

# Perspective

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

## A Message from the Section Chair

Carpe diem, indeed.

It seems very appropriate to begin my first message as Chair with the same words that our immediate past Chair, Greg Amoroso, ended his last message. A little over one year ago, when Greg became Chair and I became Chair-Elect, we quickly realized that we had similar priorities for the YLS. Under his leadership, we worked seamlessly together to ensure that the YLS developed new goals to better serve the young lawyers of this state. Greg began a great new period for our Section and I want to thank him for his hard work, dedication and vision. I wish him the best of luck in his future endeavors.

Today's young lawyers face challenges on a magnitude much greater than our predecessors. As this state's largest young lawyers group, we intend to lead the efforts to discuss and deal with these challenges. It has been my personal experience that many senior members of the bar do not understand that while our challenges are similar to ones they faced as young attorneys, the magnitude to which they affect our lives is beyond comparison. Fortunately, I am happy to report that as we continue to educate the senior bar about these issues, their response has been extremely positive.

One year ago, the YLS began discussing practical solutions to the issue of student loan debt. The overwhelming student loan debt of young lawyers is undoubtedly our greatest challenge. While paying for higher education with student loans has been a part of our predecessors' lives for many years, the burden and amount of that debt is at a level unimaginable to the senior bar. This incredible burden affects almost every aspect of our lives: the choice of jobs we can afford to take after law school, our quality of life, and the ability

*(Continued on page 21)*

## A Message from the Outgoing Section Chair

In my first message as Chair of the Young Lawyers Section, I announced that the Executive Committee of our Section had begun a project to focus attention on and develop solutions for the issue of overwhelming student debt. By the time this, my second and final message, is in print, the former NYSBA President, A. Thomas Levin, will have announced the formation of a committee to address the issues of student debt, including the tax treatment of student loan payments. Thank you to Scott Kossove, our new Chair, for his lobbying work, and thank you to President Levin for listening and acting swiftly!



Our Section will have representation on this committee, and will continue to work on solutions to the critical problems associated with student loan debt.

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# **Save the Dates!!!**

**January 24 - 29, 2005**

**128th NYSBA Annual Meeting, New York Marriott Marquis**

**Wednesday, January 26, 2005**

**YLS MCLE Program**

**and**

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

**Friday, January 28, 2005**

**Bridging the Gap for Newly-Admitted Attorneys**

offering eight (8) 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.

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**February 9 and 10, 2005**

**New York City**

**Bridging the Gap: Crossing Over Into Reality**

**9:00 a.m. - 5:00 p.m.**

Offering 16 MCLE Credits

Further Information to Follow

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**Friday, November 19, 2004**

**Deadline for Nominations to the Young Lawyers Section**

**2005 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 mailed the week of October 11th and will also be available on [NYSBA.org/yys](http://NYSBA.org/yys).

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**June 4-6, 2005**

**YLS Spring Meeting/U.S. Supreme Court Admissions Program**

**Washington, D.C.**

The 2005 Supreme Court Admissions Program in Washington, D.C., is an exceptional opportunity to be admitted to the Supreme Court and sit in on one of the High Court's Sessions. Be sure to mark your calendar and plan to join us.

# From the Editor's Desk

*"Super Slide Rules: Have Fun."*

— Sign posted on ride at *Grandpa Bob's Animal Park, Mexico, New York*

As many of you can probably relate, even when enjoying recreational activities with family and friends it is sometimes hard to "turn



off" the lawyer inside of us. As a municipal defense lawyer I find myself consistently playing a risk management role to ensure proper warning signage is in place (with proper wording and placement) or defects are corrected, etc., which, sadly, has permanently altered the way I think while at a playground with my own children or while taking a walk on an uneven or cracked sidewalk area . . . which brings me to the above quote.

It is unfortunate that so simple a gesture is such a rarity, to the point where one would expect signs like these to be relegated to a "Museum of Legal Oddities" so astonished law students and tort professors can gaze upon them for generations to come, pondering the ramifications. With

the state of things today, it is not hard to envision playgrounds and recreational areas with more warning signs and safety devices than actual equipment! That is, of course, if there are even play areas in place which are not cost prohibitive and insurable. Anyway, it is refreshing to see that plain common sense and old-fashioned fun still live on in some parts of the world.

On a related note and for those who, when not waxing nostalgic for simpler times, practice in the nuts-and-bolts world of litigation, for this issue attorney Richard Weber gives a good overview of the liability aspects involved with playground equipment which can be helpful for both plaintiff and defense counsel. Returning author Odia Kagan, when she is not traveling the world getting admitted to practice in different countries, submits another informative and useful article on an issue affecting anyone with access to the Internet—dreaded SPAM. Author and speaker David Dempsey serves up valuable practice tips when preparing for trial, and leadership coach and former NYSBA Director of Law Practice Management Stephen Gallagher provides a telling

overview of perceptions of the legal profession.

I was also impressed with the overwhelming response to the *Sound Off!* question regarding how to manage staggering student loan debt. Rather than turn into a gripe session, YLS members provided a wealth of practical financial and personal advice on how to address this problematic issue—certainly recommended reading.

In other housekeeping matters, it was discussed at a recent YLS Executive Committee meeting that readers might be interested in seeing shorter articles with an emphasis on practice tips, general advice, and brief summaries of new laws going into effect. Please feel free to send along any such articles for inclusion in future issues.

Complete back issues of *Perspective* can be found on the State Bar website: <<http://www.nysba.org/young>>. Please send all articles, reviews, humor, photos, artwork, *SOUND OFF!* responses via email to: [jamesrizzo9@juno.com](mailto:jamesrizzo9@juno.com). *Sunt superis sua jura.*

**James S. Rizzo**

*"Be who you are and say what you feel 'cause people who mind don't matter, and people who matter don't mind."*

—Theodor Seuss Geisel, American children's author (1904–1991)

# SOUND OFF!

## Young Lawyers Respond to the Questions: ARE YOU ABLE TO MANAGE THE DEBT FROM YOUR STUDENT LOANS?

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

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

*“Thank you for addressing this important issue. I work for a medium-sized firm in Albany and the fact is I am not able to manage my student loans. They’re basically the equivalent of a home mortgage loan. I’ve had to make income-sensitive repayments ever since I’ve been out of law school so that my family and I can afford food, rent, utilities and one car payment (I graduated within the last 5 years). We do not own a home although we’re going to attempt to buy one this summer. With the monthly student loan payment we can’t afford a home at the median price range and will be living in a lower-middle-class neighborhood. No wonder law schools are awash with rich white kids. Who needs racism and sexism to keep everyone else out? Cost is the new barrier to the legal profession. I’m a middle-class, public-school educated white kid and I’m raising my children in a neighborhood worse than the one I grew up in.*

*What would I tell law students or new attorneys? I hope your parents have money; otherwise, you are making/just made a pretty poor economic investment. Plan on living with school loans the rest of your life. Hope for legislative changes allowing student loans to be discharged in bankruptcy. That’ll be one long line at the bankruptcy court . . .”*

\* \* \*

*“I am able to manage my debt, but only because I consolidated my loan, and extended the time to pay (from 10 years*

*to 20 years). If not, I would not be able to handle my loan payments, which, at the time I started paying them 2 years ago, were as much as my monthly rent! Also, I worked while I was in law school and paid the interest on my loans (the interest begins accruing the minute the loan is paid out to the student), and therefore the interest was not added to the principal amount. When I graduated, the amount I owed was the principal only.”*

New York City

\* \* \*

*“The best way to make student loan debt work for you is to take advantage of the large sum of money that you owe and the interest that you will be paying. Instead of being subject to the \$2,500 maximum student loan tax deduction, which is scaled down depending on your income, you should take full tax advantage of the loan. Purchase a house or apartment and then plan on refinancing and rolling the student loan debt into the mortgage. This will allow you to deduct 100% of the “student loan” interest. If you are afraid that you cannot afford the payments on a mortgage, look into programs such as the 5/1 interest only ARM. Additionally, you do not need to wait until tax time to take advantage of the tax benefits that you will be getting—you can call your human resources person and increase the number of exemptions that you are claiming (your accountant can tell you*

*how many to take based on the size of your mortgage and your tax bracket) and you can increase your monthly paycheck by \$500 or more by implementing this strategy. This extra money will help service the student loan, and, as a major perk, you will be building equity in your home/apartment. This strategy can be combined with the purchase of a two-family house, where the rent you charge helps to service your mortgage loan. Most mortgage companies will allow about 70% of the rental income to be included as ‘income’ when you apply for the mortgage.*

*The views expressed herein are my personal views and in no way reflect the views of my firm.”*

Mike Boccio, Esq., Associate  
Carter Ledyard & Milburn LLP  
New York, NY

\* \* \*

*“I do manage my debt from my student loans, though I have to say it is difficult. While I could have made things easier on myself by choosing a different payment plan, I decided to go with the shortest set plan which allows it to be paid off in 10 years (though I can always pay more, I never am able). I could not stand the thought of having these loans hanging over my head any longer than that.*

*Unfortunately, I consolidated when I graduated in 2000 when interest rates were definitely not what they are today. I definitely recommend that people consolidate and take advantage of these great rates. Also, take advantage of all the extra rate reductions for paying on time*

(Continued on page 22)

**“The glory of each generation is to make its own precedents.”**

**—Belva Ann Bennett Lockwood, American social reformer  
(1830–1917)**

## **Tired of Billable 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:**

**HOW DO YOU MANAGE STRESS IN YOUR LIFE AND WORK?**

**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](mailto: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!

# Prepare to Prevail at Trial: A Seven-Step Plan

By David J. Dempsey

*“Excellence is an art won by training and habituation.  
We are what we repeatedly do.  
Excellence, therefore, is not an act but a habit.”*

—Aristotle

The final weeks before trial are chaotic. Attorneys are overwhelmed with enormous responsibilities, including analyzing testimony and case theories; coordinating schedules; monitoring deadlines; deciding on jury profiles; organizing exhibits; preparing direct and cross examinations; and supervising paralegals, legal assistants, and any other attorneys assisting with the case. Juggling these critical tasks while maintaining focus and perspective is challenging even for the most experienced trial attorney.



