

# Perspective

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

## A Message from the Section Chair

My neighborhood elementary school has had a sign in front all summer saying, "PTA Meeting—September 5—Do One Thing." It's not a very memorable sign or a catchy phrase, but it conveys an important idea for any voluntary membership organization. Imagine what a fantastic Section we would have if each member decided to "do one thing." No one needs to make a huge commitment of time, not everyone needs to chair a committee or do all of the work for a project, but if everyone "did one thing" our Section could accomplish so much more.



How do you get involved? It could be as simple as attending a district event or Section meeting. There are Young Lawyers Section district events being held in most of the judicial districts in the state and you can look for these events advertised in "In Touch," the Section's fax and electronic newsletter. Based on a membership survey we did a few years back, one of the things you wanted was networking opportunities. These district events provide the

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## The New Face of Pro Bono

By Diane Burman

In the words of Helen Keller: "Alone we can do so little; together we can do so much."

Last month on my 35th birthday, my four-year-old son Max asked me my age. He thought it was cool that I was "so old." I reminded him that I am actually a "young lawyer" for at least another two years. Reading Barbara Samel's Spring 2001 message as the Young Lawyers Section Chair made me stop and think. Barbara spoke about our role in shaping the future of our profession. Barbara's message made me feel like she was speaking directly to me—taking on huge law school debt (I maxed out on all my school loans), balancing family and work (my constant struggle), about feeling guilty and a bit lazy because I no longer wanted to work "crazy" hours, and about wanting to make a difference (the reason I went to law school and took this position). I have been Director of Pro Bono Affairs at NYSBA for a little less than eight months. In my new role, I must keep attuned to the struggles and stress young lawyers, myself included, face



and try to help reduce that stress and foster personal satisfaction in our decision to join our noble profession.

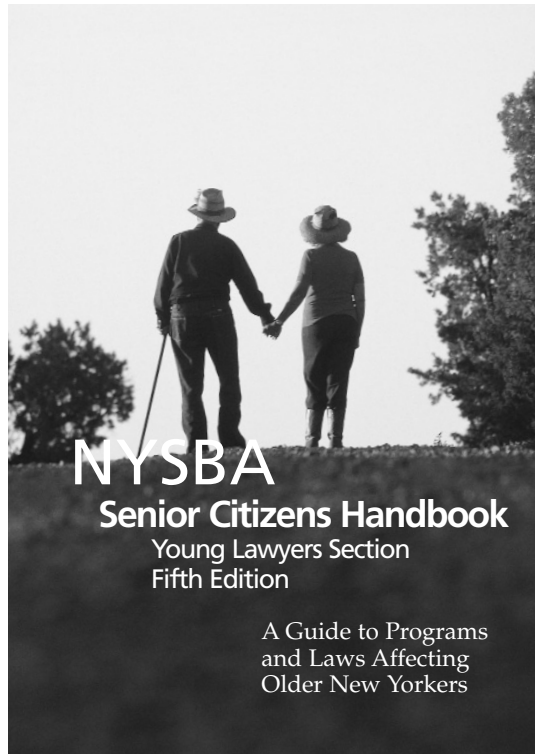
First, I am proud to be a part of an organization that is a leader in advocating strongly for access to justice for all New Yorkers. Many of our most vulnerable New Yorkers—victims of domestic violence, children, the elderly, the disabled—rely on these legal services to help them with basic life necessities and issues, such as housing, health care, family problems, discrimination and consumer problems. Despite the overwhelming need, programs are forced to turn away a large number of clients every day due to lack of resources. The NYSBA's own study indicates that

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The Expanded 5th Edition  
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Orders are being accepted for the 5th Edition of the Senior Citizens Handbook, produced by the New York State Bar Association Young Lawyers Section (YLS). The publication price is \$10.00/copy, but members of the Young Lawyers Section will receive a 20% discount, making the price of your copy \$8.00.

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# From the Editor's Desk

"If we are strong, our strength will speak for itself. If we are weak, words will be no help."

—From the address that President Kennedy never got to deliver  
in Dallas on November 22, 1963

As this issue was being prepared for publication, the horrible and tragic events of September 11, 2001 took place in New York City, Washington, D.C. and Pennsylvania. As opinions vary on how to properly react to the atrocity, the above quote seemed hauntingly appropriate. My personal condolences to all who may have experienced the loss of a family member or friend, or suffered any injury during the ordeal. This issue is dedicated to both the victims and the heroic individuals assisting in the rescue and clean-up operations.



event and it was a great honor to be able to personally make the motion for admission before the Court. I believe all who participated would agree that it was a memorable event and I encourage any who have not been admitted to the Supreme Court to take part in the program the next time it is offered.

I also must thank all of those who sent in your comments for **SOUND OFF!** As you will observe, the responses for this issue were particularly pointed. I am pleased to report that our State Bar President Steven C. Krane has formed a special Committee to explore the contentious issue of escalating law school debt incurred by young lawyers, an issue previously debated in the **SOUND OFF!** forum and cited herein as one of the most important issues facing young lawyers today. I recently had the opportunity to attend my first meet-

ing at the State Bar House of Delegates where Mr. Krane outlined some of the ambitious goals of the Committee, which should encourage both law students and new attorneys alike. As Chief Judge Kaye has previously noted, the voices of our Section members do make a difference, and the State Bar is definitely interested in our opinions. More details of **SOUND OFF!** can be found on page 5 in this issue. Please send all comments via e-mail to: jamesrizzo9@juno.com. **Please also note that the deadline for all submissions (substantive articles, reviews, SOUND OFF! responses, etc.) for the Spring issue of Perspective is February 15, 2002.**

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

James S. Rizzo

**"Man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all."**

—Aristotle

## SEPTEMBER 11, 2001

While this issue of *Perspective* was being finalized for publication, our nation experienced a horrible tragedy. One week after the disaster, we still don't have the names of the men or women who perished, but know that it will include some of our fellow bar members and colleagues.

The Bar Association established a toll free number (1-877-HELP-321) to serve as a clearinghouse to match lawyers with victims and family members in need of legal assistance provided through pro bono programs offered jointly by The Association of the Bar of the City of New York and the New York County Lawyers' Association. The Association is also providing assistance to lawyers whose offices were destroyed or are temporarily or permanently unfit for occupancy, along with the families of lawyers who worked in the World Trade Center and adjacent areas and to assist the clients of both displaced and deceased lawyers. You can sign up to volunteer through the State Bar Association Web site at [www.nysba.org](http://www.nysba.org).

To the children, parents, spouses, family and friends of the lost, we offer the deepest sympathy of our Section.

Barbara J. Samel  
YLS Chair

# SOUND OFF!

## Young Lawyers Respond to the Question: “What Do You Feel Is the Most Important Issue Facing Young Lawyers Today?”

*“Balancing the long hours of practice with being a parent.”*

\* \* \*

*“The most important issue facing young lawyers today is the immense student loan bills they need to pay. While it is no doubt a cost you voluntarily agree to, the loans prohibit individuals from being able to go into public interest/prosecution without putting their family’s future financial security in jeopardy. If more loan forgiveness programs were put into effect for public interest jobs, the public interest would be better served. I am currently a prosecutor for the United States Navy, and would love to stay, but do not feel I will be able to stay because of the student loan debt I need to pay.”*

\* \* \*

*“The most important issue for me is flexibility—how to work at a really good firm, with good work, yet have time with my family. Female lawyers are at a big disadvantage. If only more of the firms doing the great work could allow lawyers to work five days a week and leave at 6 p.m., even if pay was reduced proportionately.”*

\* \* \*

*“I feel the most important issue facing young lawyers today is repayment of student debt. Law school costs are incredibly high and loan repayment can put quite a stress on one’s wallet right out of law school. As a young lawyer in my first year of practice, I have had to wrestle with this issue and have heard the same experiences from other young lawyers.”*

\* \* \*

*“I think that the most important issue facing young lawyers today is the choice between doing good and making money.*

*If anyone has discovered a way to do both, please share it with the rest of us!”*

\* \* \*

*“I believe that the biggest issue facing the majority of young lawyers today (and not just those lucky enough to be admitted to the upper echelons of the profession at an early point in their careers) is the ability to maintain integrity in a profession whose realities do not exactly meet expectations. The impulse to sacrifice honesty, a law school education and principle for the demands of business is too great for most lawyers to resist, let alone young lawyers. As a result, I often see ill-mannered, unethical businessmen who purport to be lawyers, but who have stopped trying to solve society’s problems in order to make the most money for the richest few. That’s not why I went to law school. It’s not why I practice law.”*

