bar is designed to test competence in a state's laws. Of course the Bar exam also tests tangentially how one thinks, writes, and manages time, but primarily

it is a test of a finite amount of knowledge—not a test of how one has developed his or her mind in law school.

Law school does help prepare one for the practice of law. As a practitioner one needs the mental development that law school assists."

Perrin W. Clark, Esq.
Sullivan & Cromwell LLP

* * *

"Law school was not designed to prepare you for the bar exam or the practice of law, in the normal sense of the word 'prepare.'

Law school prepares your mind to think like an attorney and trains you to find answers to problems by using the law. Law school does not attempt to prepare you for the bar exam, nor should it. Bar courses and intense studying prepare a person for the bar, then you forget all of it in a year, and that's it.

Law school does not nor should it attempt to prepare you for the practice of law. The practice of law is an art form that varies from person to person, courtroom to courtroom, city to city, state to state, and country to country. Over time, a lawyer gains knowledge of the practice of law. This knowledge is obtained from hours of hard work, attorney mentors, and a thousand mistakes. It does not come from a Professor, twenty years out of practice, telling you 'how it is in the real world.' Our expectations are that upon graduating from three years of school and upon passing a single exam, that we have proven ourselves capable of the practice of law. Then, reality hits us square in the face, and we realize that we don't have a clue about how to exercise our new profession. This inevitably leads us to look for someone (Law School) to blame for the fact that we are not the attorneys we thought we would be immediately out of law school.

In reality, law schools do a great job. We simply do not want to accept, in this age of instant gratification, that the practice of law and being a great attorney takes a long time."

* * *

"Law school did not prepare me for the bar exam; Bar-Bri prepared me for the bar exam. The bar exam is a ridiculous exercise in memorization for which only Bar-Bri or a similar course can prepare you. Law school prepared me to be a lawyer. Why is the bar exam even necessary, other than as a rite of passage or coming-of-age ritual?"

* * *

"Brooklyn Law School prepared me very well for the bar exam, however I have friends who don't feel the same way about their law school. When I was studying for the Bar I remember complaining that my law school courses should have been taught the way the bar review courses teach the material. Very matter of fact, this is the rule—learn it and apply it to the facts."

* * *

"My answer is no to both. Bar-Bri prepared me for the bar exam and working in law firms prepared me for the practice of law."

* * *

"I have spent only one year in law school doing my Master of Laws after the education in a foreign country, which has no similarities with the US legal education. I graduated in 1997, and have not worked as a lawyer for personal reasons. In 2001, I took a BAR-BRI course and passed the NY State Bar Exam. Though I spent only one year at the University of Connecticut School of Law and studied only 5 subjects out of 32 being tested in New York, I passed the Bar with flying colors. That makes me confident to say that Law School does prepare lawyers for a Bar examination. JDs study law for three whole years. That should be more than enough."

* * *

"I think my law school prepared me well for the bar exam because we were required to take every topic that was covered on the NY Bar, whereas other schools only required the first year courses. As for the practice of law, as a night student, working all day, going to classes at night & studying all weekend prepared me for the type of long hours that lawyers put in, but I think until you actually start practicing law, nothing can truly prepare you for the pressures, the demands, and the responsibilities of practicing until you start actually doing it."

St. John's University School of Law
Queens, New York

* * *

"1.) Oh yes, Law School prepared me so well for the Bar Exam that our professors actually advised us not to take Bar Review Courses because they were a waste of money—NOT! In all actuality, my Law School (UB) actually courted the Bar Review courses and truly appreciated the 'gifts' the courses gave to the Law School. One bar review course was even allowed to keep their materials in our library—of course, available only for students that were enrolled in the bar review course.

2.) Based on my answer to #1 above, I'm sure you can figure out my response to the second question.

Generally, Law School is all about theory and does not teach any practical skills. Additionally, they do not teach the 'business' aspect of law."

* * *

"While early law school courses prepared me for the bar exam, the rest of my time at law school did not do much in preparing me for the practice of law. When I asked my attorney-father-employer the fifth or eightieth question about what to

"The highest reward for a person's toil is not what they get for it, but what they become by it."

— John Ruskin (1819-1900), British Artist and Author

do, he yelled, "What the hell did they teach you in law school?"

He was, and still is, an impatient man, but his question is valid. I was not prepared for the practice. Law school was theory. Only in my last year did I get involved with classes and programs that related to practice."

* * *

"No one teaches young lawyers about the fundamental business dynamics of private legal practice—writing off associate time, overhead costs, breaking even, profitable practice areas, business development, profit distribution, etc. It doesn't teach you 'how to think like a lawyer!' Learning these subjects is crucial to being efficient from day one, so why not teach it before it's too late? Obviously a student or young associate can glean limited information from the issue of *The American Lawyer* that publishes the Am Law 100 revenue calculations, but very few would appreciate the context."

Hayel Hourani
Georgetown University Law Center,
J.D. 2001

* * *

"YES and NO. Yes: Law School did an excellent job of teaching me the law. BUT ...

No: Law School did not teach me how to take the Bar Exam or test me the way the NYS Bar Exam tests you. In my senior year (4th at night), my school NYLS publicly recognized and began to address the issue that they did not intentionally teach to the Bar Exam. My understanding is they now specifically test with the same techniques used by the Bar Examiners. I felt this put us at a disadvantage because I needed to learn how to take the exam and learn how to answer the questions in order to receive points on the essay questions."