Nothing is more vital to the success of a trial than a detailed plan that is religiously implemented. While every litigation team will delegate responsibilities and adopt a specific plan that works best for them, set forth below are seven critical steps attorneys should consider when preparing for trial.

**1. Plan Meticulously.** Misunderstandings during intense trial preparation exacerbate everyone’s stress, and in some cases, they can have a significant adverse impact on the trial. Prepare a task list with time lines and specific deadlines for accomplishing each task. *Summation* and *Case Map* are two excellent software programs that provide litigation support for this purpose. Place the task list in a central location that is accessible to everyone at all times. It should provide such specifics as a

description of the tasks to be accomplished, who is responsible for accomplishing the tasks and supervising their completion, a status slot, and any other information essential to the case. Time is too precious for mistakes once you begin trial preparation. Eliminate the items on your list that you have neither the time nor resources to accomplish. While additional depositions or research might be useful, if the cost either in dollars or additional hours needed to complete the task is not justified, eliminate it.

*“We think in generalities, we live in details.”*

—Alfred North Whitehead

**2. Communicate Clearly.** Constantly communicate with your team. Hold everyone accountable, and let them know that you expect results, not excuses. Insist that they notify you immediately if they encounter a problem that cannot be resolved independently and quickly. Periodically update everyone on the status of the case. Assume the responsibility for eliminating confusion and keeping everyone focused.

*“Every great work is the fruit of patience, perseverance and concentration.”*

—Santiago Ramon Y Cajal

**3. Take Command of the Paperwork.** Your ability to control the flow of paperwork is vital to the success of your case. Ensure that all documents are marked, recorded, and organized in a manner that will be logical for you during trial. Summarize and annotate briefs and memoranda in a concise and logical fashion.

Always maintain the perspective of the judge or jurors—how can you present the evidence in a manner that will make your position clear and memorable? Clarity is critical.

**4. Know Your Judge.** Judges are creatures of habit and emotion, and they have a certain set of rules—written and unwritten—that they follow in their courtroom. Some have inflexible rules or idiosyncrasies that you violate at your peril, while others operate in a laissez-faire manner; some are irascible, and others very patient. Know as much as possible about the judge’s preferences and predispositions before you step into the courtroom. If there are written local rules, study them. If you know others who have tried cases before your judge, seek their insights. Learn from the mistakes of others.

*“Better to be wise by the misfortunes of others than by your own.”*

—Aesop

**5. Test Your Strategy.** Trials are stressful, regardless of how many cases you have tried. Attorneys frequently become so immersed in the details, they lose perspective, which may cause them to pursue a line of questioning, argument, or a case theory that will be lost on a layperson hearing the evidence for the first time. Analyze your strategies from the perspective of the judge or jurors. Are they clear? Are they descriptive? Do they flow logically and understandably? Do they tell a story that will resonate with the audience? Resolve inconsistencies or problems in your case now; do not

wishfully think that others will overlook them.

*"Eyes are more accurate witnesses than ears."*

—Heraclitus

### 6. Perfect Your Visual Aids.

Visual images have an undeniable impact that no amount of verbal description can capture. Ensure that they are designed with the listeners and the theory of the case in mind. Decide how they can be used for maximum impact. Here are a few rules:

- (a) **Avoid Complexity:** Visual aids should clarify and solidify your message. Too often, lawyers use visual aids that are packed with complex terminology, intricate diagrams, or confusing charts. These visual aids will only frustrate the judge and jurors.
- (b) **Limit Your Points:** The first step in designing your visual aids should be to determine the essence of your team's message. What points are absolutely critical for the judge or jurors to understand? Design your visual aids with these concepts in mind; then use numbers, bullets, or models that will facilitate easy understanding. Avoid too many lines, too much artistic flair, and too many distracting colors.

*"Things seen are mightier than things heard."*

—Alfred Lord Tennyson

- (c) **Plan Ahead:** Know the answers to the following questions well before the trial begins: How will you transport the visual aid to the courtroom? Will you be permitted to store the visual aid in the courtroom before and during the trial? Will there be an easel, stand, or table on which you can display your

visual aid? Will you need assistance moving or operating the visual aid? Are there any particular rules to which the judge adheres that would limit how and when you will be permitted to use your visual aid? Do you anticipate any objections by the opposing counsel or reluctance on the part of the judge to your use of visual aids? Plan and prepare in order to avoid needless scrambling and anxiety.

**7. Practice Courtroom Presentations.** The opening statements and closing arguments are vitally important, but they seldom receive the attention they deserve. Powerful and persuasive communication in the courtroom results only from focused practice, which will allow you to communicate with confidence and conviction. There is only a tiny window of opportunity to make your points in a convincing, and persuasive fashion. To enhance the chances of that happening, take the following steps:

- (a) **Ensure Clarity:** The sage philosopher Yogi Berra opined, "You've got to be very careful if you don't know where you are going, because you might not get there." Ensure that the presentations are consistent with the theme of the case. Share only the essential facts because all the minute details will overwhelm the jurors. Limit the presentation to only the key theories and compress it into an organized package that will inform and touch the judge and jurors.
- (b) **Ruthlessly Edit:** Remember to keep your presentation focused by providing the judge and jurors a precise road map of the case. The most persuasive, and memorable presentations were powerful because the message was clear, the language was

precise, and the storytelling logical and compelling. Redraft and revise your argument so that it can be easily understood and more importantly, not misunderstood by your audience.

- (c) **Practice:** Hone your presentations with practice. Identify problems or distractions: do you tightly cling to the lectern, mumble, speak without enthusiasm or vocal energy, stare at the floor, the ceiling or the visual aid, or nervously shuffle to dissipate energy? Eliminate any aspect of the presentation that diminishes its impact.

*"We cannot make it rain, but we can see to it that the rain falls on prepared soil."*

—Henri J. M. Nouwen

Careful planning is essential to the ultimate success of a case. There is no substitute for detailed preparation, a precise plan, and regular follow-up with your team. Most trials are won, or lost, based on the thoroughness of preparation. So when the gavel falls, plan and ensure that you are prepared to prevail.

David J. Dempsey, Esq. is a practicing 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 book, *Legally Speaking: 40 Powerful Presentation Principles Lawyers Need to Know* (Miranda Publishing, 2002), and founder of Dempsey Communications, LLC, a presentation skills training company dedicated to helping lawyers speak with power, passion, and persuasion in every forum. He can be reached at [www.legallyspeakingonline.com](http://www.legallyspeakingonline.com) or 1-800-729-2791.

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## TECHNO TALK

# “Have You Got Anything Without Spam?”<sup>1</sup>

By Odia Kagan

*“If you want to be your own boss and make money working from home while . . . shopping for cut-rate electronic products from China—you’re in luck . . .”*

—Michelle Delio<sup>2</sup>

### The Spam Problem

*“The ‘free’ distribution of unwelcome or misleading messages to thousands of people is an annoying and sometimes destructive use of the Internet’s unprecedented efficiency.”*

—Bill Gates<sup>3</sup>

Recently, more often than not, the “You’ve Got Mail” message appearing on your screen is only the opening to an onslaught of e-mails suggesting various pastimes and offering different products and investments which you neither wanted nor expected to find in your private e-mail inbox. Sometimes, you and others realize that some of these offers originated from . . . you or someone posing as you.