\* \* \*

*“Total absence of senior attorneys whose knowledge and skills have been validated by ‘outsiders’ and who can teach.”*

\* \* \*

*“The biggest problem facing young lawyers today is the failure to recognize how vital it is for our society that we young professionals help our communities in any way possible. This problem is due to the salary hikes’ creation of much too much self-importance and pursuit of material possessions on our parts.”*

\* \* \*

*“How much they are prepared to sacrifice to further their careers. This affects the decision on what sort of law to practice and in what sort of firm. There is a backlash here in the UK by lawyers of all calibers against the long hour cultures of City firms, especially in corporate practice areas. I for one am reevaluating why*

*I ever chose a city career in corporate and indeed law at all.”*

Mark Cummings, CMS Cameron McKenna, London,  
Admitted 1997 (New York), 1998 (Northern Ireland), 2000 (England)

\* \* \*

*“Time management.”*

Stacey Anne Mahoney, Esq.  
New York City

\* \* \*

*“I think the most important issue facing young lawyers today is how to deal with overwhelmingly large and burdensome law school debt. Looking back, I wonder if being a member of this high-stress, low-respect profession was worth the cost.”*

\* \* \*

*“The most important issue facing young lawyers is knowledge of our client’s business. Merely knowing the law, knowing how to research, and knowing how to draft a summons and argument in support of motions are important. But those tools are only means of unlocking the door. In order to walk through the door and up the stairs, you must understand your client’s business.*

*What does the client seek? How do they buy or manufacture their goods/services? What issues face them from a profitability standpoint? Or, as is the goal of the finance manager, how can your counseling help to increase the wealth of the shareholders, the end user, so to speak?*

*Sure, suing tortious defendants and getting judgments for our clients are important, but will the average client have enough litigation going to make your practice successful? Probably not, if the client is a smart businessperson. Therefore, the lawyer must work within*

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

**If So, Then It Is Time for You to ...**

### ***SOUND OFF!***

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

***Sound Off!* Would Like Your Response to the Following Question:**

### **ARE YOU SATISFIED WITH YOUR DECISION TO BECOME A LAWYER? WHY? WHY NOT?**

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

We look forward to hearing from you!

# Attorneys and the Internet

By Mark S. Ochs

Attorneys in New York may consider the Internet as merely the latest available form of advertising. In fact it is much more. An attorney who establishes a Web site offering legal services faces a number of issues including:

1. Has an unintended attorney-client relationship been created? If so, is a disclaimer sufficient to prevent this from occurring?
2. Is the attorney engaging in the unauthorized practice of law in a state where he or she is not admitted to practice? Again, is a disclaimer sufficient?
3. Is there fee sharing with non-lawyers or is the lawyer aiding a nonlawyer in the unauthorized practice of law?
4. Does advice in a chat room constitute impermissible solicitation?
5. Do any conflicts of interest exist?
6. Has a client imparted any confidences or secrets to the attorney? If so, what must be done to protect them?
7. Is e-mail a safe form of communication to use?
8. Can a domain name become an impermissible trade name?
9. May the information in the Web site constitute improper advertising?
10. If legal services are provided, have any specific requirements for the area of practice, such as the domestic relations law, been satisfied?

NYSBA Committee on Professional Ethics Opinion 709 (1998)<sup>1</sup> holds that

an Internet practice is permitted as long as it complies with the Code of Professional Responsibility and court rules. This opinion and related opinions note the following:

## Statement of Client's Rights and Responsibilities (22 N.Y.C.R.R. 1210.1)

Pursuant to 22 N.Y.C.R.R. 1210.1, every attorney with an office in the state of New York shall post in that office, in a manner visible to clients, a statement of client's rights. In cyberspace, the attorney's Web site may be that "office." Accordingly, unless the Web site is purely educational and is not used to offer legal services or advice, the full text of 22 N.Y.C.R.R. 1210.1 should be included in the Web site.

## Conflicts Checks

DR 5-105(E) requires a law firm to keep timely records of prior engagements and have a system in place by which proposed engagements are checked against current and previous engagements. Such a conflicts check is not required where the attorney only provides general information of an educational nature and no confidential information is obtained. If however, the information provided is tailored to a specific request or involves the receipt of confidential information from a client, a conflicts check is necessary.

## Use of Internet E-Mail

Attorneys may utilize unencrypted Internet e-mail to transmit confidential information without breaching their duty to maintain confidentiality. Where an e-mail transmission is at heightened risk of interception, or if the confidential information at issue is of such an

extraordinarily sensitive nature that it is reasonable to use a means of communication completely under the attorney's control, the attorney should select a more secure means of communication, such as encryption.

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*"A Web site is similar in nature to a radio or television broadcast and therefore subject to the requirement of DR 2-101(F) that a copy of the advertisement be maintained for a period of not less than one year following its last use."*

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## Payment by Credit Card

An attorney may accept online payment by credit card.<sup>2</sup> The privacy of the client's credit card information should be safeguarded.

## Advertising on the Internet

Advertising via the Internet is permissible as long as it is not false, deceptive or misleading, and otherwise adheres to the requirements set forth in the Code.<sup>3</sup> A Web site is similar in nature to a radio or television broadcast and therefore subject to the requirement of DR 2-101(F) that a copy of the advertisement be maintained for a period of not less than one year following its last use. In addition, DR 2-101(K) requires that all advertisements of legal services include the name, office address and telephone number of the attorney whose services are being offered. Since the Internet has no jurisdictional boundaries, the Web site should inform potential clients of the jurisdiction in which the attorney is licensed, and should not mislead a

potential client into believing that the attorney is licensed in a jurisdiction where he or she is not.

## Services to Clients Outside of New York

The giving of legal advice or the rendering of legal services to a non-New York client may involve the unauthorized practice of law and can subject the attorney to the rules of conduct of the jurisdiction where the client or underlying legal matters are located. It may also result in the denial of the right to a legal fee. In *Birbrower, Montalbano, Condon & Frank, P.C., et al., v. The Superior Court of Santa Clara Co.*,<sup>4</sup> a New York law firm with no office or attorneys in California was denied the right to recover legal fees for giving advice to a California resident client regarding a contract governed by California law. The court ruled that such activity constituted the practice of law in California, regardless of where the services were actually performed.<sup>5</sup>

## Creation of an Attorney-Client Relationship

While the attorney may not believe that providing general legal information creates an attorney-client relationship, that issue should be viewed from the perspective of the layperson who may expect more from the relationship, especially if a fee is being paid. While not dispositive, the attorney should utilize a clearly understandable disclaimer.<sup>6</sup> Regardless of the disclaimer, the advice given may reach a level where an attorney-client relationship comes into being.

## Form Preparation

An attorney who maintains a Web site for the purpose of selling forms prepared specifically for an individual's particular needs is engaging in the practice of law. If the forms relate to a matrimonial matter, the provisions of 22 N.Y.C.R.R. 1400

will apply and a Statement of Client's Rights and matrimonial retainer agreement are required. Where forms are provided to an individual to use *pro se*, the attorney preparing the document must be identified.<sup>7</sup>

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*"An attorney who maintains a Web site for the purpose of selling forms prepared specifically for an individual's particular needs is engaging in the practice of law."*

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## Use of a Trade Name for a Law Practice

While operating a Web site law practice under a trade name is prohibited by DR 2102(B), the domain name used does not have to be the same as the law firm's actual name. However, it must otherwise comply with the Code, including refraining from being false or misleading. It may not imply any special competence or unique affiliations unless factually true. For example, *Arizona State Bar Opinion #2001-05* holds that a for-profit law firm's domain name should not use the suffix ".org" nor should it use a domain name such as "Countybar.com" that implies that the law firm is affiliated with a particular nonprofit organization or governmental entity.

Local bar association opinions have also addressed Internet activities. *Nassau County Bar Association Committee on Professional Ethics, Opinion 01-4* held that subject to the operational structure and advertising content, an attorney may affiliate with an online legal services-related Web site run by AmeriCounsel (the provider). The opinion looked at a number of provisions of the Code, including DR 2101 (publicity and advertising); DR 2-103 (solicitation and recommendation of professional employment); DR 2-107 (division of

fees among lawyers); DR 3-101 (aiding the unauthorized practice of law); DR 3-102 (dividing legal fees with a nonlawyer); and DR 5-105 (conflict of interest; simultaneous representation).