* * *

"Law school did not prepare me well for the bar exam. My law school experience was about learning how to think, see issues, and solve problems. By contrast the bar exam was an exercise of memo-

rization of state laws. It is a bit like getting a degree in mathematics and then having to get a license by reciting multiplication tables. The stupidest professional exam I know of."

* * *

"I believe that law school did contribute somewhat to my career as a medical malpractice defense lawyer. I do not, however, feel that my preparation for the bar exam prepared me for anything more than the exams themselves (New York and New Jersey).

I obtained my undergraduate education from Brandeis University, where I learned a great deal about critical thinking. I feel that my undergraduate education gave me a fantastic foundation to build upon. Law school served as an extension of my training in critical thinking. At law school, I also learned how to do legal research. Certainly, I apply those skills on a daily basis.

However, I seem to recall that while torts was certainly an important element of the bar examination, there was no specific questioning or preparation for medical malpractice issues.

Overall, I believe that while law school and undergraduate study provided me with a very good foundation for the law, I feel there is no substitute for experience. I found that my skills in case preparation and writing significantly improved after I had been practicing law for some time, with the help and guidance of those more experienced than I."

Wayne E. Cousin
Gordon & Silber

* * *

"I graduated from Syracuse University College of Law and the school did not prepare me **at all** for the bar exam or the practice of law. The professors seemed to think it was beneath them to teach anything practical or useful."

* * *

"Law school prepared me fairly well for the practice of law. That is credited to my choice of schools more than anything. My Alma Mater (Chicago-Kent)

emphasized a practical education, multiple writing and research courses, and trial advocacy. Law school did not prepare me for the Bar Exam; Bar-Bri did that. I chose to concentrate my elective courses in the area of international law, which does not appear on the Bar. As a result, I lacked a number of the Bar courses. With Bar-Bri, I passed the IL Bar on the first try."

* * *

"I actually do think that law school prepared me well for the bar exam and practice of law, though I certainly didn't think so at the time.

Looking back on it, my school (Univ. of Wisconsin) offered a good mix of theory and practice. I participated in three legal clinics in family law, criminal law and criminal appeals, which really helped me start out as a new lawyer who had very little supervision, even though I don't practice in those areas. I currently work for a non-profit community group representing tenants in New York City housing court.

Also, since Wisconsin has diploma privilege (meaning if you graduate from UW and maintain a certain GPA and take extra required classes, you gain admission to the Wisconsin bar, given that you pass the character evaluation), I took so many courses that helped me prepare for the NY bar. Though taking the bar prep class certainly helped more. Even though Wisconsin does not teach with a bar exam in mind because so many students use the diploma privilege, I found that the law and methods I was taught were very standard and have helped me so far.

During law school I hated how the teachers attacked students and pitted them against one another, as Wisconsin stays 'true' to the Socratic method. I also hated the exam-only format and the seemingly arbitrary grading (UW has a highly-particularized number-based system). I also disliked interacting with some students who acted aggressive, manipulative or anxious. However, all of these things I disliked exist in at least the same proportion in my practice as a lawyer. Perhaps more important than

even legal research and writing is developing an armor to protect yourself from people and steely nerves to cushion your resolve when negotiating or facing a deadline.

So, I had my doubts at the time, but I do think my school prepared me for life after law school."

University of Wisconsin, Class of 2001

* * *

"Yes and No. I don't think I learned enough substantive law in law school with regard to the bar. That came in Bar-Bri. Law school however did improve my ability to read, analyze, and write, which prepared me well for the essay sections of the bar exam and for writing motions and briefs as a Department of Justice attorney."

* * *

"I thought New York Law School prepared me well to successfully sit for the February 2002 administration of the New York State Bar Examination. I found it easier than most of my law school exams. At NYLS I learned the basics of issue-spotting, calling upon the law, organizing my response in the IRAC format, and writing it all down in simple language. Though I needed a good bar review course to teach me the specifics of New York law, NYLS taught me the skills necessary for passing the exam and, I think, to be a good lawyer. So far, so good."

David R. Williams, Esq.

* * *

"I don't think that law school prepares you well for the Bar Exam. I went to Emory University and took the basic classes that I needed for the Bar Exam.

What we learned at Law School was not what they asked and especially not how they asked on the Bar Exam. I went to an American Law School for one year and then took the New York Bar Exam. I experienced that the lack of Law School education could easily be compensated by any commercial Bar Exam preparation course. After all, the Bar Exam seems to me more like an endurance test than a real application of knowledge.

However, Law School prepared me well for practicing law! In my current position I was able to apply many things that I learned in Law School.

Ergo: The Bar Exam is a species of its own. Nothing really prepares you for it, and quite frankly it does not prepare you for anything either."

"Never confuse motion with action."

— Ernest Hemingway (1899 – 1961)

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Substantive Articles (any topic), "Sound Off!" Responses/Comments, Photographs, Artwork, Humor, Quotes, Anecdotes, etc.

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"The capacity of human beings to bore one another seems to be vastly greater than that of any other animal. "

— H. L. Mencken (1880 - 1956)

MARK YOUR CALENDARS

June 18, 2003
3:00 pm - 5:00 pm

Young Lawyers Section Executive Committee New York City
Summer Regional Meeting

June 19, 2003
3:00 pm - 5:00 pm

Young Lawyers Section Executive Committee Albany
Summer Regional Meeting

June 20, 2003
3:00 pm - 5:00 pm

Young Lawyers Section Executive Committee Syracuse
Summer Regional Meeting

September 18-21, 2003

The YLS Fall Meeting in conjunction Otesaga, Cooperstown
with the Business Law Section



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