One definition given to the new epidemic popularly called “Spam” was “any e-mailed document or documents consisting of advertising material for the lease, sale, rental, gift offer or other disposition of any realty, goods, services or extension of credit, when the documents: (a) are addressed to recipients who do not have existing business or personal relationships with the initiator; and (b) were not sent at the request of or with the consent of the recipient.”<sup>4</sup>

Spam, or “unsolicited commercial electronic mail, is currently estimated to account for over half of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise.”<sup>5</sup> A recent study by the Pew Internet and American Life Project shows that 70 percent of e-mail users indicate that

Spam has made their online experience unpleasant or annoying.

*“Speech is not free when it comes postage due.”*

—Jim Nitchals

The widespread distribution of this phenomenon and the sheer volume of it substantially interfere with the operation of various public services. Its many adverse effects have led to spamming being referred to as the plague of the Internet.

*First, Spam causes a waste of time and money.* The added volume of messages and the need to use filtering devices to decrease them, causes a strain on ISPs for storing and processing the e-mails. This leads to a delay in the traffic of legitimate e-mail, slower Internet access and, subsequently, to an increase of the costs paid by the users. Unless its growth is stopped, Spam will render e-mail inboxes unusable, and will destroy the usefulness and efficiency of e-mail as a communication tool.

*Second, Spam is mostly based on deceit and theft.* In order to promote their e-mails, spammers often use various techniques to deceive recipients, including: a false subject line for the message, a falsified “sender,” as well as using innocent party servers without authorization for relaying their message. Furthermore, spammers force third parties to bear the cost of their unsolicited advertising, as it is such third parties who handle the messages and forward them to their destinations. While the sum for each such message may be small, the aggregate is great and

leads to money loss and market inefficiency.<sup>6</sup>

### Different Approaches

The ever-increasing problem caused by Spam has led professional organizations in the field and governments to look for a legislative solution. The challenge is to strike a balance between the increasing nuisance and cost of the volume of Spam and between the legitimate requirements of e-commerce. If the legislation would be too soft, it is unlikely to stop Spam and its spread into new areas such as cellular messages. On the other hand, regulation which is too strict may harm otherwise permissible commercial communications. Building on national experiences and legal outlooks, the Spam regulation acts in the U.S. and in the EU demonstrate different approaches.



### U.S. CAN-SPAM Act (January 2004)

*“Nothing in the Constitution compels us to listen to or view any unwanted communication, whatever its merit . . . We therefore categorically reject the argument that a vendor has a right under the Constitution or otherwise to send unwanted material into the home of another.”*

U.S. Supreme Court: *Rowan v. U.S. Post Office Dept.*, 397 U.S. 728.

The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, popularly named the CAN-SPAM Act, was signed into law by President Bush on December 16, 2003, and came into effect on January 1, 2004. The Act is targeted at preventing the inconvenience and added costs of unsolicited e-mail, but focusing primarily on e-mail whose senders purposefully disguise its source and those who purposefully include misleading information in the message subject line.

The focus of the Act is the stated desire or assertion of an electronic communications user not to receive unwanted mail. Therefore, unless otherwise prohibited under the Act, Spam is prohibited only if the recipient has “opted out” and indicated his desire not to receive such e-mail anymore.

The Act categorically prohibits fraudulent activity in connection with e-mail.<sup>7</sup> This includes: sending multiple commercial e-mails from a protected computer accessed without authorization, using a protected computer to relay such e-mail with the intention to deceive or mislead the recipient as to the identity of the sender (commonly called “spoofing”), and registration of false information when opening e-mail accounts from which the transfer of commercial e-mails will be initiated. The Act grants protections to recipients of e-mails by prohibiting the sending of false or misleading header information, and mandating the inclusion of a valid return address or similar mechanism, which will enable the recipient to “opt out” of receiving such e-mails. Once a recipient has “opted out,” sending commercial e-mail to him or her is explicitly prohibited.<sup>8</sup> In addition, the Act requires the inclusion of clear identification that the message is an advertisement or solicitation and the placement of warning labels on commercial e-mails containing sexually oriented material. Aggravated viola-

tions under the Act include obtaining e-mail addresses by using an automated means from an Internet site or online service (“harvesting”), automatic creation of multiple e-mail addresses, and relay or retransmission of e-mail through unauthorized access.

The federal Act overrides pre-existing state acts regulating unsolicited e-mail.<sup>9</sup> For a breach of the Act, a spammer would face a fine of up to \$250 for each e-mail message and fines that could amount, in aggregate, to \$6 million in case of a knowing and willful violation or a violation in aggravated circumstances. Enforcement of this Act is mainly carried out by the FTC, as if the violations were an unfair or deceptive act or practice under the Federal Trade Commission Act.<sup>10</sup> With regard to states, civil actions may only be initiated by the Attorney General, or an official agency of the state, on behalf of residents which they deem were hurt by a violation of the Act.<sup>11</sup>

The Act instructs that within six months, the FTC will submit a report to the Senate with regard to the establishment of a Do-Not-E-Mail registry and mandate a review of its effectiveness and possible need for amendment or update of its provisions within 24 months of its enactment.

### **EU Electronic Communications and Privacy Directive 2002/58/EC (July 2002)**

The Directive, which came into effect in July 2002,<sup>12</sup> regulates direct marketing in, from or to the European Union by electronic communications as well as the use of cookies.<sup>13</sup> The Directive takes a different approach. Unlike the U.S. Act, which

is focused on the protection of the consumer as part of the conduct of proper trade and commerce, the Directive puts the emphasis on ensuring the “rights and freedoms of natural persons with regard to the processing of personal data and in particular their right to privacy . . .”<sup>14</sup> as recognized in the Charter of Fundamental Rights of the European Union.

Therefore, under the Directive, unsolicited e-mail is prohibited without the prior consent of the recipient, that is, unless the recipient has “opted in.”<sup>15</sup> There is a limited exception to this rule which is with regard to (1) e-mail addresses of customers, which were obtained in the context of a sale of a product or a service and otherwise in accordance with the data protection requirements of the EU;<sup>16</sup> (2) the communication was issued by the same “Sender” (natural or legal person); and (3) for the marketing of the Sender’s products and services which are similar to the ones included in the original communication. However, in order for the exception to apply, the “customers” must not have previously “opted out” of receiving additional e-mail from such Sender and must be given the clear and distinct opportunity to opt out free of charge and in an easy manner to a valid return address. This opportunity must be afforded to the recipient in the said manner, in each additional communication.

The emphasis on the protection of privacy can also be seen in the Directive’s provision concerning the prevention of unauthorized access to communications systems. Such actions are prohibited primarily in order to safeguard confidentiality and privacy. However, the Directive also addresses the matter of fraudu-

*“If you’re strong enough, there are no precedents.”*

—F. Scott Fitzgerald, American author (1896–1940)

lent and deceptive conduct and prohibits sending e-mail for the purpose of marketing while disguising or concealing the identity of the Sender. Whereas the Directive is intended mainly for the protection of natural persons and does not require opt-in consent with respect to direct marketing communications to legal entities, the member states are instructed to ensure the protection of such entities in a manner they see fit.

### Will It Work?

The new anti-Spam laws, while well intentioned, may not achieve their goal in eliminating the bulk of e-mail received. More than two months after the CAN-SPAM Act came into effect, it seems to have had little effect, as inboxes continue to be flooded by unsolicited e-mail and providers of Spam-filtering software are blocking more messages than ever. Spammers may be either ignoring the law or finding ways to pretend to comply with its provisions. Some critics have begun to call the Act the “Yes You Can Spam Act.”<sup>17</sup> The problem continues in Europe as well, with the Directive in force for almost two years.

Certain CAN-SPAM critics are blaming the fact that the law is still new. They are saying that the situation will improve once the Federal Trade Commission, which is in charge of enforcing the law, commences to implement the law’s far-reaching punishments. Others, however, suspect that enforcement will prove difficult, as many small spammers will not have the funds to pay their fines. In the EU, the difficulty with enforcement, say critics, is that the Directive does not clearly indi-

cate which European agency is responsible for this matter.

Critics of both the U.S. and EU laws blame the cross-border dispute resolution mechanism in the laws. Fingers are pointed at the uncertainty with regard to cross-border disputes in the Directive as well as at the applicability of the CAN-SPAM Act to U.S. territory alone. As much of the illegal and deceptive Spam in the U.S. has been coming from overseas, it is assumed, that with the legislation of the Act, U.S. based spammers will simply move their operations overseas, making enforcement very hard. It is clear that in cases such as those, uniformity in enforcement across borders would be more effective.

Anti-Spam activists are concerned that the CAN-SPAM Act will lead to an increase in unsolicited mail from otherwise reputable companies, which is protected by the Act as long as the opportunity to “opt out” is provided. Such activists fear that this will make “opting out of spammers” a very popular pastime in 2004.<sup>18</sup> However, opting out poses a problem in itself if the Sender is not legitimate. It is assumed that many users will prefer not to opt out to risking confirming their e-mail addresses to illegitimate businesses. Supporters of the Act dismiss this argument based on an FTC report that legitimate advertisers presently account for only 16.5 percent of Spam.<sup>19</sup>

The opt-in mechanism used in the EU Directive is just as vehemently criticized. Critics claim it is unduly restrictive and particularly difficult to apply in a business context, where it is quite often difficult and

burdensome to ascertain the identity or receive the prior consent of recipient. They believe the opt-out mechanism, which allows some direct contact between the advertiser and the consumer, is the better balance. Even supporters of the opt-in approach say that as drafted, its exception and the “similar products” requirement are too narrow and provide very limited ability for marketing.

