

# Perspective

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

## A Message from the Section Chair

I would like to talk about an issue that is of critical importance to young lawyers within New York State. The issue is student loan



debt. Our generation of lawyers has needed to borrow tremendous amounts of money in order to attend law school. The financial burden resulting from that debt, shouldered primarily at the early stages of our careers, is often overpowering.

I have heard stories from young lawyers who cannot even consider buying a home or starting a family because of their student loans. I personally have been out of law school for ten years, and have consolidated and stretched out my student loans so that I will make my last payment just one month before my 3-year-old son begins college.

Several young lawyers have even stated to me that they would gladly trade back their law degrees and discontinue their legal careers in return for release from their student loan debt!

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## Negotiating Negotiation

By Odia Kagan

*"Let us never negotiate out of fear, but let us never fear to negotiate."*

—John Fitzgerald Kennedy

### Negotiation—the Dictionary Definition

Negotiation is a process through which two or more parties exchange information in order to reduce a conflict between them. It is used for finding ways to satisfy the parties' interests and those of others. Ideally, following the negotiation process, a result will be reached, usually in the form of a compromise, the value and advantages of which will be greater than the sum of the interests and positions presented by the parties involved.

We enter into negotiation when we believe we stand to improve our situation and this improvement is dependent on the cooperation of other people. It is an interdependent process where one party's gain does not have to result in the other party's loss.

### Negotiation—the Young Lawyer's Definition

When we think of negotiation in our professional lives, we immediately conjure up the all-too-intimidating image of a long mahogany table, seating at least 20 people on either side, legal pads laid out at equal increments from one another.

On one side of this imposing table you are sitting. Facing you on the other is a row of experienced attorneys in polished suits, brandishing their fountain pens, ready to attack.



### Rewind. Start Over.

As young lawyers and young adults, we have actually been negotiating in one form or another, almost since the day we were born. We just don't realize it. We were negotiating as babies, when we cried to Mom for

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***Save the Dates!!!***

**January 26-31, 2004**

**127th NYSBA**

# **ANNUAL MEETING**

**New York Marriott Marquis**

**Wednesday, January 28, 2004**

**YLS MCLE Program**

**and**

**Reception Honoring the Outstanding  
Young Lawyer Award Recipient**

**Friday, January 30, 2004**

**Bridging the Gap**

**for Newly Admitted Attorneys**

Offering transitional mandatory education credits designed to help you become competent to deliver legal services at an acceptable level of quality as you enter practice and assume primary client service responsibilities.

# From the Editor's Desk

*"A lawyer with his briefcase can steal more than a hundred men with guns."*

—The Godfather

Since I first began my duties as Editor back in 1999, I have heard one over-



whelming topic of distress from YLS members: crushing law school debt and its negative implications on personal and professional life. With that in mind, I believe many would analogize the above quote to read "law schools" in place of "A lawyer with his briefcase." Recently elected YLS Chair Greg Amoroso has decided to make this topic the primary focus of his tenure and has formed a committee to aggressively pursue legislative changes to alleviate this burden. If you are interested in assisting in this project, feel free to contact Greg at his work address or via e-mail at: gamoroso@shskm.com.

Going along with this theme, I encourage you to contribute to our popular *SOUND OFF!* column, which asks readers to elaborate on how they've handled the cost of law school, for better or worse. Any other article submissions or comments of interest can be sent via e-mail to: jamesrizzo9@juno.com. Don't forget that complete back issues of *Perspective* can be found on the State Bar Web site: <<http://www.nysba.org/young>>. Deadline for all submissions (substantive articles, reviews, humor, photos, artwork, *SOUND OFF!* responses, etc.) to the Spring 2004 issue is **February 20, 2004**.

Finally, as my favorite season, fall, is upon us I've decided to break format and compile a short list of personal book recommendations for those wishing to take a vacation

from all things law and enjoy some obscure—and not so obscure—reading materials.

## Top 5 Books for the Halloween Season:

5. *Frankenstein, or The Modern Prometheus* by Mary Wollstonecraft Shelley (1818)—A timeless horror classic originally written by 19-year-old Mary Shelley while competing in a ghost story contest against contemporaries Lord Byron and husband Percy. Upon a first reading one may be surprised at the depth and philosophical insight into the human psyche the book contains, and it certainly begs the question as to how the story ever devolved into the brain-dead monster depicted in movie and TV versions of the same name.
4. *The Dracula Tapes* by Fred Saberhagen (1975). In an interesting twist on the classic Dracula story, authorities stumble upon cassette tapes made by Vlad Tepes (a.k.a. Count Dracula) telling his version of the "true" story of how he came to be and how he has been misrepresented through the years. Voted "Novel of the Century" by the Transylvania Society of Dracula—what better recommendation could you ask for?
3. *Rosemary's Baby* by Ira Levin (1967)—Evidence that classic movies follow the books upon which they were based to the tee. Still eerily haunting after all these years. As a side note, it is

recommended that the sequel *Son of Rosemary* be avoided. Having read it a few years back, I'm still trying to pretend it was never written. In fairness, I will give Levin's other famous work, *The Stepford Wives*, honorable mention.