The opinion noted that participation by an attorney in the program in and of itself does not constitute compensation or the giving of value to the provider and is not prohibited by DR 2-103(B). A preferential rate to the provider's users is not the giving of value by an attorney. The provider does not "recommend" lawyers or "obtain employment" for them within the meaning of DR 2-103, but functions as an advertising service or directory for attorneys. The user chooses the attorney from among those who advertise on the Web site. The provider does not influence or control that choice. The provider is not engaged in the unauthorized practice of law and the lawyers are not sharing legal fees with nonlawyers. Lawyers keep the entire legal fee and clients pay a separate fee to the provider for nonlegal services.

The opinion found a violation of DR 2-101(A) by the provider's use of the words "prestigious" when referring to its Legal Advisory Council and "prominent" when referring to attorneys. Moreover, the description of the attorney network as "unparalleled" was improper. The implication that the Legal Advisory Council "oversees the Company's legal policies" suggests that the Legal Advisory Council is giving legal advice or services and such a claim is prohibited. It also noted that the advertisement should disclose that participating lawyers are not related, so the public will not be confused as to the size of each participant's law practice or the nature of the relationship among the lawyers participating in the joint advertisement.

*Association of the Bar of the City of New York Committee on Professional and Judicial Ethics Opinion 2000-1* held that attorneys may respond to

an invitation to bid on legal projects through an Internet Web site where the client's invitation is not initiated by the attorney. While the service provider will charge a fee to the potential client for using the Web site, participating attorneys will not share in that fee or be charged a separate fee by the provider. Any fee charged by the attorney for providing legal services will be billed directly to the client and not shared with the provider. Attorneys are not pre-screened, approved, or otherwise regulated by the provider.

Where the client initiates a request for representation, the act of responding to a request over the Internet for representation does not, standing alone, constitute advertising or solicitation as defined in the Code. An attorney's involvement in responding to an invitation to bid pursuant to the plan described here, would not violate the provision in DR 2-103(B) proscribing participation in certain for-profit referral plans because no fee is paid by the attorney to the provider to obtain employment.

The provider should establish procedures to avoid prematurely revealing information on the Internet about the client's identity in connection with an invitation for bids, unless precautions are taken to assure that the client would not be better off waiting until a tentative selection of counsel is made before the identities of the client and others who may be involved are revealed.

Finally, the opinion noted that a response by an attorney to an out of state client may raise issues concerning the unauthorized practice of law.

*Nassau County Bar Association Committee on Professional Ethics, Opinion 99-3* holds that attorneys may pay to be listed as "sponsor" in banner advertisements on Internet sites that provide viewers with informa-

tion about particular fields of law, provided certain disclaimers are used. The designation on a Web page as "lead counsel" in return for a premium advertising fee is misleading and improper.

The opinion noted that the use of links in a Web site should not result in real time communication with an attorney. This opinion should be compared with *NYSBA Ethics Opinion 664*, which provides that an attorney may give live, individualized legal advice to "900 number" callers, provided the attorney discloses the extent of the advice offered and the extent of the attorney-client relationship established during such conversations.

*Association of the Bar of the City of New York Ethics Opinion 1998-2* holds that a law firm should maintain a copy of its Web site for at least one year, but need not comply with the filing requirement of DR 2-101(F)(1), which provides that a copy of a lawyer's advertisement of legal services, mailed or distributed other than by radio, television, directory, newspaper, magazine or other periodical, be filed with the Departmental Disciplinary Committee of the appropriate judicial department.

*New York County Lawyer's Association Committee on Professional Ethics, Opinion 721 (1997)* provides that while the listing of an attorney in an Internet directory is not prohibited, doing so under the heading "Attorney Referral Board" and listing by specialty is improper.

*Association of the Bar of the City of New York Ethics Opinion 1998-2* notes that a law firm that establishes a discussion area on its Web site should exercise caution and vigilance to avoid establishing an attorney-client relationship and impermissible advertising or solicitation.

## Conclusion

While not overly burdensome, Internet practice and advertising on the Web raise issues to be addressed and obligations to be met that are not present in the everyday practice of law.

## Endnotes

1. Ethics opinions of the New York State Bar Association, as well as those of local bar associations, are merely advisory in nature and are not binding on the courts of this state or the respective Appellate Division grievance committees.
2. NYSBA Comm. on Professional Ethics, Formal Op. 362 (1974) and 399 (1975) (NYSBA Op.).
3. DR 2-101, DR 2-102, EC 2-10.
4. 949 P.2d 1, 70 Cal.Rptr.2d 304 (1998).
5. See also *Spivak v. Sachs*, 16 N.Y.2d 163 (1965).
6. NYSBA Op. 664 (1994).
7. NYSBA Op. 636 (1992) and 736 (1981).

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

***"The vote is the most powerful instrument ever devised by man for breaking down injustice and destroying the terrible walls which imprison men because they are different from other men."***

**—Lyndon Baines Johnson**



# Young Lawyers Section News and Events

The Young Lawyers Section Spring Meeting program took place on April 26, 2001, at Albany Law School of Union University. The program was held in conjunction with the NYSBA Law Student Council and was entitled, **"What's Hot, What's Not, A Program for Law Stu-**



**dent Clinton's dog "Buddy" near the West entrance of the White House, May 2, 1999. You just don't know what celebrities you'll run into while in Washington for the U.S. Supreme Court Admissions Program!**

**dents on Emerging Areas of Practice."** The informal program, presented by young attorneys involved in the "hottest" areas of practice—intellectual property, labor and employment, health law and trusts and estates—offered law students and newly admitted attorneys an opportunity to learn about these areas of law and their future potential. A reception followed the event.

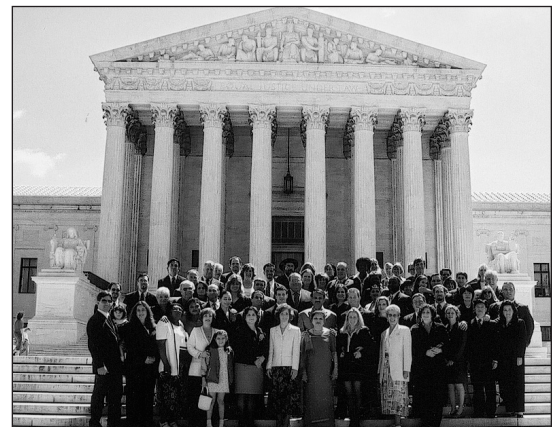
The **United States Supreme Court Admissions Program**, co-sponsored by YLS Secretary Gregory J. Amoroso and *Perspective* Editor James S. Rizzo, took place on June 4, 2001, in Washington, D.C. The response to the event was outstanding. Forty-two members of the State Bar were personally sworn in before the justices of the Supreme Court, with James Rizzo making the motion for admission before the Court. Only Justice Scalia was absent from the proceedings and attendees got the opportunity to hear several decisions announced and summarized into the

record by the various Justices involving, among other issues, the death penalty, sexual harassment and the appeal of Oklahoma City conspirator Terry Nichols. While several other groups were also present for admission, the YLS group was by far the largest. A celebratory champagne brunch followed the ceremony and all agreed that the experience was both memorable and rewarding. This event is highly recommended to all who have never had the experience of visiting the awe-inspiring U.S. Supreme Court. The trip also allows time for a good deal of sight-seeing in the D.C. area, exemplified by this author's snapshot of President Clinton's dog taken while walking by the West gate of the White House while in town for the 1999 U.S. Supreme Court Admissions ceremony.

During the summer of 2001, YLS Chair Barbara Samel held several meetings throughout New York State with Executive Committee members, Alternates and Section Liaisons to accommodate members from various regions and to review the Section's Project Implementation and Action Plan. Discussions were held on a variety of topics, including the filling of vacancies on the Executive Committee and various committees of the Section. For those interested in becoming more active in YLS activities, some of the committees in need of members are: Web Page Committee, Women and Minorities Committee, Committee on Law Student Involvement, YLS Public Service Committee and *Perspective* Editorial Board. All those interested can contact Barbara Samel at bsamel@localnet.com, or at (518) 505-5257.

The Fall Meeting/MCLE scheduled for September 14–16, 2001, at The Sagamore resort in Bolton Landing, NY, was canceled due to the terrorist attacks of September 11. It should be noted that The Sagamore generously refunded all room deposits, and the Young Lawyers Section is reimbursing those who had chosen to stay at the Chelka Lodge in Diamond Point, NY. This MCLE event, co-sponsored with the Labor and Employment Section of the State Bar, has been tentatively rescheduled to take place April 26–28, 2002. Notification and registration materials will be forthcoming following the Annual Meeting.