### Problem with Legislation as the Solution

Professionals in the field believe that the laws themselves are not at fault, but rather that the solution to Spam will likely be technological, not legal. One suggested method is to change the architecture of e-mail itself. One way would be to revise the code for delivering e-mail so that ISP’s can check whether the origin of the e-mail has been faked or a challenge/response system requiring a reply from a human or sending a computational puzzle that only a computer sending a few messages would be able to handle, while a mass-mailer would not.<sup>20</sup> Bill Gates believes that the solution will finally be found only by making spammers pay substantial amounts for each unsolicited e-mail.<sup>21</sup>

However, in the meantime, we can only look up and see the three new vacation spots, four new appliances and five alternatives for improving our looks, which have made their way into our inbox during the time we spent reading these lines . . .

### Endnotes

1. *Monty Python’s The Final Rip Off*, “Mrs. Bun, The Spam Sketch,” at <http://www.ironworks.com/comedy/python/spam.htm>.
2. Michelle Delio, *How One Spam Leads to Another*, July 3, 2002, at <http://www.wired.com>.
3. N.Y. Times, 1998, at <http://www.microsoft.com/billgates/columns/1998Essay/3-25col.asp>.

***“Be master of your petty annoyances and conserve your energies for the big, worthwhile things. It isn’t the mountain ahead that wears you out—it’s the grain of sand in your shoe.”***

**—Robert Service, Canadian poet (1874–1958)**

4. California Business and Professions Code § 17538.4(e), at <http://news.findlaw.com/hdocs/docs/cyberlaw/frgsnfrndfdrs10202opn.pdf>.
5. Congress's findings as stated in CAN-SPAM Act § 2(a)(2).
6. See, e.g., <http://www.cauce.org>; <http://www.euro.cauce.org>.
7. CAN-SPAM Act sec. 4, § 1037.
8. *Id.* sec. 5, § (a)(1)-(4).
9. Sec. 8 of the Act, but the section does not preempt pre-existing state laws which are not specific to e-mail, such as torts, fraud or computer law.
10. Sec. 18(a)(1)(B), 15 U.S.C. 57a(a)(1)(B). Sec. 7 of the Act lists other agencies in charge of enforcement for violations which could fall under other Acts which are listed.
11. Sec. 7(f) of the Act.
12. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications (Directive on Privacy and Electronic Communications) OJ L 201, July 31, 2002, p. 37. The deadline for implementation of the Directive by the Member States of the EU in their national legislations was October 31, 2003.
13. The Directive aims to be technologically neutral, defining "electronic communications" as including "any text, voice, sound or image." Therefore, the term applies to e-mail as well as text messages (SMS) and picture messages (MMS). With regard to unwanted mobile service commercial messages, the U.S. Act instructs the FTC in conjunction with the FCC to promulgate rules to protect consumers within 270 days of its enactment (Sec. 14 of the Act).
14. From the preamble to the Directive and Article 1, § 1.
15. Article 13 of the Directive.
16. E.g., the EU Data Protection Directive (Directive 95/46/EC of October 23, 1995).
17. Amit Asaravala, *Tomorrow's Menu: Spam, Spam, Spam*, December 11, 2003, at <http://www.wired.com>.
18. Joanna Glasner, *Open Up a Can of Spam*, January 16, 2004, at <http://www.wired.com>.
19. See, e.g., Anita Ramasastry, *Why the New CAN Spam Law Probably Won't Work*, January 12, 2004, at <http://www.findlaw.com>.
20. See *The Spam Problem: Moving Beyond RBLs*, at <http://theory.whirlycott.com>.
21. Paul Geitner, *Make Spammers Pay*, *Bill Gates Says*, AP, January 28, 2004, at <http://www.findlaw.com>.

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# Playground Personal Injury Law—A Primer

By Richard L. Weber

Each year an estimated 200,000 people visit hospital emergency rooms for injuries related to playground equipment, with the majority of these injuries involving children under age 15.<sup>1</sup> This article provides a rudimentary primer on case law and statutory authority related to playground personal injury claims.



## I. Effect of the General Municipal Law

Where the alleged injury occurred at a municipal or school playground, the prospective plaintiff must comply with the requirements of General Municipal Law § 50-e before filing suit. This statute requires filing of a “notice of claim” within ninety (90) days from the date the claim arises.<sup>2</sup> The notice of claim should include enough information to identify the place, fix the time, and describe the nature of the claim.<sup>3</sup> In the event plaintiff fails to serve a timely notice of claim, he or she may apply to the court for permission to serve a late notice of claim.<sup>4</sup> However, the court must consider several factors in evaluating the application, including: (a) whether the municipal entity acquired actual notice of the essential facts of the claim within the ninety-day period; (b) whether the movant demonstrated a reasonable excuse for the delay; and (c) whether the delay would substantially prejudice the defense of the municipal entity.<sup>5</sup>

Upon service of the notice of claim, the prospective defendant is entitled to an examination of the claimant.<sup>6</sup> The examination is usually upon oral questions, and should relate directly to the occurrence and

the extent of the injuries or damages.<sup>7</sup> The prospective defendant must demand the examination within ninety (90) days of the filing of the notice of claim—a demand is without effect unless served within the ninety-day period.<sup>8</sup> Where a demand has been served, no action shall be commenced against the school or municipal entity until the claimant submits to the examination.<sup>9</sup> Lastly, General Municipal Law § 50-i provides a statute of limitations for commencing an action against the municipal entity: claimant must commence the action (or special proceeding) within one year and ninety days after the happening of the event that caused the personal injury.<sup>10</sup>

## II. Common Theories Available to Plaintiff

The two most common theories of recovery involve allegations of defective or dangerous conditions at the playground and/or inadequate supervision of the playground.

### A. Defective or Dangerous Conditions

A playground operator has a duty to maintain its facilities in a reasonably safe condition.<sup>11</sup> Liability may lie where the playground operator creates an unsafe or defective condition.<sup>12</sup> The duty to maintain encompasses not only the playground apparatus and equipment, but the surrounding ground cover as well.<sup>13</sup> This duty also extends to addressing weather-related conditions such as snow and ice.<sup>14</sup>

The playground operator must have actual or constructive notice of the alleged defect or condition.<sup>15</sup> Proof of defective design or maintenance usually requires expert evidence, supported by proper inspection of the accident scene.<sup>16</sup> The mere failure to meet non-mandatory recommendations or guidelines is insufficient to prove that a playground sur-

face or piece of equipment is inherently dangerous.<sup>17</sup>

### B. Negligent Supervision/Failure to Supervise

The issue of negligent or inadequate supervision frequently arises when the injury occurs on a school playground during school hours. A school is under a duty to adequately supervise the students in its charge, and may be held liable for foreseeable injuries proximately related to the absence of adequate supervision.<sup>18</sup> The duty is characterized as that degree of care that a parent of ordinary prudence would exercise under comparable circumstances.<sup>19</sup> To survive a motion for summary judgment, plaintiff must show both that the playground supervision was inadequate, and that the deficient level of supervision was the proximate cause of the incident.<sup>20</sup> Where an accident occurs in so short a span of time that even the most intense supervision could not have prevented it, lack of supervision will not be deemed the proximate cause of the injury and summary judgment in favor of the school will be warranted.<sup>21</sup>

## III. Defenses Available to Defendant

Several defenses may be available to the playground operator. As to inadequate supervision claims, the operator may argue that inadequate supervision was not a proximate cause of the injury, or that the accident occurred so quickly that a higher level of supervision would not have made any difference.<sup>22</sup> Defendant may also assert assumption of risk by the plaintiff: It is well established that a participant engaging in a sport or recreational activity can consent to the commonly appreciated risks that are inherent in and arising out of the activity, a principle that courts have extended to infants playing on playground equipment.<sup>23</sup> Lastly, a plaintiff may be precluded from recovery

where his or her injuries were the direct result of plaintiff's own negligence.<sup>24</sup>

#### IV. Conclusion

Playground injury cases are plentiful, and this article offers only a brief glimpse into the body of law surrounding these tort actions. New practitioners are cautioned to carefully evaluate the particular facts of the case at hand when determining how to prosecute or defend a playground injury case.

