NYSBA FALL/WINTER 2004

Perspective

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

A Message from the Section Chair

Why get involved in the Young Lawyer's Section ("YLS")?

New attorneys and members of our Section frequently ask me what the benefits are to getting involved in the YLS. Frankly, every person involved in our Section will provide different reasons for why they got involved and what have been the benefits of their experience. Yet, similar to volunteering time to any organization or group, the more you give, the more you receive.

First and foremost, the YLS provides the easiest and quickest way for young lawyers to get involved in the New York State Bar Association ("NYSBA"). As I wrote in my first Chair's message and in my letter to all new members of the YLS, getting involved in the YLS is as simple as sending an e-mail to me at skossove @lbcclaw.com or our Bar liaison, Terry Scheid, at tscheid@nysba.org. Since the YLS is a group of your peers, young lawyers are very comfortable getting involved with the YLS. The more you get involved, the more you will develop a great network of colleagues from around the state that benefits you both professionally and personally.

Of the many opportunities for young lawyers to get involved in the YLS, the two most popular are serving as **District Representatives**, or

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De-stressing: Lawyerly Style

By Deborah Turchiano and Lisa Sherman

Deborah Turchiano

It's hard to find lawyers out there who don't love to complain about how stressed out and time-deprived they are. However, we lawyers are a clever lot (seven years of higher education will buy you at least that attribute) and we've figured out ways to de-stress, lawyerly style.

I. De-Stressing In the Office

Even if we're stuck in the office, we are surrounded by all sorts of tension relief devices.

A. Your Electronic Therapist

Pass by any lawyer's office on any given day, and if they are not on the phone or with a visitor, chances are they will be deep in concentration hacking away at their computers. Are they always working on the deal of the century? Of course not! Let's face it: preparing your profile for an on-line dating service looks pretty much the same as revising provisions of a zillion-dollar contract. Because most of us are glued to the computer the vast majority of the workday, high-speed access to the world outside the office has become the digital equivalent of a smoking break. There are three ways we use the magic box to de-stress.

Lisa Sherman

1. E-mail

For many of us, e-mail is our last vestige of communication to the outside world. We live for the welcoming "ping" or instant-message that so rudely interrupts our real work.

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Inside

Save the dates during the NYSBA Annual Meeting

WEDNESDAY, JANUARY 26, 2005
YLS MCLE Program - *You Survived Law School . . . Now Survive Life*
A transitional MCLE program dealing with various issues of interest to new and young lawyers including:

- Balancing Work and Family;
- It's Never too Early to Think About Retirement;
- Honesty and Ethics in Your Firm;
- The Importance of Life Outside the Office; and,
- Are our Consistutional Rights at Risk?

The MCLE Program Will be Followed by a Reception
Honoring the 2005 Outstanding Young Lawyer Award Recipient

FRIDAY, JANUARY 28, 2005
Bridging the Gap for Newly Admitted Attorneys
This program offers a total of 8 MCLE credits for newly admitted attorneys and recent law school graduates. In the morning session, experienced faculty and young attorneys will discuss getting started in the profession, how to conduct preliminary conferences and taking and defending depositions. The afternoon session will discuss avoiding malpractice claims and other ethical issues, how to select a jury and, once, again, provide an opportunity for participants to get a view from the Bench, as judges from various New York courts provide practical and procedural advice.

From the Editor's Desk

"A leader has to have the confidence to think that his decisions will be proven correct. While trying to retain humility, you must accept that the reason you're making these decisions and other people are not is because, for now, you're in charge and they aren't. You do no one good if, like Hamlet, you cannot carry the weight of your convictions."

— *Leadership*, Rudolph W. Giuliani

Leadership. The word means different things to different people. However, as young lawyers, more often than not we are asked, appointed or mandated to take on leadership positions or roles previously reserved for "older" or more experienced attorneys. Whether you are promoted to partner, appointed chief legal counsel of a large corporation or law office, run for political office, or volunteer to run a CLE event, leadership skills are essential for continued success in the practice of law. In today's litigious and sometimes socially volatile society, more than ever lawyers are looked to for guidance, insight and direction to solve complex societal problems. Lawyers—and that term would, of course, include judges—are often the final arbiters of the most important issues facing society today.

The Young Lawyers Section offers a solid "training ground" to practice and hone your skills as a leader, whether as an officer, Executive Committee member, liaison to a substantive section, a CLE Chair or facilitator for upcoming events. As evidenced by meetings with U.S. Supreme Court justices, New York Court of Appeals judges and numerous legal "leaders" from across the state and nation, the YLS is an ideal opportunity to "learn from the best" and make key connections with the important figures of our day.

In this issue, I've highlighted some different viewpoints of leadership in ***The Lawyer's Bookshelf*** column, and I welcome personal examples of leadership by our members to be published in next issue's ***Sound Off!*** I look forward to any additional thoughts, advice and tips to share with fellow members as we advance in our various leadership roles.