For those planning on attending the NYSBA Annual Meeting in New York City, the Young Lawyers Section has two events scheduled. The first is the always popular **"New York Civil Practice Update"** with Distinguished Professor of Law



**2001 Supreme Court Admissions Program—** The YLS sponsored the 2001 Supreme Court Admissions Program held in June in Washington, D.C. Pictured in front of the U.S. Supreme Court are the members of the YLS and General Practice Sections admitted to practice before the highest court in the land.

David Siegel on Wednesday, January 23, 2002, at 9:00 a.m. The YLS is also co-sponsoring a program for law students on Thursday, January 24, from

4:30 to 6:30 p.m. entitled, "**How to Start a Law Practice.**" Section members usually engage in several social events after the meetings which always makes for a good time.

As many of you know, the YLS also has several ongoing projects, such as the *Mentor Directory*, a valuable resource to help young lawyers with questions that arise in your daily practice, and the *Senior Citizens Handbook*. The revised and updated *2001 Mentor Directory* was released in late July 2001. Both publications are big sellers and are a great example of the quality services the YLS provides both to young lawyers and the public. Also, for those who have a penchant for computer wizardry, the YLS welcomes your assistance in maintaining and updating the YLS Web site located at: <http://www.nysba.org/sections/young>. The site has recently been updated with detailed information



**The Art of Multitasking—Barbara Samel combined her duties as YLS chair, delegate to the NYSBA House and MOM while attending the June House of Delegates Meeting at The Otesaga in Cooperstown. Even though Max (pictured with Barbara) is too young to become a YLS member or have great interest in the Baseball Hall of Fame, Barbara and her family had an enjoyable time.**

about the workings of our Section including, among other items, by-laws, YLS committees, links to sites of interest, biographies and pictures of Executive Committee members and even the full *Author's Guide* for those interested in writing for this publication. If you are interested in working on any of these projects, please contact one of the Section officers for further details.

Watch for your "*Electronically In Touch*" e-mail/fax newsletter for more up-to-date information on YLS activities and upcoming district events near you. Also, do not hesitate to express your interest in any Executive Committee, Alternate or Liaison positions which may currently be vacant. If further information is needed, feel free to contact any of the Section officers or our wonderful, hardworking State Bar Staff Liaison, Terry Scheid at (518) 487-5537.

***"If we desire respect for the law, we must first make the law respectable."***

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

## **MARK YOUR CALENDARS!!!**

### **January 23, 2002**

Young Lawyers Section Annual Meeting at the New York Marriott Marquis

### **April 26-28, 2002**

Young Lawyers Section Spring Meeting in cooperation with the Labor & Employment Law Section  
The Sagamore, Bolton Landing

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

# TECHNOTALK

## Napster Defenses

By David P. Miranda

The Ninth Circuit Court of Appeals recently affirmed a preliminary injunction against Internet music service Napster,



ruling that Napster can be held secondarily liable for infringement of users of its services.<sup>1</sup> However, the court remanded the case back to the district court to impose liability only to the extent that Napster has actual notice of specific infringing files and fails to take proper action.<sup>2</sup> A closer look at the defenses raised by Napster and the Appellate Court's disposition of them is instructive with respect to the manner in which copyright laws are applied to alleged infringement arising over the Internet.

Napster asserted two statutory defenses which it claimed precluded a preliminary injunction.<sup>3</sup> The Audio Home Recording Act precludes an action alleging copyright infringement based on the noncommercial use by a consumer of such a device or medium for making digital music recordings or analog music recordings.<sup>4</sup> Napster contends that under this statute, users of its services are engaging in a nonactionable exchange of copyrighted music recordings and that it cannot be held secondarily liable for such a nonactionable use. Since some computers do make digital music recordings, under some circumstances computers could, in fact, be considered digital audio recording devices. The Court of Appeals held that computers are not considered digital

audio recording devices under the Act because making digital audio recordings is not their primary purpose and there are no grounds for interpreting the term "digital musical recording" to include songs fixed on a computer hard drive.

Napster also claimed the defense of the safe harbor provisions for Internet Service Providers contained in the Digital Millennium Copyright Act (DMCA).<sup>5</sup> The district court concluded that the safe harbor defense of the DMCA applies to direct infringers, and that Napster failed to establish the DMCA protects contributory infringers such as Napster. Under the district court's very literal interpretation of the DMCA, if Napster were doing more to facilitate the transfer of music files by providing connections through its own system rather than users' and hosts' systems, the safe harbor provisions might apply.<sup>6</sup> Significantly, the Ninth Circuit did not accept a blanket conclusion that section 512 of the Digital Millennium Copyright Act will never protect secondary infringers. The Appellate Court noted the provisions of the DMCA protect qualifying service providers from liability for direct, vicarious and contributory infringement.<sup>7</sup> The Appellate Court held that several significant issues have been raised as to whether the safe harbor provisions of the statute apply, including:

1. whether Napster is an Internet Service Provider as defined in 17 U.S.C. § 512(d);
2. whether copyright owners must give a service provider official notice of infringing activity in order for it to have knowledge or awareness of infringing activity on its system; and

3. whether Napster complied with section 512(i), which requires a service provider to timely establish a detailed copyright compliance policy.<sup>8</sup>

Rather than deny the motion for preliminary injunction upon these grounds, the court noted instead that these issues need to be more fully developed at trial. However, since plaintiffs were able to establish serious questions regarding the merits of Napster's defenses and the balance of hardships tipped sharply in plaintiffs' favor, the preliminary injunction would not be denied on these grounds.

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*"The Court of Appeals held that computers are not considered digital audio recording devices under the Act because making digital audio recordings is not their primary purpose and there are no grounds for interpreting the term "digital musical recording" to include songs fixed on a computer hard drive."*

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Napster also contends that the preliminary injunction violates the First Amendment, asserting two distinct free speech rights: its right to publish a directory, in this case the search index, and its users' right to exchange information. The Appellate Court notes that the Copyright Act balances legitimate First Amendment concerns with the rights of copyright holders. The Appellate Court finds no reason to disturb the preliminary



determination that Napster users are not fair users for the purposes of the fair use doctrine, a defense to copyright infringement.<sup>9</sup> Uses of copyrighted material that are not fair uses may be rightfully enjoined. The Ninth Circuit agreed with the district court's analysis of the relevance of the fair use factors under section 107 of the Copyright Act, finding that Napster users engage in a commercial use because they get for free that which would otherwise require payment. The Ninth Circuit also noted that Napster users engage in wholesale copying of files because their file transfer allows a copying of the entire work, causing harm to the relevant market by reducing CD sales among certain consumers and raising barriers to the recording industry's own entry into the digital downloading of music.

Although the Ninth Circuit's decision ultimately permits the preliminary injunction against Napster to stand, it did so more based upon the fact that the balance of hardships tipped substantially in the recording industry's favor rather than upon a determination that Napster's defenses were unwarranted as a matter of law. In discussing the balance of hardships, the Ninth Circuit notes,

Any distraction of Napster, Inc. by a preliminary injunction is speculative compared to the statistical evidence of massive, unauthorized downloading and uploading of plaintiffs' copyrighted works (as many as 10,000 files per second) by defendant's own admission . . . the court has every reason to believe that without a preliminary injunction, these numbers will mushroom as Napster users, and newcomers attracted by the publicity, scramble to obtain as much free music as possible before trial.<sup>10</sup>

A closer analysis of the Ninth Circuit's review of Napster's defenses reveals that despite the preliminary injunction, there are serious questions of fact regarding the applicability of recent amendments to the Copyright Act and the statutory defenses that they may provide to services such as Napster.

## Endnotes

1. *A&M Records, Inc. v. Napster, Inc.*, 2001 WL 115033 (9th Cir. 2001).

2. For a discussion of the district court's decision see *Safe Harbor Provisions of DMCA Denied in Napster Copyright Infringement Case*, ABA IPL Newsletter Vol. 18, No. 4 at 30 (2000).
3. Audio Home Recording Act of 1992, 17 U.S.C. § 1008; Digital Millennium Copyright Act, 17 U.S.C. § 512.
4. 17 U.S.C. § 1008.
5. 17 U.S.C. § 512.
6. *Safe Harbor Provisions of DMCA Denied in Napster Copyright Infringement Case*, ABA IPL Newsletter Vol. 18, No. 4, at 30 (2000).
7. *A&M Records, Inc. v. Napster, Inc.*, 2001 WL 115033 (9th Cir. 2001) at 87-88.
8. *Id.* at 88.
9. 17 U.S.C. § 107.
10. *Citing to A&M Records v. Napster*, 114 F. Supp. 926 (N.D. Cal. 2000).