#### Endnotes

1. Consumer Products Safety Commission, Special Study: Injuries and Deaths Associated with Children's Playground Equipment, April 2001, at 1, available at <<http://www.cpsc.gov>>.
2. Gen. Mun. L. § 50-e(1)(a).
3. *Id.* at 50-e(2); *Perre v. Town of Poughkeepsie*, 300 A.D.2d 379, 752 N.Y.S.2d 680 (2d Dep't 2002).
4. *Id.* at 50-e(5).
5. *Id.*; see also *Perre*, 300 A.D.2d at 380; *Barnes v. New York City Housing Auth.*, 262 A.D.2d 46, 691 N.Y.S.2d 463 (1st Dep't 1999); *Matter of Alvarenga v. Finlay*, 225 A.D.2d 617, 639 N.Y.S.2d 115 (2d Dep't 1996).
6. Gen. Mun. L. § 50-h.
7. *Id.*
8. *Id.* at 50-h (2).
9. *Id.* at 50-h (5).
10. *Id.* at 50-i (2). Note that the CPLR 208 toll for infancy applies to the Gen. Mun. L. § 50-i statute of limitations. See *Blackburn v. Three Village Central School*, 270 A.D.2d 298, 705 N.Y.S.2d 53 (2d Dep't 2000). Also note that the statute provides for a two-year limitations period in wrongful death actions.
11. See *Prosser v. County of Erie*, 244 A.D.2d 942, 665 N.Y.S.2d 216 (4th Dep't 1997).
12. See *Davidson v. Sachem Central School Dist.*, 300 A.D.2d 276, 751 N.Y.S.2d 300 (2d Dep't 2002).
13. See *Banks v. Freeport Union Free School Dist.*, 302 A.D.2d 341, 753 N.Y.S.2d 890 (2d Dep't 2003).
14. See *Rivas v. New York City Housing Auth.*, 261 A.D.2d 148, 689 N.Y.S.2d 483 (1st Dep't 1999) (noting issue of fact whether defendant had constructive notice of ice accumulation for sufficient period of time in which to discover and remedy it).
15. *Pecore v. City of Syracuse*, 298 A.D.2d 978, 747 N.Y.S.2d 883 (4th Dep't 2002).
16. See *Washington v. City of Yonkers*, 293 A.D.2d 741, 742 N.Y.S.2d 316 (2d Dep't 2002); *Banks*, 302 A.D.2d 341.
17. *Capotosto v. Roman Catholic Diocese*, \_\_\_ A.D.2d \_\_\_, 767 N.Y.S.2d 857 (2d Dep't 2003); *Davidson*, 300 A.D.2d 276.
18. *Capotosto*, 767 N.Y.S.2d 857 (citing *Mirand v. City of New York*, 84 N.Y.2d 44, 614 N.Y.S.2d 372 (1994)); *Banks*, 257 A.D.2d at 723.
19. *Mirand*, 84 N.Y.2d at 49; *Merson v. Syosset Central School Dist.*, 286 A.D.2d 668, 730 N.Y.S.2d 132 (2d Dep't 2001); *Pike v. Gouverneur Central School Dist.*, 249 A.D.2d 820, 671 N.Y.S.2d 872 (3d Dep't 1998).
20. *Navarra v. Lynbrook Public Schools*, 289 A.D.2d 211, 733 N.Y.S.2d 730 (2d Dep't 2001); *Lopez v. Freeport Union Free School Dist.*, 288 A.D.2d 355, 734 N.Y.S.2d 97 (2d Dep't 2001).
21. *Lopez*, 288 A.D.2d at 336.
22. See *supra*.
23. See *Auwater v. Malverne Union Free School Dist.*, 274 A.D.2d 528, 715 N.Y.S.2d 852 (2d Dep't 2000). Note that courts may question whether a very young child possessed the capacity to appreciate the risk assumed. See *Trainer v. Camp Hadar Hatorah*, 297 A.D.2d 731, 748 N.Y.S.2d 386 (2d Dep't 2002).
24. See *Feldman v. South Huntington School*, 290 A.D.2d 529, 736 N.Y.S.2d 607 (2d Dep't 2002); *Ascher v. Scarsdale School Dist.*, 267 A.D.2d 339, 700 N.Y.S.2d 210 (2d Dep't 1999) (plaintiff's unsuccessful attempt to perform a "back flip dismount" from a moving playground swing was sole proximate cause of his injuries); *Osbourne v. Olean Board of Education*, 186 A.D.2d 1059, 588 N.Y.S.2d 489 (4th Dep't 1992).

**Richard L. Weber is a litigation associate in the Syracuse, New York office of Bond, Schoeneck & King, PLLC. He also serves as the Young Lawyers Section Liaison to the NYSBA Trial Lawyers Section.**

***"Looking foolish does the spirit good. The need not to look foolish is one of youths many burdens; as we get older we are exempted from more and more."***

**—John Updike**

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# An Outsider's Look at the Legal Profession

By Stephen P. Gallagher

During my thirteen years as the NYSBA Director of Law Practice Management, I had the pleasure of working with local bar associations



throughout the state to offer CLE programs targeting the business/ leadership needs of solo and small firm practitioners. I also enjoyed working with literally hundreds of individuals in helping them develop skills and competencies needed to manage a law practice. Before joining the bar association in 1990, I had helped attorneys gain better balance in their lives, careers, and law practice through my early work as a career placement advisor and Director of Administration at Temple University School of Law. I had become an early advocate for leadership skills training beginning in law school, and this continues to be a difficult challenge for the profession.

I recently joined Atticus, Inc., an executive coaching firm, that works exclusively with attorneys to help individuals adapt to change, build a sustainable profitable law firm and support these key individuals in achieving balance in professional and personal life. I continue my teaching and lecturing through my bar association work, and through teaching responsibilities in a graduate program in Strategic Leadership at Neumann College in Aston, PA.

I was proud to participate in this year's NYSBA Annual Meeting program with the Young Lawyers Section, and after spending time with a number of the program participants, I thought I might be able to leave you with some thoughts that may help the Section in planning future

programs and activities. Many people spoke about the high cost of entering the profession and the difficulty in finding one's way.

I recently completed teaching a graduate-level course in *Knowledge Management* and I'd like to share some feedback I received from adult learners who had very little experience with the delivery of legal services. I trust there may be something of value for YLS members. I assigned the class an exercise to study attrition rates for law school graduates along with the dissatisfaction that seemed to evolve from higher billable expectations and the undercurrent of resentment from partners who struggle to accept the wages paid to "novice" lawyers (*Keeping the Keepers II*, 2003, p.16). One of our goals was to determine if bar associations could do anything to help entry-level attorneys deal with this complex problem. I had sensed that everyone had taken the position that it was just someone else's problem.

One of the texts we referenced was *The Support Economy*, which gave us a chance to examine how organizations—including law firms—are failing individuals. Professor Shoshana Zuboff laid the foundation by introducing the idea that, "the Economic Revolution we are experiencing arises from the complex interplay of three forces: a new structure of consumption, technologies aligned with the new consumption, and a new enterprise logic capable of linking people, technologies, and markets in a new way." (S. Zuboff, *The Support Economy*, p. 32).

According to Zuboff, over the past twenty years we are seeing the rise of a new breed of individuals that have changed far more than the organizations upon which they depend. We examined the attrition rate problem in order to learn how to

bridge the gap or chasm that now separates "entry-level attorneys" and their interests from traditional bar associations and their interests. We found that this relationship is frequently marked by frustration, disappointment and mistrust. Although we were unable to find a single cause-and-effect relationship to account for why so many young attorneys were choosing not to join bar associations, it seemed clear to the students that bar associations were the logical organization in a position to intervene on individuals' behalf.

Professor Zuboff convincingly argued that there has been a growing presence of *new kinds of people* who yearn to live differently than people lived in the past. Today, people share, *new dreams of psychological self-determination* that, in turn create *new markets* characterized by wholly new approaches to consumption. Our students agreed strongly with Dr. Zuboff who stated that, "Individuals do not want to be the object of commerce, treated like anonymous pawns in the exploitive games of market segmentation, penetration, and manipulative pseudo-intimacy. Young people want to "opt in" and make their own choices, controlling their destinies and their cash. They want their voices to be heard, and they want them to matter." (S. Zuboff, *The Support Economy*, p. 10). My class of adult learners felt that bar associations that continue to treat members as anonymous "consumers" of CLE programs and materials will increasingly struggle in this changing world.

My students developed another theory based on Professor Zuboff's suggestion that entry-level attorneys and their clients are expressing a very different orientation towards consumption as compared with the generations that preceded them. If bar associations hope to survive,

they will have to find ways to better serve these new “consumers.” Students felt very strongly that professional associations do have an important role to play in establishing new standards for the profession, so bar associations will need to involve entry-level stakeholders in developing the framework for entirely new lines of service for attorney members and their clients.

Finally, our students agreed with Professor Zuboff’s conclusion that, “Fortunes will be made, as a new kind of commercial enterprise learns how to make money by authentically supporting the new individuals in their quest for psychological self-determination. (S Zuboff, *The Support Economy*, p. 8). If bar associations cannot respond to the current challenges they face in attracting and keeping young people, these new consumers will create solutions in new ways. Bar associations, as they currently look may not survive in the years ahead.