2. *Harry Potter* series by J.K. Rowling—Books 1–5 (1997–2003). No explanation needed—simply excellent, must-read books! What other author has ever gotten elementary school kids excited about an 800+ page book?
1. *The Circus of Dr. Lao* by Charles G. Finney (1935)—a witty, sardonic and purely unique romp through a fantasy circus world filled with bizarre creations, human and otherwise. It was later made into a B movie (now available on DVD) starring Tony Randall and Barbara Eden entitled, "The Seven Faces of Dr. Lao," which pales in comparison to the book (see #3 above). You won't find this on any best-seller lists and copies can usually only be found through Internet auction sites such as eBay. Nothing worthwhile is ever too easy to find. As Dr. Lao would say:

"Oh, we've spared no pains and we've spared no dough;

And we've dug at the secrets of long ago;

And we've risen to Heaven and plunged Below,

For we wanted to make it one hell of a show . . ."

James S. Rizzo

*"I know what I like, and I like what I know."*

—Peter Gabriel

# SOUND OFF!

## Young Lawyers Respond to the Question: ARE YOU ABLE TO BALANCE THE DEMANDS OF YOUR LEGAL WORKLOAD WITH YOUR PRIVATE LIFE? 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.

*"Yes, because I have a challenging, fulfilling, varied, reasonable workload in government law, a job that does not subject me to the weed-out rat race that is associate life."*

2002 J.D.

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*"I have been very lucky in that I started my own practice, Wallach & Rendo, LLP, when my son was fourteen months old. Therefore, it has been relatively easy for me to balance the obligations of my career and my family. My partner and I both have young children at home. We are both flexible with our schedules which enables us to be hands on-moms and busy practicing attorneys."*

*Before deciding to start my own practice, I shopped around for a part-time job in a law firm or the public sector. However, I realized that the opportunities I had would require me to be in an office for a set period of time with very little flexibility."*

Sherry L. Levin Wallach, Esq.

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*"No. Work almost always trumps personal agenda items. Why? Because much of what I do personally depends upon my ability to earn as an attorney. As a senior associate, more and more responsibility falls to me. While this is a sign of confidence, it is also a double-edged sword. Shrinking legal fees and clients' diminished willingness to pay them means those not calling the shots, i.e., me and others at my level, are called upon to put in more and more hours. This is necessary for those sharing in the profits to maintain an ever-increasing income level. The inverse relation of*

*hourly rates to hours worked results in long days and late nights which significantly impacts my personal life."*

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*"In general, I balance pretty well the two since I am in-house for a biotech company. So, any request that I receive is sent to me with advance or reasonable notice and I can organize my work. There are maybe four weeks every year where it is quite crazy, and from time to time acquisition work adds up for a period of time, including working throughout the weekend."*

*I work an average of 60 hours a week, with one late night every week or every two. But I can still practice sport on a regular basis, see friends and take four weeks of vacation. I am heading to Peru for two weeks!*

*Overall, the job is pretty interesting. The only downside is the level of people you interact with compared to a law firm, but you can still make a very decent living if you find the right company."*

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*"I am able to balance the demands of my legal workload with my private life because I am currently in a non-legal position."*

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*"Yes—it requires: (1) getting your day off to an early start (in the office and billing by 8:30 a.m.); and (2) periodically monitoring e-mail and telephone messages while outside of the office. May not be ideal, but necessary for balance."*

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*"The question is not whether you can balance your legal career with your private life, but whether you can balance your checkbook. My family has gotten increasingly close together as we realize that we have to do so in order to keep warm."*

Elias S. Gootzeit, Esq.  
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*"Yes I am. However it does appear to be demanding at times and I have the benefit of an understanding spouse. I work for a title company and the biggest frustration and issue is the time it is taking to learn all of the new procedures and details of the particular area of law. I practiced in Florida for a period of three years and just recently started practicing for Stewart Title Insurance Co."*

*The real estate market in New York has some similarities to Florida but there are some sharp contrasts between the two states. There are a few new challenges,*

(Continued on page 15)

## **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 issues affecting young lawyers today. Each issue a primary topic will be given for readers to comment on (see below). However, submissions are encouraged on any other 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 MANAGE THE DEBT FROM  
YOUR STUDENT LOANS?**

**IF SO, WHAT ADVICE WOULD YOU GIVE TO LAW  
STUDENTS OR NEW ATTORNEYS?**

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!