**David P. Miranda is a member of the Intellectual Property Law firm of Heslin Rothenberg Farley & Mesiti, P.C. in Albany, NY devoted exclusively to helping clients protect and capitalize on their intellectual property. He can be reached at (518) 452-5600 or on the Web at [www.hhrfmlaw.com](http://www.hhrfmlaw.com).**

**This article was originally published in the *IPL Newsletter* of the American Bar Association, and is reprinted with permission.**

## REQUEST FOR ARTICLES

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

Please send to:

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

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



# Book Briefs

By Michelle Levine

**DUPONT CIRCLE**, by Paul Kafka-Gibbons. Houghton Mifflin Co., New York, 246 pages.

It is said that love makes the world go 'round, and that is certainly the theme driving this skillfully crafted novel. In one respect a love letter to the Washington, D.C. neighborhood that is the book's title and setting, it is also a collection of subplots about love—some quite literally, as in the one surrounding the fictitious case *Love v. United States* that raises the issue of gay marriage. Told in small chapters grouped by month, *Dupont Circle* introduces the reader to a quirky cast of characters centered on the affluent Allard family.

We first meet Jonathan Allard, a gay history professor at George Washington University, who is raising his mentally ill sister's children with his husband Peter, a novelist. Jon's father, Bailey, is a widower living in the family mansion with only canine companionship from Leo and Virginia Woof and their son, Henry. A sitting member of the D.C. Circuit, Bailey Allard is quite capable of caring for himself, but Peter insists someone else should be in the house. Enter Louisa Robbins, a second year student at George Washington Law, who lands herself the sweetest housing deal a student could want: live rent-free with a federal judge in exchange for simply verifying that he is alive and well each day. That will certainly stretch her summer associate's salary at Arnold & Porter. It will also complicate her love life.

Louisa is in a long-distance relationship with Chris, a surgery resident in New York. Hailing from Montana, Louisa was dazzled by the handsome, charming, intelligent and bound-for-success med student. Everything about Chris is perfect, except for the fact that Louisa does not love him. This realization comes into increasingly sharp focus as Louisa finds herself inexplicably drawn to Bailey. Equally inexplicable are Bailey's feelings for Louisa. In fact, this May-December romance springs from nowhere, which is one of the main weaknesses of the book.

Another improbable pairing is Max and Eve, Bailey's law clerks. However, their relationship is more believable, if only because it is presented as a *fait accompli* rather than an affair that is supposedly blossoming before the reader's eyes. Max and Eve are both intellectuals, but Eve is a wealthy, polished woman and Max is the quintessential nerd. They seem hopelessly mismatched, yet their love story is quite sweet.

The book is replete with love stories; the emotion is presented in all its permutations. There is love between brother and sister, father and child, uncle and niece. There is love between members of different generations and members of the same sex. Curiously, this multitude of devoted relationships does not

provide much warmth to an often-frosty novel. Perhaps the frequent use of 25 cent words makes the text inaccessible. Perhaps the author is trying too hard to make his characters offbeat and succeeds only in making them off-putting.

One definite shortcoming is the occasionally implausible dialogue that reads more like a sermon from the author than anything a real person would actually say in conversation. This dubious dialogue is most prevalent in the story about *Love v. United States*, the gay marriage case that Bailey somehow procures on his docket despite having a gay son in a legally meaningless marriage. Still, it is an interesting subplot that loosely connects several of the book's characters and leads to a reasonably satisfying ending.

*Dupont Circle* is a fine novel; however, the dust jacket hinted at a better story than the one told inside. Nonetheless, the book successfully demonstrates the power of love—how it defies labels and transcends the constrictions that society imposes. And in times like these, anything that celebrates love is something worthwhile.

**Michelle Levine recently left the profession of law to join the editorial staff at a parenting magazine on Long Island.**

***"The art of being wise is the art of knowing what to overlook."***

**—William James, American psychologist and philosopher  
(1842-1910)**



*125 Years*

## **NEW YORK STATE BAR ASSOCIATION**

### **125th ANNUAL MEETING**

**JANUARY 22-26, 2002  
NEW YORK MARRIOTT MARQUIS  
NEW YORK CITY**

**YOUNG LAWYERS SECTION MEETING  
WEDNESDAY, JANUARY 23, 2002  
9:00 a.m.**

The Young Lawyers Section is pleased to announce that Distinguished Professor of Law David Siegel will be the featured speaker at the YLS program held during the NYSBA Annual Meeting. The program will begin at 9:00 a.m. with Professor Siegel discussing recent developments in New York Law, including a review of the CPLR. Professor Siegel is the author of many of the CPLR practice commentaries and is considered the preeminent scholar in the area of New York civil practice.

The second part of the program, entitled "Pitfalls of Practice," will cover: Tips on Being a Successful Associate, Common Mistakes Made by Young Lawyers, Client Relationships, and Balancing Work and Family.

So mark your calendar and watch your mail for further information on this YLS program and others.

# Immediate Openings!

## Delegates to the American Bar Association Young Lawyer Division Assembly

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

The ABA offers a national platform to exchange ideas, discuss ethics, and explore important legal issues. The Assembly receives reports and acts upon resolutions and other matters presented to it

both by YLD committees and other entities. In the past, issues debated have included: amendments to the Model Rules of Professional Conduct; the enactment of uniform state laws regarding elder abuse; the enactment of federal legislation to eliminate unnecessary legal and functional barriers to electronic commerce; guidelines for multi-disciplinary practice; government spending on basic research and clinical trials to find a cure for breast cancer; and recommendations concerning biological evidence in criminal prosecutions.

For those interested, the position offers an opportunity for involvement in the American Bar Association without requiring a long-term commitment or additional work. A master list will be compiled of those

individuals interested in serving as a delegate, and those individuals will be polled prior to each meeting as to whether they can serve as a delegate for that particular meeting. Delegates will not be required to participate in floor debates or prepare written materials for the meetings.

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

*"Hesitancy in judgment is the only true mark of the thinker."*

—Dagobert D. Runes

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## Nominations for Outstanding Young Lawyer

The Young Lawyers Section each year honors a young lawyer who has rendered outstanding service to both the community and the legal profession. The Outstanding Young Lawyer Award recognizes an attorney who has practiced less than ten years and has a distinguished record of commitment to the finest tradi-

tions of the bar through public service and professional activities. These activities may include, but are not limited to, pro bono service, service to bar associations and community organizations, and participation in those activities that enhance the profession and benefit the public.

The award will be presented at the NYSBA Annual Meeting in January 2002 at the meeting of the Young Lawyers Section. The deadline for nominations is December 1, 2001. Please contact Terry Scheid at the State Bar Center at (518) 487-5537 for a nomination form.

## The New Face of Pro Bono

(Continued from page 1)

only 14 percent of the civil legal needs of the poor statewide are being met. Legal services leaders have estimated the aggregate pro bono contribution of New York attorneys at approximately two million hours. The Department of Pro Bono Affairs has been gearing up with new initiatives and projects that may help lawyers find pro bono opportunities that appeal to them and make them feel proud that they have helped their fellow New Yorkers access justice. I hope one (or all) of the Department's initiatives may appeal to you and you will take the opportunity to work with me in the struggle for justice.

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*"The NYSBA's own study indicates that only 14 percent of the civil legal needs of the poor statewide are being met."*

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### Legal Services/Pro Bono Donation Program

The Department is in charge of the Legal Services/Pro Bono Donation Program. Under this program, the Department acts as a facilitator to help people easily donate their "used but still great" items (e.g., computers, office furniture, books, etc.) to worthy New York programs. To name just a few of the items we have gotten requests for:

- computers
- computer stands
- 12'-14' conference table
- 12 conference room chairs
- two lateral file cabinets (36" wide, 41" high, 18" deep)
- one bookcase

- one projector for PowerPoint presentations

Accordingly, please feel free to call upon me if you have any items you may wish to donate.