“For millions of people today, including entry-level attorneys, life is no longer foretold, but rather is an open canvas waiting to be painted by individual choice.” (S. Zuboff, *The Support Economy*, p. 65). The attrition problem for entry-level attorneys is a vestige of past times. Individuals cannot solve this problem themselves, but bar associations can play an important role in bringing people together to solve this complex problem.

My students thought young people would want two critical questions answered by bar associations:

1. What new types of client services should attorneys seek to provide in five, ten, or fifteen years?

2. What new skills and competencies will lawyers need to provide these new services to clients?

The thought that fewer than half of entry-level attorneys remained with their first law firm employers for their fifth year anniversary date was seen as an opportunity for bar associations to intervene on behalf of the individuals they wish to represent. It was felt that professional associations should provide members with a broader “pallet of paints,” and just stand back to allow members the freedom to begin painting their own open canvas of life.

In summary, our students concluded that bar associations can and should help entry-level attorneys with the high attrition rates they face in entering the legal profession. Bar associations do have an increasingly important role to play in re-shaping standards of excellence for the profession. This means that the bar associations will need to abandon long-established procedures and look afresh at the work required in creating new services in order to deliver new value to clients. More precisely, bar associations have to create the environment where their *members can create new value* for their clients, or they will surely go elsewhere.

**Stephen P. Gallagher was the Director of the Law Practice Management Department at the New York State Bar Association for 13 years. He retired from the bar and is now working as an Executive Coach for attorneys through LeadershipCoach.us and Atticus, Inc. This article is based on a Knowledge Management course Mr. Gallagher taught at Neumann College, Aston, PA.**

***“Every adversity, every failure, every heartache carries with it the seed of an equal or greater benefit.”***

**—Napolean Hill (1883–1970) U.S. motivational author**

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Shoshana Zuboff and James Maxmin, *The Support Economy: Why Corporations are Failing Individuals and the Next Episode of Capitalism*, (New York: Penguin Group, 2002).

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# Young Lawyers Section News and Events

Over the past year there has been a flurry of activity in the YLS. At the



**Aarti Tandon**

NYSBA Annual Meeting in New York City this past January, the YLS offered a three-part program: "Navigating the Electronic Minefield"; "So You Want to Go Solo: The ABC's

of Setting Up Your Own Practice"; and the "CPLR Update with Distinguished Professor of Law David D. Siegel." Panelists provided the latest information and gave sound advice to all attorneys involved with these issues and/or considering opening a solo practice. Program Chairperson for the event was Magdale L. Labbe, Esq., of Proskauer Rose LLP, Newark, NJ. Speakers for the event included: Michael T. Mervis, Esq., Proskauer Rose LLP, New York City; Stephen P. Gallagher, Leadership Coach, Neumann College, Philadelphia, PA; Hal R. Lieberman, Esq., Edwards & Angell, LLP, New York; Leonard E. Sienko, Jr., Esq., The Sienko Law Office, Hancock; Aarti Tandon, Esq., Law Office of Aarti Tandon, New York; and David D. Siegel, Distinguished Professor of Law at Albany Law School of Union University.

"Life After the LLM: Navigating the Legal Marketplace that Awaits," a panel discussion sponsored by the International Law and Practice Section and the Young Lawyers Section, took

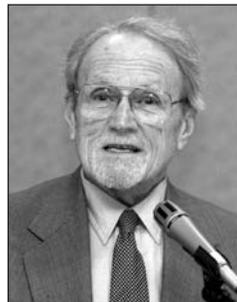


**Stephen Gallagher**

place on October 15, 2003, at the Fordham University Law School Amphitheater. A panel of distinguished international lawyers from companies and law firms with an international practice shared their insights into what students can

expect when seeking positions, what the interview process is like, and the types of positions available. The program provided students with an opportunity to obtain valuable information and ask questions about the employment process. Following the panel, a reception took place where students were able to talk further with the panelists and other lawyers who shared their thoughts about the practice of law in the United States.

On March 3, 2004, the YLS joined the Onondaga County Bar Association New Lawyer Section in hosting its Fourth Annual Winter Reception at the Corinthian Club in Syracuse, New York.



**Prof. David Siegel**

The Spring 2004 YLS Executive Committee meeting featured a strategic facilitation conducted by former YLS Chair Sue (Bernis) Gray. The purpose was to reinvigorate the YLS by agreeing on a new vision, goals, and projects that will be undertaken.

As part of the second phase of its program to assist law school graduates with repaying loan debts, a **Special Committee to Study Student Loans** has been appointed. This new group will be led by current YLS Chair Scott Kossove of Garden City (L'Abbate Balkan Colavita & Contini, LLP). The new committee will investigate and make recommendations to the bar's Executive Committee regarding federal legislation that would amend the Internal Revenue Code to allow full deduction for interest paid on student loans obtained for attending an institution of post-secondary education, such as law school. If you would like to comment or be involved in this important com-

mittee please contact Scott Kossove or Jean E. Nelson II, Associate Director, CLE, at [jnelson@nysba.org](mailto:jnelson@nysba.org).

"Now that you've turned 18" has been published by the YLS Committee on Public Service and Pro Bono to give young adults an overview of their basic legal rights and responsibilities. You can view or download this publication on the NYSBA website by going to <http://www.nysba.org/18>. Another useful 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.

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.

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 issue. Watch for your *Electronically In Touch* e-mail/fax newsletter and check the YLS website <http://www.nysba.org/young> for more up-to-date information on YLS activities and upcoming district events near you.



**Michael T. Mervis**



**Leonard Sienko**

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

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

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

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

- the writing must be legal research-based

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

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

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

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

**John G. Horn**  
**2004**  
**Outstanding Young Lawyer**  
**Award Recipient**



The New York State Bar Association Young Lawyers Section is pleased to honor John G. Horn with the 2004 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.

John G. Horn didn't get to live out his dream of being able to look over his shoulder to see Michael Jordan running down the court ready to catch an alley-oop pass. The only court he walks on these days is one with judges and jurors when he appears on behalf of clients.

Mr. Horn received his undergraduate degree from the University of Rochester (1989), earned a Master's degree from Northwestern University and was awarded a law degree, cum laude, from Loyola University Chicago School of Law (1998). He concentrates his law practice in commercial litigation as well as product liability, employment discrimination, personal injury, and patent and trademark infringement.

Following law school, Horn worked as a confidential law clerk to U.S. District Court Judge John Elfvin and then joined Harter Secrest in 2000.

He values being part of the Buffalo community. Horn is the founding member and vice president of Lawyers for Learning, an organization which has helped to pair more than 300 members of the legal community with students from Buffalo's inner-city School 18 in one-on-one weekly tutoring sessions. He's also been a tutor for more than four years.

In 2002, the U.S. District Court for the Western District of New York awarded him a special recognition for his pro bono work involving a prisoner civil rights case which took two years to resolve. His efforts, and that of a fellow attorney, resulted in the review and improvement of procedures for prisoners confined in administrative segregation. He also volunteers his time to charities and non-profit organizations such as Habitat for Humanity, National Multiple Sclerosis Society, and the American Diabetes Association.

His professional memberships include the Bar Association of Erie County, American and New York State Bar Associations. As a regular continuing legal education presenter, he has lectured throughout Western New York on subjects dealing with ethics and protecting trade secrets. He served as a deacon at the Westminster Presbyterian Church, following in the footsteps of his father, grandfather, uncle and great uncle.

When recognizing Mr. Horn for this award, NYSBA Young Lawyers Section Chairperson Gregory J. Amoroso of Utica (Saunders, Kahler & Locke, LLP), stated, "John Horn's selfless devotion to public service and commitment to professionalism are the hallmarks of a young lawyer. He 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 Mr. Horn has made to the organized bar, legal community and the public throughout Buffalo make him 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 Scott E. Kossove at (516) 837-7405; Fax: (516) 294-8202; or E-mail: [skossove@lbclaw.com](mailto:skossove@lbclaw.com).

## Available on the Web

### Young Lawyers Section Newsletter *Perspective*

[www.nysba.org/young](http://www.nysba.org/young)



**Back issues of the Young Lawyers Section Newsletter (*Perspective*) (2000-present) are available on the New York State Bar Association Website.**

*Back issues are available at no charge to Section members. You must be logged in as a member to access back issues. For questions, log-in help or to obtain your user name and password, e-mail [webmaster@nysba.org](mailto:webmaster@nysba.org) or call (518) 463-3200.*

### ***Perspective* Index**

For your convenience there is also a searchable index in pdf format.

To search, click "Find" (binoculars icon) on the Adobe tool bar, and type in search word or phrase. Click "Find Again" (binoculars with arrow icon) to continue search.

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## A Message from the Section Chair

(Continued from page 1)

to purchase a home for our families, amongst others.