# The Inner Advocacy Game: Nine Keys to Owning the Courtroom Stage

By David J. Dempsey

Whenever the curtain rises in the courtroom, lawyers must be mentally prepared to communicate with confidence and conviction. Jurors and

judges are evaluating not just what we say, but how we say it. They are reading and reacting to our body language, facial expressions, vocal energy, and all of our mannerisms. The nonverbal message we send may be louder than the verbal. Do you always send the correct message—that you are confident and convinced in your case—or are distracting mannerisms undermining your message?

Set forth below are nine tips lawyers can use to ensure that they indeed “own the courtroom stage.”

## 1. Distill Your Case to Its Essence

Do not expect the judges or jurors to hack through a thicket of complex details, particularly where the evidence or testimony will be confusing and technical. You may know the facts about your case and the law, but you will not persuade anyone by overwhelming them with minute details. Vigorously edit your arguments and decide how to present them in a concise, logical fashion.

It is critical that you know the theme of your case and exactly what you want to accomplish. Every word and sentence should bolster your position. Constantly ask yourself: how will these words or expressions support my argument? Is this the



most important issue; is this the best example; is this the most compelling way to illustrate my point?

*“Order and simplification are the first steps toward mastery of a subject.”*

—Thomas Mann

## 2. Anticipate Distractions

Ideally, it will be as quiet as a monastery when you are in the courtroom, with everyone giving you their undivided attention. Unfortunately, there will be inevitable distractions: a juror may be preoccupied doodling; spectators will be entering and exiting the courtroom; the judge may be engrossed with paperwork or speaking to the law clerk; or the opposing counsel may be coughing or shuffling papers to distract you. Anticipate and plan for these interruptions; do not become sidetracked by these distractions.

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*“Jurors and judges are evaluating not just what we say, but how we say it.”*

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## 3. Study the Courtroom

To be effective, you must focus on the judge, jurors, and witnesses. Do not stare at your notes, a visual aid, the back wall, or the heavens (perhaps praying for divine insight!) as you communicate. Study the listeners to determine how your message is being received: are the jurors shaking their heads or wincing? Do they seem to be engaged or interested? Is anyone taking notes? Stay alert and be aware of all the nonver-

bal clues floating around the courtroom.

## 4. Master Your Visual Aids

Using a visual aid while speaking affects virtually every aspect of your courtroom delivery: your movement, timing, eye contact, positioning and connection with the judges or jurors. Before trial, become comfortable with how you will use the visual aid, how it will operate, where you will stand and where you will position the visual aid to ensure visibility from every angle. Do not squander valuable moments at trial determining these critical details.

## 5. Use Vocal Variety

If you speak for any length of time at the same pace, without any vocal energy or variety in your delivery, the attention of the judge and jurors will wander. Identify the essential points of your message. Experiment with the pace at which you speak, focusing on delivering complex information and key points slowly and with emphasis. Practice delivering the less significant portions of the speech quicker. Interperse pauses for dramatic impact.

## 6. Practice Replicating Conditions

Strive to replicate the actual courtroom experience as you rehearse. If it is possible, practice your presentation in the courtroom where the case will be tried. Stand up, move naturally at transitions and imagine that you are looking into the eyes of the judge and jurors. If you simply prepare for your courtroom presentations while sitting at your desk, clasp your notes, and repeating the script, it will not prepare you for the actual speaking experience.

## 7. Critique with a Camera

A video recorder should be an indispensable tool as you prepare for any courtroom presentation. It tells the unassailable truth of how you sound and appear when you speak. Videotape yourself as you rehearse your presentations in order to identify problems or distractions, refine points and hone and master your delivery. Observe your body language and facial expressions as you confront questions and objections. Study and polish every aspect of the delivery, including: timing, pacing, pausing, vocal variety, gestures, movements, and eye contact.

*"Practice, knowledge, again practice, and again knowledge. This form repeats itself in endless cycles, and with each cycle the content or practice and knowledge rises to a higher level."*

—Mao Tse-Tung

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*"You have only one opportunity to make a lasting, favorable impression at trial."*

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## 8. Test Your Presentation

Deliver every courtroom presentation to a test audience. Deliver it to one or more people whose opinions you trust and who do not know or understand the details of the case. Solicit honest feedback and ask critical questions: Is your theme crystal clear? Is the opening statement logically organized and easy to follow? Are the stories vivid and memorable? Does your word choice conjure specific, concrete images? Are there any nervous habits or distract-

ing mannerisms that should be eliminated? Did you use your voice as a tool to convey your conviction and emotion, or did you deliver your message in a flat and emotionless fashion? Refine, polish, and repeat the presentation until every aspect of the message is as effective as you can make it and every aspect of your delivery is powerful.

## 9. Break the Mold

Developing a commanding courtroom presence is a process of evolution and experimentation. Excellent attorneys never become complacent, simply relying on comfortable methods of communicating. They raise their sights and constantly evolve. They always question: is there a better way to present my case and to persuade the jury? They take risks. They have the courage to let go of the familiar and determine if there is a better way to present their case each time they enter the courtroom. Can you afford not to do the same?