As mentioned in the Spring/Summer issue, the YLS Executive Committee has been discussing various changes to YLS publications—including ***Perspective***—to ensure our members receive pertinent information on a more frequent basis. A current proposal is to begin publishing ***Perspective*** up to six times per year, as opposed to bi-annually, and possibly switch to an electronic format. If you have any comments, criticism or would like to be involved in writing or performing editorial work for ***Perspective***, please feel free to contact either the YLS officers or myself.

For this issue, I have once again been fortunate to obtain quality substantive articles on topics pertinent to YLS members. Technology author Odia Kagan outlines the ever evolving area of e-mail privacy; Deborah Turchiano and Lisa Sherman share a humorous chapter on "De-stressing" ourselves from their recently published novel; and Melissa Zambri gives an overview of the recently enacted HIPAA regulations and how they affect law firms and attorneys.

Back issues of ***Perspective*** from 2000 to the present issue can be found on the State Bar website: <http://www.nysba.org/young>. Please send all substantive articles, reviews, humor, photos, artwork and *SOUND OFF!* responses via e-mail to: jrizzo@romegov.com. Please note that my e-mail address has changed since the last issue. Deadline for all submissions to the Spring/Summer 2005 issue is **February 11, 2005.** *Error fucatus nuda veritate in multis, est probabilior; et saepe numero rationibus vincit veritatem error.*

James S. Rizzo

"The priceless heritage of our society is the unrestricted constitutional right of each member to think as he will. Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error."

— Robert H. Jackson, U.S. Supreme Court Justice, Albany Law School Graduate

SOUND OFF!

Young Lawyers Respond To The Questions:
HOW DO YOU MANAGE STRESS IN YOUR LIFE AND WORK?

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 views of the Young Lawyers Section or the New York State Bar Association.

"I deal with stress by doing the following:

1. Exercise–I jog at least 3 times a week after work and spend my weekends out of the city mountain biking (ride 50–100 miles a weekend);

2. Time with loved ones–Go to the beach with fiancé and hang out with non-lawyer friends;

3. Never discuss work outside of the office;

4. During the workweek I always take lunch outside of the office when possible to escape the work environment for at least 30 minutes–1 hour and take a walk during lunch on the very bad days.

I would recommend finding a healthy way to deal with stress and avoid drinking and smoking as one's outlet."

* * *

"I manage stress in my life and my work by simply doing one thing at a time. I usually start the day by listening to voice mails, reading e-mails and mail and prioritizing my work. Once this is done, I simply deal with things on an item-by-item basis—completing tasks one by one. Once I am home, I focus on my life outside of work, in a similar manner."

Hofstra University School of Law

* * *

"My advice for law students and new attorneys is to attempt to get the balance before you are stressed out. If you create a certain lifestyle it is easier to maintain when stressful times come. Arrive to work early. Allow 10–15 minutes to settle at your desk before you have to rush to court, start writing that memo or meeting a client. Take control of your schedule as much as you can and don't be afraid to say I can't do something. If you overcommit and fail, you will look worse than if you tell people you have prior commitments and cannot take on more responsibilities at that present time.

Additionally, when you feel stressed and overwhelmed, schedule some 'me' time—something out of the ordinary. Whether it's a dinner at a special or favorite restaurant, or a movie you ordinarily would not choose. Just do something out of the routine. It will relax and recharge."

Damian S. Jackson, Esq.
N.Y.S. Office of the Attorney General

* * *

"As a sole practitioner, I do feel stress many times during each day of my workweek. I try NOT to work on the weekends, especially during the summer months. When I leave my office on Friday afternoon, I close the door, remind myself that I put in a good week and everything there CAN and will wait for Monday.

I also am in touch with other sole practitioners. Speaking with them helps me to keep "work" in perspective. We all seem to have similar joys and frustrations with the practice of law. I also look at my family and remember what's important.

Lastly, as an elder law attorney, I think about the assistance I provide to my clients and their families. At the end of the day I know I am in the right specialty. That is most rewarding."

* * *

"Although I hated exercising in the morning, I find that when I do 20 minutes of cardio before work, my outlook and productivity during the day are much improved. I continue an anaerobic workout at night, but am a new convert to morning aerobic exercise!"

New York, Admitted: June 2002

* * *

"How I deal with stress:

Monday—this job sucks; I'm quitting at the end of next month.

Tuesday—this job sucks; I'm probably quitting at the end of next month.

Wednesday—this job sucks; I'm thinking about quitting at the end of next month.

Thursday—this job sucks; I'm considering quitting at the end of next month.

Friday—this job sucks; I've thought about quitting a lot, but the money's pretty good.

Saturday—this job sucks; if I quit, what else would I do?

Sunday (if not working)—watch TV and zone out.

Repeat cycle."

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"We live in the midst of alarms; anxiety beclouds the future; we expect some new disaster with each newspaper we read."

— Abraham Lincoln, U.S. President, Lawyer (1809–1865)

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:**

WHAT IS THE MOST IMPORTANT OR MOST DIFFICULT LEGAL TASK YOU'VE ACCOMPLISHED AS A YOUNG ATTORNEY?

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: **jrizzo@romegov.com.** *Perspective* reserves the right to edit responses and the right not to publish responses considered inappropriate.

We look forward to hearing from you!