### Pro Bono News

Established in 1991, *Pro Bono News* is a quarterly newsletter published by the Department. The newsletter's purpose is to improve pro bono service, advance knowledge in providing equal access to legal services in New York state for the poor, and provide continuing guidance and assistance to individual lawyers, bar associations, law firms, law schools, government offices and other entities in establishing, operating and working with volunteer projects. The newsletter has undergone a major revamping these past few months to ensure it is addressing access to justice issues important to NYSBA members. There are now several standing feature articles, such as "Technology Corner," "Project Focus," an "Individual Spotlight" section and an awards and recognition section. The goal is to provide informative articles so the readers can decide for themselves how they may want to become involved in pro bono. Moreover, every edition of the *Pro Bono News* features an examination of a unique and interesting pro bono project around the state. The idea is to let others know about projects that they may want to join or look to start in their local area. The "Spotlight" section will feature an individual in the pro bono field. Member submissions for the newsletter are welcome. Contact the department at [probono@nysba.org](mailto:probono@nysba.org) if you would like to submit an item and/or be added to the mailing list.

## 2001-2002 New Publications

### 2001-2002 Pro Bono Opportunities: A Guide for Lawyers Outside of New York City

The NYSBA's new publication entitled, *2001-2002 Pro Bono Opportunities: A Guide for Lawyers Outside of New York City* endeavors to accomplish three objectives: (1) to help encourage those attorneys who would like to use their legal skills to do the public good and volunteer for pro bono; (2) to help individuals who may be in need of a pro bono attorney; and (3) to be used as a general resource regarding what pro bono programs are available throughout New York. This *Guide* sets forth descriptions of nearly 100 programs. Each program description lists information on areas of law covered, populations served, training provided, hours of operation, volunteer services needed, malpractice insurance coverage, and staff and Web site contact information that will help you in assessing the program compatibility with your particular needs and interests. In addition, the *Guide* contains information such as law school pro bono opportunities and relevant access to justice Web sites. You may access this *Guide* via the Web site at [www.nysba.org/public/probono/probono.html](http://www.nysba.org/public/probono/probono.html) or by calling the NYSBA Department of Pro Bono Affairs at (518) 487-5641 and asking for a free copy.

### NYSBA Department of Pro Bono Affairs 2001-2002 Awards Directory

This is a first of its kind publication listing awards that can be received by persons or organizations in New York State who are actively promoting the public good. The purpose of the *Directory* is to act as an easy resource and reference tool for nominators who wish to submit



names on behalf of eligible persons or entities doing the public good in New York. The *Directory* contains an alphabetical listing by award name, an alphabetical listing by presenting entity and a monthly award deadline listing. We hope that through this publication, nominators will take advantage of this important opportunity to recognize those who serve in our community. You may access the *Directory* via the Web site at [www.nysba.org/public/probono/probono.html](http://www.nysba.org/public/probono/probono.html) or by calling the NYSBA Department of Pro Bono Affairs at (518) 487-5641 and asking for a free copy.

### CLE Pro Bono Rules Technical Assistance

In June 2001, The New York State Continuing Legal Education Board published its specific guidelines implementing the rules and regulations permitting attorneys to earn continuing legal education credits by performing pro bono legal services pursuant to a court assignment or with an approved pro bono CLE provider. The guidelines provide, among other things, that credit for pro bono legal services will be awarded at the ratio of one CLE credit hour for every six 50-minute hours of pro bono legal services, for a maximum of six credit hours per reporting cycle. The guidelines also include definitions of terms used in the rules, describe the eligibility and approval process necessary to become approved pro bono CLE providers, and set forth the obligations of the attorneys and approved pro bono CLE providers necessary to receive such pro bono CLE credit,

including the record-keeping requirements. The guidelines are published on the Web at <http://www.courts.state.ny.us/probono-cred.html>. The Department is available to offer technical support and guidance to pro bono programs seeking to become accredited and to act as a resource for attorneys interested in receiving CLE pro bono accreditation.

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*"The guidelines provide, among other things, that credit for pro bono legal services will be awarded at the ratio of one CLE credit hour for every six 50-minute hours of pro bono legal services, for a maximum of six credit hours per reporting cycle."*

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### Speakers' Bureau

The NYSBA Department of Pro Bono Affairs is in the process of forming an active speakers' bureau. Speakers will be available to make presentations, participate in roundtable discussions, and/or lecture on topics concerning pro bono activities and access to legal services, as well as numerous other topics of interest. If you are interested in joining the speaker circuit, please contact the Pro Bono Department.

### Pro Bono Consulting Project

Through the newly created Pro Bono Consulting Project, the

Department of Pro Bono Affairs provides telephone and on-site consulting to individuals and outside entities regarding pro bono initiatives. If you and/or your employer are interested in a personal pro bono consultation specific to the actual needs of your office, please call the Department at (518) 487-5641 and ask for a Department of Pro Bono Affairs Personal Consultation. Thereafter, I will promptly return your call to discuss your particular needs and interests.

### Still Not Sure How to Get Involved in Doing Pro Bono, or if You Even Want to Get Involved?

I understand child-care issues, feeling ill-prepared to help an actual client in court, feeling like you do not have enough time to volunteer, feeling like you are not sure it is your responsibility to do pro bono, and a host of other reasons may give you pause before volunteering. I am available to talk about your specific concerns and issues in confidence. Just reach out to me and let me know. Keep my phone number and e-mail address handy! I look forward to hearing from you.

Diane Burman, Director  
Department of Pro Bono Affairs  
New York State Bar Association  
One Elk Street • Albany, NY 12207  
(518) 487-5641 tel  
(518) 487-5694 fax

[www.nysba.org/public/probono/probono.html](http://www.nysba.org/public/probono/probono.html)

e-mail: [probono@nysba.org](mailto:probono@nysba.org)

**DO THE PUBLIC GOOD  
VOLUNTEER FOR PRO BONO**

***"You can't legislate intelligence and common sense into people."***

**—Will Rogers**

## SOUND OFF!

(Continued from page 4)

the client's operating environment, meet and work with CPAs, pension people, HR departments, etc. What do those other professionals have to say about the client and the issues relative to that client's industry? This will enable you to use the law as a means to help the client. Further, the lawyer must understand the regulatory environment the client operates in.

Mere knowledge of statutes and case law is not enough. As important are questions like: what local, city, state, or federal agencies have jurisdiction over the client's operations? Do you understand those rules and can you help the client be more efficient and profitable within the boundaries of those rules?

Lastly, if we use our client's situations to help the client, more likely than not, we will be making a positive impact on public policy. That is, our clients will be more successful if they operate healthy businesses, they will give more to charities, they will get more customers which will require them to hire more employees, which will generate more work for us, more work for the CPAs, more business for the client's suppliers, and more money earned, and more taxes paid to our governing bodies for which to better our law enforcement, our schools, and our society."

\* \* \*

"Paying back student loans."

\* \* \*

"Balancing family with demands for increased billable hours."

\* \* \*

"Career satisfaction: balanced lifestyle, appreciation for contributions, fair compensation, intellectual challenges, interesting colleagues and mentors."

\* \* \*

"The most important issue facing young lawyers today is balance—finding the right blend of work and life, finding the

right blend of intellectual interest and financial stability."

\* \* \*

"The current economic slowdown is, of course, of concern to those now in law school or entering the profession, but a more profound challenge for many young lawyers today is coping with a negative feedback loop the profession is in related to escalating salaries, escalating hours, escalating law school debt loads and a resulting degradation of quality of life. A more humane balance must be struck. Whether a young lawyer gets great or no mentoring is too random, and the lack of training contributes to the malcontentment of many young lawyers in the early years of practice."

\* \* \*

"I am practicing now for a little over six months. Like most other professions, there is so much to learn and I've found everything has been mostly self-taught. I chose to become a sole practitioner because I found that no other firm had time to train. If I was going to survive, I would have to sink or swim on my own time, not under the added pressure of learning under someone else's billable hours. I have found the Web to be an invaluable resource for information, forms, case law and advice. No one, however, trains you on how to run a practice! I have found every attorney I have encountered thus far to be helpful, cooperative and extremely friendly. I am surprised. Thank God for Jay Foonberg's book, *How to Start & Build a Law Practice* and thanks to Fred Johs, Esq., for turning me on to it. By the way, my practice is doing far better than 'just surviving'."

\* \* \*

"I believe the most important issue facing young lawyers today is the sheer explosion of the number of lawyers churning out of our law schools and the lesser increase in the number of legal jobs available. To make matters worse, the lawyer will also have to choose a balance of working an inordinate number of

hours per week with the small pay scale in many entry-level jobs. Both factors decrease the satisfaction within the profession."