You have only one opportunity to make a lasting, favorable impression at trial. Use this nine-point checklist to ensure that when the gavel drops, you are indeed ready to own the courtroom stage.

David J. Dempsey, Esq., is a trial attorney and general partner in the Atlanta law firm of Coleman & Dempsey, LLP, 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) which is available at [www.legallyspeakingonline.com](http://www.legallyspeakingonline.com).

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*"Be not afraid of greatness: Some are born great, some achieve greatness, and some have greatness thrust upon them."*

—from *Twelfth-Night*, by William Shakespeare (1564–1616)

# Young Lawyers Section News and Events

## Young Lawyers Admitted to the U.S. Supreme Court

On June 2, 2003, more than 30 lawyers from across the state were admitted to the bar of the U.S. Supreme Court in an event sponsored by the NYSBA Young Lawyers Section. Gregory J. Amoroso of Utica (Saunders, Kahler & Locke, LLP), and I co-chaired the Admissions Program, with Amoroso making the motion for admission before the Court.

Young lawyers in attendance saw Justices Thomas, Scalia and Stevens read three decisions into the



The best time of the year to be in the Nation's Capital—as the sun shone brightly, and the flowers were blooming on the walk past the Capitol to the Supreme Court. The NYSBA admittees wholeheartedly agreed.



Executive Committee members met for their quarterly meeting before Admissions to the Supreme Court. Pictured (from left) are General Practice Section Liaison Randy Lewis, Trusts & Estates Law Section Liaison Daniel DeFio, Section Secretary Karen Defio and Section Chairperson-Elect Scott Kossove.



Supreme Court Justice Ruth Bader Ginsburg (front row, third from right), congratulates the new admittees immediately after the Court adjourned.

record, including a landmark decision on copyright infringement. Only Justice Breyer was absent from the bench during the proceedings, having recused himself from one of the decisions. The new admittees to the Court had the chance to meet Justice Ruth Bader Ginsburg, who greeted the group after the ceremony and offered her personal congratulations.

### Starr Treatment

Former Solicitor General and Independent White House Prosecutor Kenneth Starr was the



featured speaker at the celebratory brunch following the ceremony. Starr spoke about his experiences before the Supreme Court, recalling his more than 25 oral arguments, including the famous flag-burning case against the late attorney William Kunstler. He recounted when Kunstler persuaded him to go over and meet the actual flag burners seated in the Supreme Court courtroom before the oral argument. When Starr noticed that Kunstler was not joining him, Kunstler joked that he was “too conservative” for them. Starr also recalled how, when he was moving a colleague’s admission before the bar of the Supreme Court, Chief Justice Rehnquist had to prod him into stating the very precise, requisite wording of the motion for admission. It was an error he would not repeat. While Starr’s speech was anecdotal, his main emphasis was on his great admiration and respect for the High Court and the principles upon which it stands.



The group also had an impromptu meeting with former Senator and presidential candidate Robert Dole, who was at the Supreme



Court to meet a group from Kansas. Senator Dole, who looked as vigorous as ever, generously posed for photos and joked about debating the merits of the Kansas Bar versus the New York Bar on "60 Minutes" with former President Bill Clinton. A debate, he quipped, that was sure to get them cancelled.

The Young Lawyers Section anticipates hosting the Admissions Program again in 2005. To become admitted to the High Court, you must be an attorney in good standing for three years or more, have two sponsors who are already admitted

to the Supreme Court and must pay the requisite applications fees. The privileges of admission include the ability to submit papers and argue before the Court, the right to observe oral arguments in the attorney section of the courtroom, and the use of the extensive Supreme Court library.

—James S. Rizzo

**Rizzo, corporation counsel of the city of Rome, has been editor-in-chief of *Perspective* since 1999, and recently finished a two-year term on the House of Delegates.**



After the Admissions Ceremonies were concluded, members proudly stood for photos on the steps of the U.S. Supreme Court.



At the southeast end of East Potomac Park you will find a half-buried figure of a sleeping giant, the Awakening Statue (above), and that's where three young lawyers (below) enjoyed some sightseeing time before the Supreme Court Admissions program.



Former Sen. Robert J. Dole graciously posed for photos with the New York attorneys while waiting to greet University of Kansas Law School admittees.



Young Lawyers Section members gathered at the Hotel George for a welcome reception the night before their admissions ceremonies.

# Fall Meeting in Cooperstown

The **Fall Meeting** of the YLS, in conjunction with the Business Law Section, took place **September 18-21, 2003**, at the scenic Otesaga Hotel in Cooperstown, New York. YLS Program Chair of the event was Timothy A. Benedict, First Assistant Corporation Counsel of Rome, New York. CLE topics included Practical Implementation of the New Governance, Compliance and Disclosure Requirements After Sarbanes-Oxley, Corporate Compliance and Risk Management, Hot and Emerging Issues in Bankruptcy, and Emerging Issues in Franchise Law. A YLS Executive Committee meeting followed the seminars.