We immediately drafted a proposal for the formation of a presidential committee to study practical solutions to this issue. I personally took this proposal to the immediate past president of the NYSBA, A. Thomas Levin. Past President Levin, who has been a great supporter and friend to the YLS, immediately formed a presidential committee called the Special Committee to Study Student Loans. This committee is comprised of members of the bar with various backgrounds and specialties, including young lawyers and experts on tax law. Needless to say, this is an incredibly exciting development for the YLS. Over the course of the next year, this committee will be working on specific federal legislative proposals, with the goal of providing relief to all young professionals who have student loan debt.

The YLS is also taking the lead in acting upon the senior bar's recent initiatives to increase its diversity. The YLS is the most diverse section within the bar, but there is much more to do. At this past January's first NYSBA diversity reception, the current president, Ken Standard, discussed the importance of minorities not just joining a minority bar, but joining the NYSBA as well. Our Section is in the process of finalizing and adopting our own diversity statement. Coupled with that statement is an action plan to further increase our membership's diversity. Many of our members will, over the course of the next year, be meeting

with minority bar association leaders to discuss joint event planning and the importance of increasing our Section's diversity.

The time has also come for the senior bar to recognize the critical importance and necessity of young lawyer involvement throughout all levels of the bar. We are the bar's future. Yet, when the bar recently undertook an effort to deal with its future leadership and structure, it did not consider amending its bylaws to require a position on its executive committee for a young lawyer. This would guarantee that the perspective of the young lawyer would always be represented. To date, the NYSBA is unfortunately one of only two voluntary state bar associations in the country that does not have a mandatory position on its executive committee for a young lawyer. This, however, will change in the future. The importance of this issue cannot be minimized and is the reason that our Section will lead the effort to amend the NYSBA's bylaws to require that a young lawyer hold a position on its executive committee. This is the beginning of a persistent campaign that will not end until we are successful.

These are only a few of the many bold and practical initiatives our Section is working on. It is a very exciting time to be a member of our Section, and I encourage all of you who want to be active in the YLS to contact me at [skossove@lbcclaw.com](mailto:skossove@lbcclaw.com), or Terry Scheid, our bar liaison, at [tscheid@nysba.org](mailto:tscheid@nysba.org).

Scott E. Kossove

*"In the end, you're measured not by how much you undertake but by what you finally accomplish."*

—Donald Trump

## A Message from the Outgoing Section Chair

(Continued from page 1)

But we must not stop there.

We need to focus attention on our other issues and concerns, including the flexibility of work schedules. In today's society, most new families are raising children in households with two working parents. If one of those parents is an attorney and is expected to work a sizable amount of hours each week, the resulting burden on his or her spouse can be enormous. This burden may become unmanageable if both parents are in the legal profession.

Today, young lawyers face incredible challenges; student loan debt and inflexible work schedules are only the tip of the iceberg. Therefore, we must ensure that we have a voice, that our issues are on the table, are discussed and are addressed. To that end, we have made efforts to increase young lawyer representation on NYSBA's governing bodies and committees. We have not been successful so far, but have submitted a new proposal to the bylaws committee, seeking an amendment to mandate the inclusion of a young lawyer on NYSBA's executive committee.

Our success as a section will only come from the full effort of our membership. All young lawyers need to get involved at the earliest stages of their careers to ensure that the "big" bar and the "older" lawyers are aware of our challenges, and will look for solutions to our problems.

The only way that we will have an impact is with an active membership and a full and dedicated executive committee.

Carpe diem.

Gregory J. Amoroso

# SOUND OFF!

## Young Lawyers Respond to the Questions: ARE YOU ABLE TO MANAGE THE DEBT FROM YOUR STUDENT LOANS?

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

(Continued from page 4)

and using automatic withdrawal. Anyone who is able to take out a home equity line mortgage on their home would be wise to do so and use the money to pay off their student loans (assuming their student loan rates are higher than the home equity). You may not only reduce your interest rate, you can also deduct the interest paid on the home equity line on your taxes. This is a great benefit, since most attorneys exceed the cap for being able to deduct the interest on their student loans on their taxes."

\* \* \*

"Although I am very fortunate to take home the big firm money and I actually love my job, I cannot begin to emphasize the pressure that a large student loan debt exerts on my career. If I become unhappy, I do not have the flexibility to change to a job that pays less. Although people who work in big firms make enough to pay the loans, and even many public interest attorneys are able to take advantage of loan repayment assistance programs at their schools, there is a large contingency in the middle that have large debt but do not have a big firm job, nor do they want to do public interest law.

A good idea for a future law student is to think long and hard about what you are interested in. If you want to work at a large firm, but you have not been accepted to a top-tier school, then you would probably do best to go to a state school rather than spend more money (and incur more debt) by going to an expensive school that is not top-tier. At either school, only if you are in the top of your class will you be able to get the big money. If you are interested in public interest law, evaluate your prospective

schools carefully based on their loan repayment assistance programs. Last, do not go to law school for the money you think you might earn; only do it because you think you will love it. Otherwise, it won't be worth it while you're there, and it certainly won't be worth it being tied into a job that you don't like for years and years just to pay for law school."

\* \* \*

"My advice to law students: When taking out the loans, consider how much you *really* need and whether you can get some of the money by working through the school year and in the summer. You are going to have to learn how to balance a million things at once when you start practicing, so why not start early? Be frugal. Otherwise you may find yourself frustrated when you begin realistically looking for jobs and considering living standards. Finally, many public interest employers have loan assistance or payback programs; consider those employers if you don't want to do 'firm' life. Keep in mind too, that many firms are very committed to pro bono and some (like Proskauer Rose) not only require you to perform pro bono, but give you full billable credit for your pro bono efforts. So you can still serve the public and work for a firm.

My advice to young lawyers is to live below your means, particularly if you are at a firm. Remember that the "Golden Handcuffs" are still handcuffs. If you live above your means because you think you should be able to, you are only eliminating your long-term career flexibility."

Robyn S. Crosson, Esq.  
Proskauer Rose LLP  
New York, NY

\* \* \*

"The deep debt is actually manageable if you get roommates to share living expenses. Ideally, young attorneys should seek out a slightly older, married couple, who retire to bed early upon your arriving home and leave some leftovers on the stove for dinner. Remarkably, many of them go by the nicknames 'Mom' and 'Dad'! Hey, with that enormous debt, it doesn't hurt if you can start off living at home."

New York, NY

\* \* \*

"Yes. Why? Because I currently live at home with my parents (mind you, I'm about to turn 30). In fact, this is the only way I can manage my student loan debt because I'm a legal services attorney and my salary is less than \$35,000/year. While I have to pay \$800/month in student loans, my parents are very generous and don't ask me for any money toward household expenses, which allows me to even save a little bit each month. My only other regular expenses are \$100/month for gas (I use my parents' car, so no car payments) and \$100/month for cell phone and land line (thank God I don't have credit card debt on top of the student loans, as so many law graduates do). So, I'm doing all right, but there's no way I'll be able to move out anytime soon."

Nassau County  
2002 law school grad

\* \* \*

"I was able to pay off two student loans last year by making larger-than-minimum payments into the smallest of the two loans. When I was done with that loan, I then rolled the payment from that

loan into the second loan until it was gone.”

Ellie Jurado-Nieves, Esq.  
Bronx, NY

\* \* \*

“Q1: No.

Q2: Avoid temptation of pent-up consumerism that comes with six-fig paycheck.”

\* \* \*

“I am having an extremely difficult time managing my student loan payments. I attended a private law school in Washington, D.C., on a full-time basis and borrowed all tuition and expenses, as well as living expenses, from both federal and private lenders. Though I now receive a good salary, I cannot afford to save for retirement or to fund any savings vehicle beyond my 401(k) due to my astronomical monthly loan payments. I am limited as to which areas of law I can pursue because I must bring in a high minimum salary just to break even financially. Travel and entertainment are almost nonexistent. My advice is twofold: (1) use credit cards as little as possible while in law school, and (2) attend a state school where you qualify for in-state tuition. There are many excellent state universities with law schools that are competitive academically, that provide excellent networking and career opportunities, and that don’t rob you blind in the name of education.”

\* \* \*

“I graduated with \$130,000 in loans and if you work at a big NYC corporate firm, you’ll have no problem managing the debt load with the salary you’re provided.”

\* \* \*

“I graduated from Fordham Law School and now live in New Jersey. I was fortunate (for many reasons) to get married right after law school to someone who has no school debts, so his salary helps to pay off my law school loans and, therefore, makes my debt not too overbearing. In addition to my husband’s assistance, paying off my loans was made easier by

consolidating them into one loan. Before I was making several different payments a month, all at varying interest rates. Consolidation not only helped me to eliminate my higher interest rates, but also released some of the stress that automatically comes with making numerous payments rather than just one. We also have helped to lower the principal by occasionally paying additional money. During months where one of us got a bonus at work or had some extra money, we would make an additional payment to the principal, not the interest. In the end, this helps to decrease the amount that we will have to pay.”