\* \* \*

"The most pressing issue is an old one: the public's image of lawyers, and how lawyers should conduct themselves as a result."

\* \* \*

"I think the most important issue facing young lawyers today is how to manage one's time and maintain an ethical and socially productive role as an attorney while faced with a host of pressures, such as the downturn in the economy, accumulation of student loans, increasing billable hours expectations at law firms and unethical behavior and/or widespread apathy of fellow practitioners."

\* \* \*

"I can't say what is the MOST important issue facing young lawyers today, but one important issue that our mentors probably did not have to contend with is that of DEBT. More specifically, how to pay off our student loan debt on a public interest salary before we retire. My loan bills are over \$1,000/month and that is only the interest on two out of three loans. This huge bill precludes me from following my desire to work for indigent clients and is forcing me to face "selling-out" by working at a big firm, just to make ends meet."

George Washington University Law School, class of 2000

\* \* \*

"Not becoming disenchanted in the face of the disenchantment and disinterest of other professionals and the courts especially. How do we manage to think that we're accomplishing anything when eight times out of ten we see a judge's eyes glaze over with boredom at a breach of contract case with only one comma in the ad damnum? Or when, in this type

of case, we get a discovery schedule of 90 days and the judge acts like you just asked for tuition reimbursement from him when you ask for 120. Or when he or she more than overtly alludes to the fact that the parties should settle, and by no means does he or she want to read a jurisdictional motion, or else.

If the argument could be made by the courts that hustling parties through the justice system achieved some suitable end, like the speedier adjudication of the more contentious cases, it might be a start. But one of my clients is still awaiting a decision on a summary judgment motion that was argued ten months ago. Within New York City, the distinct vibe that I get from the benches is that they're not really interested in hearing any case that isn't in some way glamorous, complex or high-stakes. And it's really hard to feel like what you do matters when it is so painfully obvious that, most of the time, the audience to whom you are trying to convey a sense of urgency or injustice is sending the message back to you that you and your client aren't really worth its time."

Gisele Heldt, Esq.

\* \* \*

"I think the most important issue facing young lawyers today is how to balance the demands of a big firm with the

lifestyle our generation tends to appreciate more than our parents (quality time with friends and family). Our generation is less willing to do anything and everything clients want, particularly at the crazy times they tend to want it, but our high salaries make it very hard to say no. Still, I hear more and more young lawyers refusing to work the crazy hours the previous generation was willing to do!"

\* \* \*

"The recession. I think we're all a little freaked out about how secure our jobs really are. And if the present isn't secure, what about the future? I think we're also trying to figure out a way to actually have it all, the brilliant career and a real life outside of work, without having to wait until we leave the law firm world. The hours are just insane, and I don't think they make for better lawyering or better lawyers."

Third year Fordham Law student  
New York City

\* \* \*

"One issue I think is relevant is work environment: mentoring vs. slavery (no guidance and just grief). I think mentoring is not only more pleasant for the young lawyer but also more efficient for the firm. Having experienced both, I know I work harder and am more effi-

cient in a mentoring relationship. It is just a thought."

\* \* \*

"The most important issue facing young lawyers today is finding a job."

\* \* \*

"The most important issue facing young lawyers today is why so few of us want to be young lawyers. Is it us? Is it the profession? What has changed over the years? Serious analysis of this issue must begin, because if we are the future of the law and we are leaving it in droves . . . what kind of a future is that?"

\* \* \*

"Definitely debt from student loans! Just two or three decades ago, there was very little correlation between one's profession and the amount of his or her education debt. Today, lawyers are by far the most oppressed with debt after graduation. Most people justify this expense by noting six-figure incomes of new graduates; yet, most new lawyers make a livable income for someone with debt from a bachelor's degree—not a J.D. Lawyers serve society in numerous ways, yet we live with a crushing burden of debt. It's atrocious!"

Allison Williams  
Syracuse University College of Law

**"Injustice anywhere is a threat to justice everywhere."**

**—Martin Luther King, Jr. (1929-1968)**

# "Law FAX"

## Stay in Touch With the Public While Staying Active in Your Section

### **There is an exciting new opportunity for Young Lawyers Section Members!**

The Young Lawyers Section is undertaking a new initiative called "Law FAX." "Law FAX" will be a one-page FAX bulletin sent to all 750 news-rooms (print, radio and television) in the state, explaining some facet of a legal matter then in the news. These bulletins will be sent once a week, depending on news flow.

The purpose of the program is to help the public achieve a better understanding of the law and in part, help restore public trust and confidence in the profession. We need you, our members, to volunteer as authors. Please submit the attached form by December 21, 2001, if you are interested.

Even if you are unsure of making a big commitment of time to volunteer for bar association activities, this is a great way to get involved and serve the public and our profession with a minimal commitment of time.

We hope you will consider volunteering for this new YLS project.

How will the "Law FAX" program work?

You will be asked to choose one or more areas of law that you are comfortable writing about. The NYSBA Media Services Department will maintain a running list of volunteer attorneys for various areas of law. When the Media Services Department identifies an issue in the news that needs attention they will contact the attorney to write a "Law FAX." In most instances, they will be dealing with a time sensitive issue and will need a quick response. If the attorney is unable to act quickly

because of work or other commitments, the next attorney on the list will be contacted. There is a clear understanding by the Association that attorneys, especially young attorneys, will not always be able to participate when called.

### **What type of topics will be covered?**

Often the "Law FAX" will explain an issue in a major case or piece of legislation in the news. Sometimes the "Law FAX" will explain concepts that may not be related to current news but can be used for background information in the future. Topics could be any news story with a law-related angle. You will not be asked to explain or comment on an entire case but only a small portion. Examples may include: what are the different types of bankruptcy; what does someone need to prove to contest a will; what does it mean when someone is a hostile witness; or what does double jeopardy mean?

### **How long will it take to write a "Law FAX"?**

The Young Lawyers Section understood early on that not every attorney could easily write on every area of law and that is why we ask you to sign up for areas of law that you feel competent to write about. When you are writing about a concept in an area you are already practicing in, we anticipate that it would not take longer than one hour.

### **How much research will I need to do to write the "Law FAX"?**

In most cases, little to none. You are not writing a memo to a senior part-

ner, but only a one page or less explanation written in non-legalese. There will not be complex legal issues involved. The key thing to remember is that this is being written for non-lawyers—this is for your next door neighbor to understand.

### **Will I get any credit for writing the "Law FAX"?**

Young lawyers who author these bulletins will be credited by name on the FAX, which means your name and the name of your firm or other entity, will be reaching 750 media outlets in New York. If you so wish, the Media Services Department will also send a letter of appreciation to your supervising attorney.

### **Do I have to be a good writer?**

Not really. When you submit your piece, the Media Services Department will review it for grammar and ease of understanding. The Media Services Department is used to putting together releases for reporters and they will make sure it is in the appropriate format for reporters.

### **Do I have to take calls from reporters?**

Reporters will be encouraged to call the State Bar's Media Services Department. If a reporter would like to speak to you directly, Media Services will call you first to see if it is OK.

**Sound easy enough? Then get moving and fax back the attached form to (518) 463-4276 by December 21, 2001.**



# Law FAX Application Form

Name: \_\_\_\_\_

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\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Would you like a letter sent to your supervising attorney or other individual thanking the firm or entity for your participation?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide the name and address:

\_\_\_\_\_

Which of the following categories would you be comfortable writing about (*check all that apply*)?