Through the YLS Committee on Public Service and Pro Bono (Tara Brower Wells, Chair, Darrin Derosia, Kristin Hawes, and Tucker Stancliff),

a new publication, "*Now that You've Turned 18*," has been published to give young adults an overview of their basic legal rights and responsibilities. You can view or download this publication on the NYSBA Web site by going to <http://www.nysba.org/18>.

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 are also the YLS's two ABA-award winning publications, the *Mentor Directory* and the *5th Edition Senior Citizens Handbook*. The Mentor Directory can be conveniently accessed online at <http://www.nysba.org/ylsmentor>. Another use-

ful YLS publication is *Pitfalls of Practice*, a guide for new attorneys on common mistakes to avoid in various fields of law. YLS also 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 magazine. Watch for your *Electronically In Touch* e-mail/fax newsletter and check the YLS Web site <http://www.nysba.org> (follow links to the YLS page) for more up-to-date information on YLS activities and upcoming district events near you.

## 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:

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*Articles can be sent as an e-mail attachment to the address above, or submitted on a 3½" floppy disk, in Microsoft Word format, along with a double-spaced, printed original, biographical information and a photograph (if desired). Please note that any articles previously published in another forum will need written permission from that publisher before they can be reprinted in Perspective.*

# Young Lawyers Are “On the Case”

Hemmy So  
Kevin Ecker  
Laura Hidalgo  
Christopher Dow  
Heidi Dennis  
Rene Kathawala  
Monique Ribando  
Laurie Giordano  
Christopher McDonald  
Alessandra Scalise  
Jeffrey Rust  
John R. Merlino  
Clemens W. Pauly  
Kevin Wicka  
Paul Campson  
Michael Fauci  
Joseph DeMarco  
Kelly Slavitt

What do these Section members have in common? At the time this issue of *Perspective* went to press (a month ago), in 2003 they had written

an article for the “On the Case” project sponsored by the YLS Section in cooperation with the PR Committee. In some cases, they’ve written more than once.

OTC is a 400-500 word article that explains a point of law or legal concept that relates to a story in the news. For examples, you can see an archive of all the OTCs by going to: <http://www.nysba.org/onthecase>.

The law is Black Letter (you’re writing something as if you’re explaining it to your mother.) This material is distributed via FAX to more than 250 radio, TV and newspaper outlets throughout the state.

The purpose is to assist reporters in accurately explaining the law and legal system to the general public. Young lawyers benefit from partici-

pating in two ways: (1) OTC helps sharpen your research and writing skills—distilling key concepts and making them comprehensible; (2) it gives visibility to you and your law firm.

Some young lawyers have been contacted by radio and newspaper reporters to be interviewed for stories based on their OTC or for a new story based on an idea they got from an OTC. Writers are always needed in all subject areas but especially: criminal, business, trial, environmental, and insurance.

Oh, by the way, there’s a pretty neat “thank you gift” for signing up. That’s all we can tell you. If you’re interested, go to <http://www.nysba.org/otc> or contact Terry Scheid, YLS Staff Liaison, at [tscheid@nysba.org](mailto:tscheid@nysba.org).

*“I never work better than when I’m inspired by anger. . . . My whole temperament is quickened, my understanding sharpened and all mundane vexations and temptations depart.”*

—Martin Luther (1483–1546), German religious reformer

## Friday, November 21, 2003

### Deadline for Nominations to the Young Lawyers Section 2004 Outstanding Young Lawyer Award

The YLS Outstanding Young Lawyer Award recognizes a young attorney who has rendered outstanding service to both the community and the legal profession. If you know of a young attorney who meets the eligibility requirements as described in the nomination brochure, please consider submitting a nomination to recognize his or her value to the profession and the community.

Nomination forms will be e-mailed the week of October 13th and will also be available at [nysba.org/young](http://nysba.org/young).



# 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](mailto:gamoroso@shskm.com).

## Pencil yourself in.



Where do you fit into this schedule? The New York State Bar Association's Lawyer Assistance Program understands the competition, constant stress, and high expectations you face as a member of the legal community. Dealing with these demands and other issues can be overwhelming, which can lead to substance abuse and depression. Finding a balance between your career and your personal life is not a luxury, but a necessity. NYSBA's Lawyer Assistance Program is committed to helping you achieve that balance. We offer free and confidential support. Confidentiality is protected under Section 499 of the Judiciary Law.



NEW YORK STATE BAR ASSOCIATION  
Lawyer Assistance Program  
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## A Message from the Section Chair

(Continued from page 1)

This issue has serious implications for the practice of law. A generation of lawyers is starting their careers overwhelmed and frustrated.