TECHNO TALK
Who's Been Reading My E-Mail?

By Odia Kagan

"Oh, no–" Ron gasped . . . Ron was pointing at the red envelope . . ."She's–she's sent me a Howler."

"What's a Howler?" [Harry] said.

But Ron's whole attention was fixed on the letter, which had begun to smoke at the corners . . . . Ron stretched out a shaking hand, eased the envelope from Errol's beak, and slit it open. Neville stuffed his fingers in his ears. A split second later, Harry knew why. He thought for a moment it had exploded; a roar of sound filled the huge hall, shaking dust from the ceiling.

'STEALING THE CAR, I WOULDN'T HAVE BEEN SURPRISED IF THEY'D EXPELLED YOU. YOU WAIT TILL I GET HOLD OF YOU. I DON'T SUPPOSE YOU STOPPED TO THINK WHAT YOUR FATHER AND I WENT THROUGH WHEN WE SAW IT WAS GONE . . .'

. . . . Mrs. Weasley's yells, a hundred times louder than usual, made the plates and spoons rattle on the table, and echoed deafeningly off the stone walls. People throughout the hall were swiveling around to see who had received the Howler, and Ron sank so low in his chair that only his crimson forehead could be seen."

J.K. Rowling , *Harry Potter and the Chamber of Secrets*, 68–69 (1998).

We all remember how it felt when back in grade school the teacher noticed our hand motions and furtive looks and made us open a folded note intended for a trusted class friend, and "share it with the class." As adults, we view sending e-mails on a regular basis as a quick, more direct and private method for one-on-one communication without the risk of being forced to "share with the class." But is this really the case? A recent decision by a federal appeals court in Boston—stating that it was acceptable for an Internet service to read client e-mails intended for a third party—may mean that our private e-mails may be about as private as Harry Potter's Howlers . . .

"You've Got Mail (and Court Says Others Can Read It)"[1]

The Background

Interloc (now part of Alibris), a company dealing in the online sale of used and rare books, also served as an Internet Service Provider (ISP), providing its clients with Internet access and e-mail addresses (username@interloc.com). During 1998, under the instruction of CEO Bradford C. Councilman, the company intercepted and saved copies of all incoming e-mail messages to their clients from Amazon.com, its competitor, in order "to develop a list of books, learn about competitors and attain a commercial advantage."[2]

Mr. Councilman, Alibris Inc., and Interloc's computer systems administrator were indicted under the Wiretap Act.[3] Whereas the latter two pled guilty and were sentenced to a fine and probation, respectively,[4] Councilman fought his indictment. His main argument of defense was that the Wiretap Act did not apply, as the e-mail messages were copied while in "electronic storage" rather than "in transit."

"Things which matter most must never be at the mercy of things which matter least."

— Goethe

A Few Words About the Relevant Law

The Electronic Communications Privacy Act (ECPA) was enacted by Congress in 1986 to set out provisions for access, use, disclosure and interception of electronic, wire and oral communications. It also addressed the protection of privacy in such communications. The Act is composed of two parts, commonly referred to as the Wiretap Act (18 U.S.C. §§ 2510–2522) and the Stored Communications Act (18 U.S.C. §§ 2701–2711).

The **Wiretap Act** makes it illegal to intentionally intercept, attempt to intercept,[5] disclose[6] or use[7] an intercepted electronic communication.[8] There are exceptions to the prohibition. Some key exceptions where interception is permissible are: when a party to the communication consents and the interception is not for a criminal or tortious purpose;[9] communications which are readily acces-

sible to the general public;[10] interception or disclosure by the ISP if done during the normal course of employment as a "necessary incident" to the rendering of the provider's service;[11] and disclosure to law enforcement of information inadvertently obtained by the ISP relating to the commission of a crime.[12]

The **Stored Communications Act** was legislated to deal with communications which are in "electronic storage," that is: communications in storage which are *incidental* to their delivery process (e.g., e-mails in a user's mailbox after transmission but before the user retrieved the message from the mail server) and storage for the purpose of *back-up*.[13] The Act sets new punishments for any person who: "1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or 2) intentionally exceeds an authorization to access that facility, and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage."[14]

The Majority Decision

The District Court[15] held that Councilman did not violate the Wiretap Act," as Congress did not intend for the Wiretap Act's interception provisions to apply to communication in electronic storage."[16] On appeal, the majority, in a decision by First Circuit Court of Appeals Judge Juan Torruella, affirmed the District Court's decision that Councilman's actions were not prohibited under the Wiretap Act.[17] The court held that even though "the e-mails in this case were accessed by the procmail[18] as they were being transmitted and in real time . . . the presence of the words 'any temporary or immediate storage' [in the definition of 'electronic storage'] in 18 U.S.C. § 2510(17) controls." In so holding, the majority judges stated that "it may well be that the protections of the Wiretap Act have been eviscerated as technology advances"[19] and that the federal wiretap provisions may be "out of step with the technical realities of computer crimes."[20] However, the court turned to Congress, stating that "it is not the province of this court to graft meaning onto the statues where Congress has spoken plainly."[21]

The Dissent

In a dissenting decision, Judge Kermit Victor Lipez stated that his colleagues' "approach to the Wiretap Act would undo decades of practice and precedent regarding the scope of the Wiretap Act and would essentially render the Act irrelevant to the protection of wire and electronic privacy."[22] Supporting his opinion by the technical structure of sending e-mail,[23] as well as on Congress' legislative history and intent, Judge Lipez held that the Wiretap Act *does* apply to e-mails which are temporarily stored during transmission.