\_\_\_ Administrative Procedure

\_\_\_ Alternative Dispute Resolution

\_\_\_ Antitrust Law

\_\_\_ Appellate Practice

\_\_\_ Federal

\_\_\_ State

\_\_\_ Banking

\_\_\_ Bankruptcy

\_\_\_ Business Law

\_\_\_ Civil Rights

\_\_\_ Collections/Judgment Enforcement

\_\_\_ Construction & Surety Law

\_\_\_ Contracts

\_\_\_ Criminal Defense

\_\_\_ Disability

\_\_\_ Education Law

\_\_\_ Elder Law

\_\_\_ Entertainment Law

\_\_\_ Environmental Law

\_\_\_ Estate Planning

\_\_\_ Ethics

\_\_\_ Family Law

\_\_\_ Food, Drug & Cosmetic Law

\_\_\_ Health Law

\_\_\_ Immigration

\_\_\_ Insurance

\_\_\_ Intellectual Property

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\_\_\_ Municipal Law

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\_\_\_ Real Estate

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\_\_\_ Foreclosure Actions

\_\_\_ Landlord-Tenant

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\_\_\_ Family

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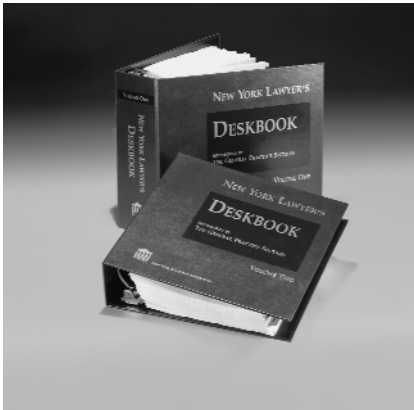
\_\_\_ Workers' Compensation

\_\_\_ Other \_\_\_\_\_

\_\_\_\_\_

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*Please return this completed application form by December 21, to Terry S. Scheid, New York State Bar Association, One Elk Street, Albany, NY 12007, Fax 518/463-4276. Thank you.*



1998 (Supp. 2001) • approx.  
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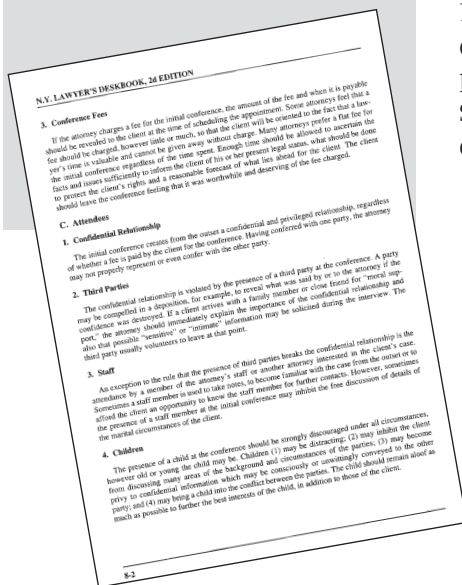
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Written and edited by leading practitioners, the *New York Lawyer's Deskbook* consists of 24 chapters, each covering a different area of practice. Each chapter is intended as a starting point for new practitioners or for practitioners who may not have previously encountered a particular subject area.

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Buying and Selling a Small Business  
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What Is a Debt Collection Case?  
Enforcement of Money Judgments  
Matrimonial Law  
Labor Law  
General Introduction to Workers' Compensation Law  
Social Security  
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Included in the *Formbook* are copies of official forms, commonly used commercial forms, original forms developed by the authors and a wide variety of miscellaneous material which the authors use in their daily practices. Many of the sections contain sample clauses, worksheets, letters, checklists, charts, questionnaires and other informative exhibits.

The *Formbook* is a companion volume to the *New York Lawyer's Deskbook*. Many of the forms and materials included in the *Formbook* are referred to in the *Deskbook*. Although both the *Formbook* and the *Deskbook* are excellent resources by themselves, when used together their utility is greatly increased.

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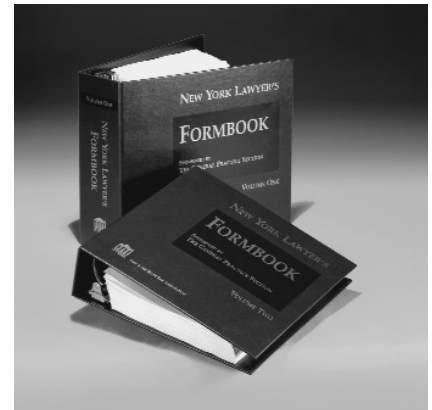
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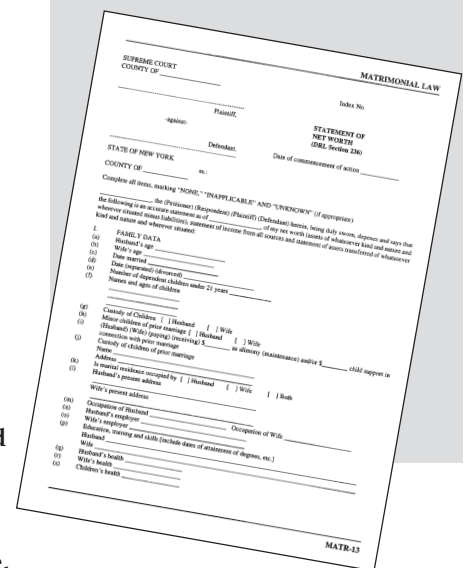
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against the impact of a new idea."***

**—Percy Williams Bridgeman, American Scientist  
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## A Message from the Section Chair

(Continued from page 1)

opportunity to meet with other young lawyers in your area in a casual setting.

The Section is also giving its members an opportunity to participate through our new "Law FAX" program. "Law FAX" is an exciting new initiative of the Section to help the public achieve a better understanding of the law and in part, help restore public trust and confidence in the legal profession. Please read the article in this issue explaining how the program works. It is a simple way to get involved in the Section with a minimal commitment of time.

The Section is always looking for new members for our larger committees. Below is a listing of some of our projects that you might be interested in.

### **Perspective Editorial Board—**

Each member of the editorial board is responsible for finding one article of interest to young lawyers for each edition of *Perspective*, the Section newsletter. *Perspective* is published twice per year.

### **Young Lawyers Section Web**

**Page Committee—**This Committee will initially be responsible for deciding what should be included on the YLS Web page for presentation to the Executive Committee.

Committee members will be asked to review other Web pages and then discuss ideas with the entire Committee via telephone conference call. After a decision is made on content, Committee members will be responsible for reviewing a small portion of the Web page on a monthly basis to insure that links and information are still relevant and to report any changes to the Web page Editor-in-Chief. Individuals need only know how to use the Internet; no other computer knowledge is necessary.

### **Women and Minorities**

**Committee—**The goal of this Committee is to increase participation by and benefits to women and minorities in the Young Lawyers Section and the State Bar Association. The Committee will meet via telephone conference call to determine what issues are important to meet the goals of the Committee. Each Committee member will then be responsible for researching the Internet or other available sources on one of the issues to find useful material. This information will be posted on the YLS Web page to make our Web page the one-stop-shop on issues of importance to women and minorities.

### **Committee on Law Student**

**Involvement—**This Committee will

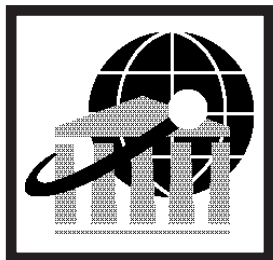
consider ideas to benefit law students and increase their participation in State Bar Association activities. The Committee will meet via telephone conference call to decide what activities would most benefit students, such as programs at law schools, bar exam survival courses or kits, or articles in *Perspective*. A presentation will then be made to the Executive Committee for approval. The Committee will work on implementation of the project or projects chosen.

### **YLS Public Service Committee—**

This Committee will meet via telephone conference call to consider various ideas for YLS public service, taking into consideration the time commitment necessary and funding involved, and present those ideas to the Executive Committee for consideration. Once one or more ideas are chosen, the Committee will work on implementing the project.

Last but not least, even if you don't want to join a committee or participate in any other way, we always want to hear your ideas. If you have ideas for projects or ideas for our committees, let the Section know. If you would like to join a committee or share your ideas, you can reach me at [bsamel@localnet.com](mailto:bsamel@localnet.com).

Barbara J. Samel



Visit Us on Our Web site:  
[http://www.nysba.org/  
sections/young/index.html](http://www.nysba.org/sections/young/index.html)

# Publication of Articles

*Perspective* welcomes the submission of articles of general interest to the Young Lawyers Section. Authors may submit their articles to the Editor-in-Chief as an e-mail attachment, or may submit a 3 ½" floppy disk (preferably in Microsoft Word format) and one, double-spaced printed hard copy, along with biographical information and a photograph (if desired). Articles should be submitted to the editor listed below who most closely fits the subject matter you are writing on. Unless stated to the contrary, all published articles represent the viewpoint of the author and should not be regarded as representing the views of the Young Lawyers Section or substantive approval of the contents therein. *Please note that any articles which have already been published in another forum will need the written consent of that publisher before they can be reprinted in Perspective.*

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***"No matter what side of an argument you're on,  
you always find some people on your side that you  
wish were on the other side."***

**—Jascha Heifetz, Russian-born American violinist  
(1901-1987)**

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