The Executive Committee of the Young Lawyers Section has formed a committee to focus on this crucial issue of student loan debt. The committee will attempt to formulate some realistic suggestions and solutions to assist young lawyers with lessening their financial loads. We hope to have a draft report and action plan completed by the end of this year.

Further, we hope to start a dialogue at all levels of the Bar Association and at all levels of government on this issue. There have been some past efforts in this arena, but these efforts must be increased and intensified. The legal community as a whole must make it their priority to find some remedies to this problem.

It would be easy to write off this issue as “unsolvable,” or merely a “fact of life.” But instead, we must give our collective best efforts to find some relief from the unreasonable debt carried by many young lawyers.

Gregory J. Amoroso

### Moving? Let us know.

Notify OCA and NYSBA of any changes to your address or other record information as soon as possible!

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## Negotiating Negotiation

(Continued from page 1)

food or for some attention; we were negotiating when, as kids, we promised Dad we would behave ourselves at his boss’s bar-b-cue for the small price of that action figure set; we were negotiating when we got a deal on that secondhand convertible . . . and we have been negotiating ever since.

### Prepare, Prepare, Prepare

The most important factor in a successful negotiation is to come prepared. You must familiarize yourself thoroughly with your (or your client’s) position as well as with the opponent’s position and determine the concessions you will be willing to make. First—know yourself, then—know your opponent, and finally—know your action plan.

Here are some suggestions to get you started:

#### From the Outside Looking In

- **Know your clients’ objectives and arguments**—Make sure that you know your client’s needs, interests and objectives. Practice the best way to express them clearly and succinctly. Study all the relevant facts and organize them effectively.
- **Set your goals**—This is a very important point and one to which you should give considerable attention. We conduct negotiations in order to achieve a result that is better than what we would have achieved without the negotiations. A good way to identify this result is to determine the Best Alternative to a Negotiated Agreement (BATNA). This is the standard against which you need to compare the various solutions presented during the negotiation. This protects you from rejecting terms that are in your best interest to accept and from accepting terms that are

unfavorable.<sup>1</sup> Also, it is important to consider the BATNA of the other party. And, of course, make sure to determine your “red line” from which you will not be willing to retreat.

- **Formulate your position**—Every point on which there may be disagreement between the parties is an issue. For each issue formulate your position—an opening position, a “last line of defense” and a desired position. Consider the various alternatives and compromises which you may be willing to make as well as which issues are “non-negotiable.” This flexibility will provide you with greater leverage in the negotiation. You will be able to propose a solution conceding a “negotiable” point, while safeguarding non-negotiable ones. When deciding your positions, always remember to consider the facts and principles at hand, rather than merely your desire to win. Anything in between the best alternative and the worst one—is a winning alternative.
- **Organize the issues**—Once the issues are defined, divide them into categories: simple-compound, easy-difficult, immediate-long-term, inexpensive-costly, expendable-indispensable, etc. This will enable you to move seamlessly from one issue to the other without breaking the momentum of the negotiation.

#### From the Inside Looking Out

- **Know the other side and the other side’s case**—Learn your opponent’s position, interests and values. Also, try to learn about your opponent as a negotiator: their reputation, the strategies or tactics they have used before, etc. Keep in mind that the other side’s professional and cultural background strongly affects their

agenda as well as the way they conduct negotiation.

- **Get into your opponent's head**—Having established your interests and your position on the issues, give them a “reality check” by comparing them with your opponent's stated interests and goals or with those you believe they have. Focus on the needs, interests and desires of the parties, rather than their declared positions or their personalities. Things are not always what they seem. The opponent's seemingly timid personality or far-reaching declared goals should not divert you from your agenda.
- **Creativity counts**—The other party rarely accepts the first option that is put on the table so try to think of as many possible solutions, using your imagination and creativity. The more alternatives that are presented, the greater the chance for success.

## Conducting the Negotiations

*“Firmness in support of fundamentals, with flexibility in tactics and methods, is the key to any hope of progress in negotiation.”*

—Dwight D. Eisenhower

Negotiation is the process of exchanging offers and counter-offers until a mutually satisfactory solution is reached. In order to make the most of the process you should always keep the following in mind:

- **Keep your eyes open**—You must be aware of what is happening all the time. If there is a change in the positions, you need to reassess your former assumptions. Be prepared to respond to the changing situation by adjusting your position as needed.
- **Be tuned in to your opponent**—During the negotiations watch

your opponent's behavior, both verbal and non-verbal. Use your instincts and intuition to sense your opponent's feelings about the negotiations. Are they comfortable with the proceedings? Are they prepared to move on?