Rejecting Councilman's arguments, Judge Lipez stated that should Councilman's interpretation be accepted, "e-mail would only be subject to the Wiretap Act when it is traveling through cables and not when it is being processed by electronic switches and computers during transit and delivery."[24] This would naturally lead to a substantial decrease in the scope of protection awarded to e-mails.

Against the Decision—"This Time the Sky Really *Is* Falling"[25]

Since its publication, the *Councilman* decision has been widely criticized.[26] Kevin Bankson, an attorney for the Electronic Frontier Foundation (EFF) noted, "This decision makes clear that the law has failed to adapt to the realities of Internet communications and must be updated to protect online privacy."[27]

Critics of the *Councilman* decision say it is particularly dangerous because after it, "e-mail has fewer protections than phone conversations and postal mail. Granting e-mail providers the ability to read e-mail is equivalent to granting a postal worker the right to open and read any mail while it's at a post office for sorting . . ."[28]

Since service providers are exempted under the Stored Communications Act,[29] prior to the *Councilman* decision, ISPs that read their customer's mail without permission could be prosecuted under the Wiretap Act. The *Councilman* decision eliminated that possibility.[30]

In addition, this decision makes it easier for government to intercept communications since it subjects messages such as the e-mails read by Interloc to the Stored Communications Act, rather than the Wiretap Act. Under the Wiretap Act, in order to acquire a wiretap order for the interception of electronic communications by the government, a very strict procedure must be followed. If it is not, the evidence collected may be rendered inadmissible.[31] On the other hand, the Stored Communications Act does not contain such special protections and under it, the government may obtain access to communications under this Act with a simple warrant.[32]

Orrin Kerr in his article[33] states, "Because the exceptions to the Wiretap Act are narrow while the exceptions to the Stored Communications Act are much broader, the switch from protection via the former to via the latter is not only a switch to lesser protection but in many cases a switch to no protection at all."

The House Takes Action

It is due to this extensive criticism of the *Councilman* decision that on July 22, 2004, four members of the House of Representatives[34] introduced the E-mail Privacy Act of 2004 (H.R. 4956)[35]—a bill intended to reverse the effect of the *Councilman* decision and hold e-mail to the same privacy standards as phone conversations.[36] The bill amends the definition of the term "intercept" to include electronic communications in

temporary storage at any point during transmission, as was the case in *Councilman*.[37] Therefore, under this bill, Councilman would have been convicted of a federal crime and the government would have needed a wiretap warrant in order to legally acquire the information harvested by Councilman.

The E-mail Privacy Act would also narrow the exemption formerly granted ISPs under the Stored Communications Act and would prohibit them from accessing (and reading) clients' private e-mails without authorization except to the extent it is "a necessary incident to the rendition of the service, the protection of the rights or property of the provider of that service" or to comply with a government request.[38]

In a statement to the press, Representative Inslee effectively replied to the *Councilman* court's call to Congress to take action and said: "Congress will act to modernize America's privacy laws if the courts fail to maintain a strong privacy standard."[39]

Gmail—A Groundbreaking Innovation or an Invasion of Privacy?

Another case of an ISP's involvement in the content of clients' e-mails in transition is that of Gmail, http://www.gmail.google.com. In April of this year, Google, the world-famous search engine, launched a free Web-based e-mail service with 1 gigabyte of storage. In this service, the e-mail messages received by Gmail users will be automatically scanned, and targeted advertisements based on the content of each message will be displayed on the screen next to that message. This controversial feature was widely criticized as a gross invasion of privacy.

Against: A Gift Horse with "Rotten Teeth and Bad Breath"[40]

Critics of the new service fear the invasion of privacy which Gmail causes. In an attempt to fight the service, a site named http://www.Gmail-is-too-creepy.com was launched to actively dissuade recipients of e-mails from Gmail from replying to such messages.

In addition to being granted an unprecedented amount of storage (1G), Gmail users are discouraged from deleting old messages. This is done both by the provision of a very powerful search engine enabling the easy location of any e-mail message, and through active "admonitions" from the Gmail trash bin, which, when empty says: "No Conversations in the Trash. Who needs to delete when you have 1,000MB of Storage?!"[41] This results in a wide base of information which is stored and subject to subpoena or discovery in litigation.[42]

An element of particular concern is the degree of centralization of the Google service. Because it provides a variety of online services, not only does Google collect and index data from all e-mail messages a user sends or receives through Gmail (including information such as sender and recipient), but it can also link this information to such user's Web searches (www.Google.com), social network (www.orkut.com) and shopping habits (ads and www.froogle.google.com.[43]