\* \* \*

“I’m able to manage the debt only because I took a job at a large firm rather than become a prosecutor as I had planned. I’d advise law students to go to a state school and/or to find scholarships whether at their schools, in their communities or nationally.”

Stamford, CT

\* \* \*

“A tip for those of you who work in New York City. Do NOT get sucked into the typical law firm high-consumption lifestyle, starting with an apartment in Manhattan. I know you think you deserve it, that you are entitled to a little luxury because you are working so hard. I hear you. I know you are working hard. But my advice is to suck it up and live further out.

If you can stand having roommates, I highly recommend living in a share arrangement in one of the outer boroughs. The real boondoggle is to dodge the NYC resident tax (which applies to residents of all five boroughs) by living in New Jersey. At a typical big law firm first-year salary (125K), you will be paying \$350/month in city tax. Another way to look at this is that your first \$350 of rent in Jersey is ‘free’!

I live in a share in Jersey City for \$450/month. It’s a short walk to the Path train, and only a few minutes to Manhattan. Since I am saving \$350/month in NYC resident taxes, I am

living for the equivalent of \$100/month in the five boroughs. And my place is nice—a house with several bedrooms, two baths, a washer/dryer, dishwasher, garage, etc. Deals like this exist in Jersey. The neighborhood is pretty sketch, so I am fortunate that I can take advantage of the firm’s car service at night.

Another benefit to Jersey: nearby grocery stores. Giant supermarkets with awesome selections and reasonable prices. No hole-in-the-wall bodegas with rotting bananas and limited assortments, or super-pricey gourmet markets, which is what you find in the city. I am able to save the majority of my post-tax paycheck and not skimp on other things that are important to me. It’s all because of where I am living.”

Second-year litigation associate at a large NYC firm

\* \* \*

“I can manage my student loan debt, but I sometimes feel that it is a monkey that will take a long time to get off of my back. I could not leave the practice of law now if I wanted to because I have to earn enough to at least pay for them, plus rent, etc.

Advice to Law Student or New Attorneys: Debt is not so bad, just be ready for the payback.”

\* \* \*

“I took on another \$18,000 in debt to get my LLM in criminal law. While I have not yet begun repaying my loans as I do not graduate from the LLM until June, I am very concerned about the now-\$74,000 debt I am carrying. I want to work as a prosecutor at the local DA’s office, which pays only \$40,000 to start. I am very concerned. There has to be some type of loan forgiveness worked out for attorneys working as prosecutors.”

\* \* \*

“No! Seeing as I am not able to effectively manage the student loan debt I currently carry, my advice to prospective law students would be to attend a school you can afford without taking out 100% of the cost of your education as loans.

# SOUND OFF!

## Young Lawyers Respond to the Questions: ARE YOU ABLE TO MANAGE THE DEBT FROM YOUR STUDENT LOANS?

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

(Continued from page 23)

*The fact that I carry \$150,000 in debt from my law school education limits my ability to pursue the career path I am most interested in and makes me feel forced to work at a large corporate law firm in order to pay my bills."*

Harvard Law School '02  
New York City

\* \* \*

*"If you're a law student or young attorney with a significant debt burden, you have to chase the highest-paying jobs. Granted, it takes patience and foresight, but if you settle your financial situation early, you can pursue any career path you choose. It is better to have options when you start to focus your practice than to be foreclosed from certain avenues due to large debt."*

\* \* \*

*"Yes and no. I can manage to pay my law school loans now, but without a large NYC firm salary, I'd have to declare bankruptcy."*

\* \* \*

*"It's easy enough to manage your debt straight out of law school as long as you have a job. SallieMae is only too happy to lower your monthly payment to something manageable, and extend the years it can charge you interest. For attorneys at the big firms, the real question is whether you'll be able to pay off your*

*debt before you're tossed out or burn out before making partner, like the vast majority of associates. For the attorneys who do not get the big law job, the question is whether it was worth going to law school in the first place, or wouldn't they actually have more money, job security, and family time if they had become a plumber."*

\* \* \*

*"No. I'm a new lawyer, but not a 'young' lawyer. And I was an average law student, from a third-tier school. Combine the three, and the result is much-reduced opportunity, and income.*

*Most firms eschew new associates with prescience, preferring tabula rasa. It became obvious after a dozen interviews that I had better chart my own course. As anyone in the know can attest, the start-up phase of a new attorney's solo practice is devoid of consistent, meaningful income.*

*I have taken advantage of the 'forbearance' period offered by my loan, and am still barely making it. My 15-year-old car has a quarter-million miles on it. Margaritaville this ain't. Would that there were a way to kill (or greatly reduce) the loan."*

\* \* \*

*"No . . . I started paying off the loans 7 years ago and almost immediately had to consolidate. The rate is ridiculous but*

*since I already consolidated, I'm locked into this very high rate until the loan is paid off. The good news is that the loan will be paid off on my 76th birthday!! I started law school at 42 years old!!"*

\* \* \*

*"I've been able to manage my student loan payments, but only because I make enough money. Otherwise, I'd be in some trouble. After consolidating my college/law school/pocket money loans from 1994–2001, I have a balance of over \$100,000. My monthly payments are roughly \$630. Luckily, my salary allows me to make these payments without too much trouble, though it still hurts to write that check every month. I originally wanted to become a prosecutor, then it dawned on me that I would have too much trouble making ends meet. That, plus one person left the DA's office I was interning at for the private sector so she could pay off her student loans. So I opted for the private sector. No doubt I'd be a prosecutor now if not for the burden of student loans.*

*My advice to law students: as soon as you graduate, consolidate all of your student loans. It's a headache wading through all the paperwork, but it's worth the simplicity it produces at the end."*

\* \* \*

*"Happily I don't have any student loans at this point. I live in Dublin, Ireland, and practice as a lawyer (solicitor) here as well as being a qualified attorney. The fees for undergraduate degrees here were typically in or about \$2,000 a year and have now been scrapped. Vis-à-vis law school, these would come in at about \$5,000 a year. When I was in the process of attending law school here, I was apprenticed to a law firm in Dublin. We*

**"And God said: 'Let there be Satan, so people don't blame everything on me. And let there be lawyers, so people don't blame everything on Satan.'"**

**—George Burns**

have an apprenticeship system similar to that in England (and I believe Rhode Island). I was lucky enough to squeeze the partners for my law school fees. Some of my colleagues were not as lucky!

Many thanks for the e-mail. I'd love to receive YLS publications as it would help me stay abreast of changes in NY law. In general, I find the NYSBA to be an excellent bar association from the point of view of receiving updates on case law/legislation, etc."

\* \* \*

"I paid all my debt (1 year of private law school, about \$35K) in a year. Live simply and concentrate on paying it off ASAP. Don't fall into the trap of spending initial law firm salary on new car, too big of an apartment, vacations, etc. Kill the debt first. Pay off each loan separately, highest interest first, with big checks. If you don't specify which loan to be paid first, your payments will be spread out equally among the loans, which means you will always have all of them pending. Call ahead to see exactly how much it will be (including daily interest) to pay it off in full on a specific date and plan your payment to arrive that day. Add a day or two of interest if you like and specify any extra to be paid to the NEXT highest interest loan. GOOD LUCK!"

\* \* \*

"I have been managing my student loan debt reasonably well thus far. My advice to students and new attorneys is to consolidate all of your student loan debt as soon as possible and at the lowest interest rate possible. Also, you should attempt to pay off your student loan debt as quickly as you can post-graduation. This will delay the agony and decrease the amount of interest if you pay it off sooner rather than later.

Also, for those who graduate and work in the public interest, there are sometimes 'loan forgiveness' opportunities available depending upon the employer. Being aware and taking advantage of such opportunities can be very beneficial.

Lastly, failure to pay off a student loan, making late payments or missing payments can be extremely adverse to one's credit rating and may even prevent such events as the purchase of a new home. Thus, I caution anyone with student loan debt to take it seriously and be responsible with respect to the payment plan they choose."

Maria C. John, Esq.

\* \* \*

"Yes. Do not let the fact that you may be carrying student loan debt on your credit record for ten or twenty years scare you. Make your payments on time and do your best to pay them off, but be aware that credit card debt is much more worrisome. Student loan debt is seen as a positive thing in your credit history. Furthermore, it gives you the chance to show that you can make steady and timely payments on your debt. This fact alone improves your credit rating."



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For its Diversity and Leadership  
Development Initiatives



"We continue to recognize that in order to be most effective as attorneys and enjoy public respect and trust, the organized bar must reflect the diversity of the public we seek to serve."

— Kenneth G. Standard  
*President, New York State Bar Association*



# The Young Lawyers Section Welcomes New Members

|                            |                               |                             |                            |                            |
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