- **Communicate**—Listen to your opponent and respond accordingly. *Do not start planning your reply after you think you understood what he was saying . . .* Listen to your opponent's full reply and only then speak your mind.
- **“Know your stuff”**—Always be thoroughly familiar with the subject matter at hand, down to the most intimate details.
- **Build trust**—Gain your opponent's trust by maintaining your integrity. Be honest, keep your promises and do not betray confidences.
- **Be flexible and pragmatic**—The negotiation process may not always go according to plan; in fact, it seldom does. Be prepared to leave behind the strategies, and sometimes, even the goals, you prepared in advance if they prove to be ineffective. Be ready to try alternative strategies in their place.
- **Be patient**—Exercise patience and tolerance and do not express frustration even when the negotiation is not going your way. This way you will be able to progress methodically from one subject to the next in the negotiation, until you reach your goal. Also be patient with the other parties—never interrupt your opponent's speech.
- **Adapt your style to the situation**—Be ready to adapt your negotiating style. Move, as needed, from the competitive style, where you attempt to get “your way” even at the expense

of the other party, to the cooperative style where both parties are willing to compromise or make concessions in order to reach a mutually beneficial solution.

- **Be confident!**—If you appear to be powerful your opponent will believe that you are. Display confidence in yourself and in your cause and you will improve your standing.
- **Accept the possibility that the negotiations may fail**—Prepare yourself and your client for the possibility that the negotiations will collapse. Once you are prepared to face this outcome, you will be able to conduct the negotiations with greater confidence.

On your marks, get set, go negotiate!

Good luck!

*“The most important trip you may take in life is meeting people half way.”*

—Henry Boyle

## Endnotes

1. The acronym comes out of the research on negotiation conducted by the Harvard Negotiation Project.

This article was compiled, *inter alia*, based on the following:

- Chris Richards and Francis Walsh, *Negotiating* (Canberra AGPS, 1990).
- Roger Fisher & William Ury, *Getting to Yes* (Penguin Books, 1983).
- Lectures from the College of Law Sydney, Professional Program – EDR Workshop.

**Odia Kagan is an attorney admitted to practice in Israel and in New York. She is an associate in the Tel-Aviv, Israel, law firm Shavit Bar-On Inbar and may be reached at [okagan@sbilaw.com](mailto:okagan@sbilaw.com).**

# SOUND OFF!

## Young Lawyers Respond to the Question: ARE YOU ABLE TO BALANCE THE DEMANDS OF YOUR LEGAL WORKLOAD WITH YOUR PRIVATE LIFE? WHY? WHY NOT?

(Continued from page 4)

*such as blending into the office atmosphere and again trying to become more proficient. Probably the most difficult thing has been trying to pick up the difference between law school and private practice. I know how to draft the motion and argue it, but it is all the steps in-between that are the frustrating and difficult part. Which judge you can say what to, how to schedule which motion, which judge's calendar and what day and how to juggle multiple hearings in front of which judge.*

*Overall, though, it is a continuous learning experience and I look forward to meeting and beating the challenge. The law has so much to offer and we as officers of the court can make such an impact on the society in which we live with this degree.*

*To forward progress, but not forgetting to look out the rearview mirror."*

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*"I am not able to balance the demands because I am a solo practitioner and am not able to hire a paralegal to help me. Besides, some of the judges are very demanding and it makes matters worse. I have to take away a good amount of my private life for the legal work."*

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*"Because I am a law clerk for a federal judge, I am able to balance my professional and personal lives quite nicely. I have humane hours and a decent salary. My friends who work in big firms are*

*not able to do so since work takes all of their time and energy."*

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*"I am 33, have a family with two small ones, have been working since 1998, and a year ago decided to attend evening classes for an additional law degree. So, in addition to the regular demands of a full week of legal work during the day, and a couple more hours each night and on weekends, I try to balance my private life. I must confess that without an understanding and loving wife who takes most of the domestic workload off my shoulders, I would be lost. Even with her support it is not always easy, but the most important lesson I have learned so far is that clients do not dictate my life. I am always accessible via e-mail or cell phone if they cannot reach me in the office and this way I can avoid many misunderstandings or false expectations with short e-mails or brief telephone calls. The rule that works best for me: never let a client wait for your response more than one day, and if you cannot get to him within one day, let him know."*

Solo Practitioner in Florida/ University of San Diego School of Law, CA.