Google's critics argue that the new service is not only controversial but also illegal, as it includes the scanning of incoming e-mails from parties who did not explicitly grant their consent. "All party consent" is a requirement found in the California Penal Code (section 631)[44] as well as in several other state laws.[45] Others maintain the service as being in violation of EU directives on data flow[46] as well as German privacy laws.[47]

Google's main defense argument, that privacy is not infringed because computers, not humans, scan the messages—is rejected by critics who reply that: a) it does not make a difference whether the search is done by a human or a computer programmed by a human; and b) clicking on an ad displayed in an e-mail enables the inference that the subject of the e-mail is related to the subject of the ad.[48]

For: Self-Restraint and Prior Consent

Supporters of Gmail argue that the benefits Gmail will provide considerably outweigh the alleged dangers, which are not really dangers at all. They argue that computers doing automated scans do not invade one's privacy and that, in any case, those scans are not very different than the ones done by anti-virus and anti-spam software. In addition, traveling through various routers, e-mail is inherently not a very private medium. As to the personal data collected, the argument is that entities such as credit card companies, etc., already collect such data and more.[49] Furthermore, Gmail supporters find comfort in the self-restraint mechanisms adopted by Gmail. For example, Gmail advertisements will *not* be displayed in messages with "words related to sex, guns, drugs and other topics it considers off limits." In addition, no ads will be shown for dating sites or even for squirt guns.[50]

New Bill

Opposition to the Gmail service has led the California State Senate to introduce a bill which imposes safeguards on services, like Gmail, that scan incoming and outgoing e-mail for specific terms in order to display advertisements.[51] The bill makes it illegal for e-mail and instant message service providers, as defined, that serve California customers, to derive information from communications electronically stored by them or to divulge it to third parties unless specific conditions are met, such as: the receipt of consent or a request of a law enforcement agency.[52] In addition, ISPs are prohibited from retaining "personally identifiable information or user characteristics obtained, derived or inferred" from the scanning process.[53]

For ~~Your~~ Eyes ~~Only~~…

"Everyone knows that e-mail is an insecure form of communication. Like a postcard, unencrypted correspondence sent over the Internet is open to snooping by anyone," writes Kim Zetter of Wire Magazine.[54]

If you are new to the ways of electronic communications, you may not have known that, technically speaking, this is the case. However, following the court's decision in *Councilman*, this is now also the case *legally speaking*. In accordance with the majority decision in *Councilman*, Internet service providers may read your e-mail between the time you click the "Send" button to the time your recipient presses the "Receive" button. Indeed, the privacy policies of many ISPs include provisions prohibiting them from intercepting clients' e-mails without consent. However, what of the consent of the other party to the e-mail? While some state laws require "all party consent" for their interception, this is in many cases subject to the issuance of a subpoena or discovery in legal proceedings.

In light of its ever-growing popularity, it is not likely that e-mail will "go away" anytime soon. Therefore, it is important to remember that in the electronic age, electronic communications may be subject to discovery and may be either legally or illegally intercepted while in transition. Consequently, it is advisable to consider whether e-mail is the most appropriate method for certain communications and to take care to protect electronic communications by means such as password protection, encryption and other forms for securing communications currently available in the market.

Endnotes

1. Taken from an article bearing the same title: Saul Hansell, *You've Got Mail (and Court Says Others Can Read It)* published in NYTimes.com on June 7, 2004, *at* <http://www.nytimes.com/2004/07/06/technology/06net.html?pagewanted=print&position>.
2. *United States of America v. Bradford C. Councilman*, No. 03-1383 (1st Cir., June 29, 2004), <http://www.ca1.uscourts.gov/pdf.opinions/03-1383-01A.pdf>, p. 5. The U.S. Court of Appeals for the First Circuit decided on October 5, 2004, to rehear argument in the *Councilman* case. The original decision has been withdrawn pending the rehearing of the case, which has been scheduled for December 2004.
3. Councilman was charged with a violation of 18 U.S.C. § 371 for conspiring to intercept the electronic communications; to intentionally disclose the contents of the intercepted communication in violation of 18 U.S.C. § 2511(1)(a); and to use the contents of the unlawfully obtained electronic communication in violation of 18 U.S.C. § 2511(1)(c); and in addition, conspiracy to cause a person to divulge the contents of the communication while in transmission, in violation of 18 U.S.C. § 2511(3)(a) (*Councilman*, at 4–5).
4. Mark Jewell, *Court Allows E-mail Interception, Raising Privacy Questions*, Associated Press, published in www.USAToday.com on June 30, 2004, *at* <http://www.usatoday.com/tech/news/internetprivacy/2004-06-30-scotus-email-intercept_x.htm>.
5. 18 U.S.C. § 2511(1)(a). Intercept is defined as: "the aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical, or other device." 18 U.S.C. § 2510(4).
6. 18 U.S.C. § 2511(1)(c).
7. 18 U.S.C. § 2511(1)(d).
8. *Electronic communication* is defined in 18 U.S.C. § 2510(12) as: "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system that affects interstate or foreign commerce." The section goes on to list several transfers not included in the definition of "electronic communication."
9. 18 U.S.C. § 2511(2)(d).
10. 18 U.S.C. § 2511(2)(g).
11. 18 U.S.C. §§ 2511(3)(b)(i), (2)(a)(i).
12. 18 U.S.C. § 2511(3)(b)(iv).
13. *Electronic storage* is defined in U.S.C. § 2510(17) as: (a) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and (b) any storage of such communication by an electronic communication service for purposes of backup protection of such communication.
14. 18 U.S.C. § 2701(a).
15. *United States v. Councilman,* 245 F. Supp. 2d 319 (D. Mass. 2003).
16. *Councilman,* 245 F. Supp. 2d at 321.
17. The majority judges cited precedents such as *Steve Jackson Games Inc. v. United States Secret Service,* 36 F.3d 457 (5th Cir. 1994), holding that Congress did not intend for "intercept" to apply to "electronic communications" when those communications are in 'electronic storage'; and *Konop v. Hawaiian Airlines Inc.,* 302 F.3d 868 (9th Cir. 2002), holding that "For a website such as Konop's to be "intercepted" in violation of the Wiretap Act, it must be acquired during transmission, not while in electronic storage (*Id.* at 878) (Quoted from *Councilman, supra* note 2, at 11).
18. The program used by Interloc to retrieve e-mails for final delivery to end customers.
19. *Councilman, supra* note 2, at 12, citing *United States v. Steiger,* 318 F.3d 1039, 1047–51 (11th Cir. 2003).
20. *Councilman, supra* note 2, at 15.
21. *Id.*
22. *Councilman, supra* note 2, at 53.
23. Judge Lipez says of the type of electronic storage discussed in this case: "All digital transmission must be stored in RAM or on hard drives while they are being processed by computers during transmission . . . Since this type of storage is a fundamental part of the transmission process, attempting to separate all storage from transmission makes no sense." (*Councilman, supra* note 2, at 44–45).
24. *Councilman, supra* note 2, at 24.
25. Taken from this article: Orin Kerr, *This Time the Sky Really *Is* Falling, at* <http://volokh.com/archives/archive_2004_07_14.shtml#1089840267>.
26. *See, e.g.,* Kim Zetter, *Court Creates Snoopers' Heaven*, *at* <http://www.wired.com/news/privacy/0,1848,64094,00.html>; Jewell, *supra* note 4; Declan McCullagh,

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

— John Updike

Appeals Court Throws Out ISP Snooping Case, <http://news.com.com/2100-1028-5253782.html>; <http://www.eff.org>; <http://www.securityfocus.com>; and *Intercepting Email* (N.Y. Times Editorial Desk) published at NYTimes.com on July 2, 2004, at <http://www.nytimes.com/2004/07/02/opinion/02FRI2.html>.

27. Quoted from McCullagh, *supra* note 26.
28. Zetter, *supra* note 26. However, in this context it should be noted that most Internet service providers have explicit policies against reading their customers' e-mail messages (Hansell, *supra* note 1).
29. 18 U.S.C. § 2701(c)(1).
30. Zetter, *supra* note 26.
31. *Councilman*, *supra* note 2, at 25–26.
32. 18 U.S.C. § 2703(a).
33. Kerr, *supra* note 25.
34. Reps. Jay Inslee (D-Wash), Roscoe Bartlett (R-Md.), Jeff Flake (R-Ariz.) and William Delahunt (D-Mass).
35. H.R. 4956 IH; for full text, see: <http://thomas.loc.gov/cgi-bin/query/z?c108:H.R.4956:>.
36. Robert MacMillan, *Making Sure E-Mail Stays a Two-Way Street*, <http://www.washingtonpost.com>, Tech Policy Newsletter, July 28, 2004.
37. The suggested definition will include: "the acquisition of the contents of any communication through the use of any electronic, mechanical, or other device *at any point between the point of origin and the point when it is made available to the recipient*."
38. Amendment to 18 U.S.C. § 2701(c)(1). The exception would be limited to cases when such access is in compliance with 18 U.S.C. § 2702, which includes situations where it is permitted or required to divulge the content of a communication. *See also* Declan McCullagh, *Amazon Exec-Style Email Snooping to be Banned*, *at* <http://management.silicon.com/government/0,39024677,39122619,00.htm>.
39. MacMillan, *supra* note 36.
40. A quote of Beth Givens, director of the Privacy Clearinghouse, as brought out in Andrew Orlowski, *Big Brother Nominated for Google Award*, published in The Register on April 7, 2004, *at* <http://www.theregister.co.uk/2004/04/07/eu_foul_gmail/>.
41. *See* Lindsey Turrentine, *Google Gmail Beta—CNET Editor's Preview*, published in ZDNet.com on July 9, 2004, *at* <http://reviews-zdnet.com.com/Google_Gmail_Beta/4505-3536_16-30968161-2.html?t>.
42. Mark Rasch, *Google's Gmail: Spook Heaven?*, published in SecurityFocus.com on June 14, 2004, *at* <http://securityfocus.com/columnists/248>.
43. *See also* Andrew Orlowski, *Google Mail is Evil–Privacy Advocate*, published in TheRegister.com on April 3, 2004, *at* <http://www.theregister.co.uk/2004/04/03/google_mail_is_evil_privacy/print.html> (Orlowski April 3).
44. Section 631(a) states: "Any person who, by means of any machine, instrument, or contrivance, or in any other manner . . . willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained . . . is punishable by a fine . . . or by imprisonment . . ."
45. States such as Maryland, Illinois, Florida, New Hampshire and Washington State, to name a few. *See* Rasch, *supra* note 42.
46. http://www.cdt.org/privacy/eudirective. *See, e.g.*, chapter I, article 3, and chapter II, section II, article 7.
47. From: Jan Libbenga, *Germans Garotte Google Gmail over Privacy*, published in TheRegister.com on April 8, 2004, *at* <http://www.theregister.co.uk/2004/04/08/gmail_germany/>.
48. *See* Rasch, *supra* note 42.
49. *See* Tim O'Reilly, *The Fuss About Gmail and Privacy: Nine Reasons Why It's Bogus*, published in Oreillynet.com on April 16, 2004, *at* <http://www.oreillynet.com/pub/wlg/4707>.
50. Saul Hansell, *Google E-mail Wrestles with Ads and Ambiguities*, published in E-CommerceTimes.com: Personal Tech on June 23, 2004, *at* <http://www.ecommercetimes.com/story/34685.html>.
51. S.B. 1822. The text of the bill may be found *at* <http://tinyurl.com/ytytn> or <http://info.sen.ca.gov/pub/bill/sen/sb_1801-1850/sb_1822_bill_2004020_amended_sen.html>.
52. Andrew Orlowski, *State Senator Drafts Google Opt-Out Bill*, published in The Register on April 20, 2004, at <http://www.theregister.co.uk/2004/04/22/google_optout/>; *see also* sections 1798.88.1 and 1798.88.2 of the bill.
53. Andrew Orlowski, *California Votes for Google Mail Safeguards*, published in TheRegister.com on May 28, 2004, *at* <http://www.theregister.co.uk/2004/05/28/gmail_legislation_passed/print.html>.
54. Zetter, *supra* note 26.