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*"Yes, but it always feels as if our family is balancing a fine line. With two parent-attorneys working full-time and two young children (1 and 3), life certainly gets hectic. I can only see this getting worse as my children grow older and become more involved in extracurricular activities. It requires constant communication between my spouse and me as to who has court, who is out-of-town, in trial, etc. It also requires some flexibility on my employers' part (which, thankfully, they have given me). I miss, however, being more involved in volunteer and*

*other extra activities that I no longer have time for. It would also be great if I had a robot housecleaner like Rosie from the Jetsons!"*

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*"Yes. I work for a small firm in Albany that supports having a 'life' outside of work and has allowed my schedule to be somewhat flexible. As the mother of a five-month-old, I cherish the time I spend with my daughter. I don't want to have any regrets for working more and missing these precious times with her. While working less may mean less money, I feel that I am rich in many ways."*

Albany, NY  
Albany Law School Graduate

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*"I'm balancing things better now than I used to because I have better organizing tools, habits, and my Christian faith. I'm a newlywed and my husband and I share the workload in the household. I try to plan my meals for the week over the weekend and I prepare all of the meals ahead of time. When I get home from work I just stick the food in the oven or the microwave.*

*I try to plan ahead as much as possible. I use a Palm Pilot to schedule meetings, conference calls and travel plans. I use a Blackberry to answer e-mails right away no matter where I am. My laptop is synchronized to my desktop so that I can access files from home or when I travel. I'm also a Christian and being active in my faith helps me keep everything in perspective."*

Ellie Jurado-Nieves

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*"The answer is yes. The reason is that I've learned over the years to set my boundaries and to realize that there are times at work when I have to give up my private life for a while, but when the pressure is over I don't keep going at that same high level. Once the crunch time is over then work stays in the office and I learn to manage time in the office so I don't have to let it spill over to my private life."*

\* \* \*

*"The key for me is refraining from physically bringing work home. I would rather stay at the office late and get the work done then get home more quickly and lose the separation between the two."*

\* \* \*

*"As a matter of fact, I am able to balance my workload with my private life now after a couple of years of practicing law. The reason is, of course, that I no longer have a private life. In my free time, I do my laundry and take showers. I belong to a gym I never have time to visit and I even have to pay someone else to walk my dog."*

*Working 3,000 hours a year totally sucks. Practicing law should not be like indentured servitude where once they have you it hurts your career to move much, so you have to stay in misery until burnout. Exceptions exist, of course, for those who need no sleep or who work for human beings."*

*I was speaking to a colleague at another firm and we both admitted that we had stopped making plans with our friends because we had to cancel them so often. After a while, all your friends are really old friends because you have no chance*

*to meet or develop new ones. Fortunately, there are a lot of take-out and delivery places in the city and cleaning ladies are easy to find."*

\* \* \*

*"Yes, I absolutely am able to balance the demands of my challenging caseload with my private life . . . that is, yes, ever since I left the large Wall Street law firm I used to work for and lateralled to a mid-size firm that believes in allowing you to go home."*

\* \* \*

*"I am a Captain in the U.S. Army Judge Advocate General's (JAG) Corps currently stationed in Balad, Iraq. I currently do not have a private life so it easy to balance my workload. We are doing some extremely important work here: prosecuting war crimes and law of war violations, protecting rights of enemy prisoners of war, reconstructing the Iraqi judicial system, and instilling human rights. All in all, my personal life does not seem that important right now. However, I would love to be home."*

\* \* \*

*"Yes, I have an excellent balance of work and personal life. This is primarily due to the flexibility and down-to-earth atmosphere of my firm. They encourage outside activities and are supportive of self and family. Additionally, I make sure I am productive and efficient while I'm in the office, so that I don't generally have to work late nights or weekends—it's about getting more done in less time but still doing a good job."*

\* \* \*

*"I work for a top national intellectual property law firm, which like most large law firms, requires over 2,000 billable hours a year. It is impossible as a new attorney to be at the office and bill the required hours and still have a life."*

*Many attorneys that I know never had a life before coming to the firm, so I guess for them it does not mean any change. For me, on the other hand, I cherish my private life. Even though the top firms now are paying about \$140K, at approximately 80 hours a week, that is like having two normal \$70K/year jobs. It's STUPID!!!!*

*I equate being a new attorney to being a worker in a sneaker factory. It is a manufacturing plant. The partnership is out to make money at your expense. They pay \$140K/year, but are billing you out at over \$200/hour. Let's say it's an even \$200/hour. That means that for a 2,000 billable year, the partnership is making \$400,000/year less your salary, which equals \$260K/year, less overhead and expenses. They are still making out like bandits. The whole industry sucks and I plan to exit law firm life ASAP."*

\* \* \*

*"I not only am able to balance the demands of my legal workload with my private life, but my office environment has added to my private life. The world of in-house counsel for a major insurance carrier has been the clientless 9-5 dream job that every attorney wishing for time to pursue other interests would hope to find. I have never been more content in my life . . . the main reason being happiness in my career."*

*Buffalo Law '98 currently on Long Island*

\* \* \*

***"The time to repair the roof is when the sun is shining."***

***—John F. Kennedy***



# The Young Lawyers Section Welcomes New Members

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***"The reason why worry kills more people than work is that more people worry than work."***

**—Robert Frost, American poet (1874–1963)**

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***"It is impossible to defeat an ignorant man in argument."***

**—William Gibbs McAdoo, American government official  
(1863–1941)**

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