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"Nothing in the world can take the place of persistence. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination are omnipotent."

— Calvin Coolidge

The Impact of the HIPAA Privacy and Security Regulations on Law Firms: Attorneys As Business Associates*

By Melissa M. Zambri

As explained in an earlier article appearing in the New York State Bar Association *Journal*,[1] federal privacy and security regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA),[2] aimed at protecting patient information, impose strict and sometimes burdensome new requirements on covered entities.[3] A covered entity is a health plan,[4] health care clearinghouse,[5] or a health care provider[6] that conducts certain transactions[7] electronically.

One of the requirements placed upon covered entities is to obtain satisfactory assurances from business associates in the form of a written contract, setting forth certain elements specified in the rules.[8] A business associate of a covered entity is any person or entity doing business with the covered entity that is using the protected health information[9] of the covered entity on the covered entity's behalf.[10]

Examples of business associates include billing firms, data processing firms, auditors, consultants and attorneys.[11] Under the HIPAA privacy rules, the written agreement must:

- Establish the permitted or required uses and disclosures of such information by the business associate, such disclosures not to violate the requirements of the rule, except that:
  - The contract may permit certain disclosures for the proper management and administration of the business associate; and
  - The contract may permit the business associate to provide data aggregation services;[12]
- Provide that the business associate will:
  - Not use or further disclose the information other than as permitted or required by the contract or as required by law;[13]
  - Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by its contract;[14]
  - Report to the covered entity any use or disclosure of the information not provided for by its contract of which it becomes aware;[15]
  - Ensure that any agents, including a subcontractor, to whom it provides protected health information received from, or created or received by the business associate on behalf of, the covered entity agrees to the same restrictions and conditions that apply to the business associate with respect to such information;[16]
  - Make available protected health information for a release to the patient;[17]
  - Make available protected health information for amendment and incorporate any required amendments;[18]
  - Make available information for an accounting of disclosures;[19]
  - Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the business associate on behalf of the covered entity available to the Secretary of the United States Department of Health and Human Services for purposes of determining the covered entity's compliance with the rules;[20] and
  - At termination of the contract, if feasible, return or destroy all protected health information received from, or created or received by the business associate on behalf of, the covered entity that the business associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible;[21]
- Authorize termination of the contract by the covered entity, if the covered entity determines that the business associate has violated a material term of the contract.[22]

Under the privacy rules, a contract may permit the business associate to use the information received by the business associate in its capacity as a business associate of the covered entity, if necessary, for the proper management and administration of the business associate;[23] or to carry out the legal responsibilities of the business associate,[24] where required by law[25] or the business associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person[26] and the person notifies the business associate of any instances of which it is aware in which the confidentiality of the information has been breached.[27]

The covered entity should notify the business associate of any limita-

tions in its notice of privacy practices, any changes in, or revocations of, permission by an individual to use or disclose health information, or any restriction to the use or disclosure that the covered entity has agreed to, to the extent that such information may affect the business associate's use or disclosure of the information.[28]

A covered entity is not in compliance with the privacy or security rules, discussed more below, if it knew of a pattern of activity or practice of the business associate that constituted a material breach or violation of the business associate's obligations under the contract or other arrangement, unless the covered entity took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, terminated the contract or arrangement, if feasible;[29] or if termination is not feasible, reported the problem to the Secretary of the United States Department of Health and Human Services.[30]

To assist providers, the Department of Health and Human Services issued model contract provisions available on the Department's Office of Civil Rights website.[31] This model language sets forth the required provisions for the privacy rules only. Attorneys should become familiar with these provisions and those in 45 C.F.R. § 164.504(e).

Under the privacy rules, any contract created, renewed, or modified after October 15, 2002 had to immediately contain the provisions set forth.[32] If the agreement was entered into prior to October 15, 2002 and was not renewed or modified prior to April 14, 2003, the agreement had to include the provisions by April 14, 2004, unless it was renewed or modified sooner.[33] Evergreen or other contracts that renewed automatically without any change in terms or other action by the parties and that existed prior to October 15, 2002 did not need to contain the language required by the privacy rules until April 14, 2004, unless the contract was modified or renewed in a way which required action by the parties.[34] During the period prior to April 2004, covered entities were not relieved of their responsibilities to make information available to the Secretary of the Department of Health and Human Services and the individual, including the information held by a business associate, and to amend information and receive an accounting of disclosures by the business associate.[35]

Under the HIPAA security rules, which apply to electronic health information[36] and are effective April 21, 2005 for most covered entities,[37] the written agreement must provide that the business associate will:

- Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity;[38]
- Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it;[39]
- Report to the covered entity any security incident of which it becomes aware;[40] and
- Authorize termination of the contract by the covered entity, if the covered entity determines that the business associate has violated a material term of the contract.[41]

Since attorneys may be business associates under the rules, any attorney that receives protected health information from a client that is a covered entity will need a written agreement with the client that includes the business associate provisions. While the responsibility to put the agreement in place rests with the covered entity, since the agreement between the parties is traditionally drafted by the attorney (the retainer agreement), attorneys should have amended current retainer agreements and created a new template for new retainer agreements for covered entities where the covered entity will provide the attorney with protected health information. This is particularly important for attorneys who frequently represent health care providers, payers or clearinghouses, such as those that specialize in health law, insurance law or medical malpractice defense.

Discussing the applicability of the rules to attorneys, the commentary in the privacy rules states:

> We retain the requirement that the business associate contract must provide that the business associate will not use or further disclose the information other than as permitted or required by the contract or as required by law. We do not mean by this requirement that the business associate contract must specify each and every use and disclosure of protected health information permitted to the business associate. The contract must state the purposes for which the business associate may use and disclose protected health information, and must indicate generally the reasons and types of persons to whom the business associate may make further disclosures. For example, attorneys often need to provide information to potential witnesses, opposing counsel, and others in the course of their representation of a client. The business associate contract pursuant to which protected health information is provided to its attorney may include a general statement permitting the attorney to disclose protected health information to these types of people, within the scope of its representation of the covered entity.[42]

In many cases, attorneys who are business associates of covered entities will find themselves asked to sign the traditional business associate agree-

ment of his or her client. Attorneys should review these documents before signing, both compared to the requirements set forth in 45 C.F.R. §§ 164.504(e) and 164.314(a) and for provisions not required by the regulations that may not be applicable. For example, many covered entities require in their business associate agreements *written* privacy and security programs addressing administrative, technical and physical safeguards, which law firms may or may not have depending on their size and resources. Other agreements contain standard provisions related to data aggregation or standardized transactions, which do not apply to attorneys.

In addition, many of these agreements contain indemnification provisions, seeking indemnification of the client by the attorney for losses suffered by the client in connection with a breach of the business associate agreement, and provisions for injunctive relief and assistance in litigation or administration proceedings brought against the covered entity. Attorneys will have to determine their comfort level with such provisions prior to execution. Attorneys may wish to add a provision that it may charge the covered entity a reasonable, cost-based fee for copying protected health information. In any event, the negotiation and execution of these documents can be awkward for the business associate attorney, who may be drafting an agreement that it may have to execute or negotiating an agreement with his or her client.

In addition, attorneys should take note that even those who are not subject to the HIPAA privacy and security rules should be sensitive to the new regulations. While there is no private right of action for an individual to sue under the HIPAA rules, HIPAA does arguably create a higher standard of care regarding the proper use and disclosure of health information and could provide a new industry standard for a court analyzing a common law violation of a person's privacy rights.

This is an excellent time for attorneys to review the importance of confidentiality with staff. In addition, the rules for self-insured plans and fully insured plans, where the sponsor of the fully insured plan receives more than summary information, for the limited purposes of obtaining premium bids or modifying, amending or terminating the plan, and/or enrollment/disenrollment information, specifically require the segregation of employee health claim information from the employment functions of an organization.[43] Implementing such measures will surely assist employers defending discrimination-type claims. In all cases, given this heightened interest in the protection of health information, all those who come in contact with such information should make every effort to safeguard it and ensure its confidentiality.

Endnotes

1. Jane F. Clemens, *New Federal Regulations Expand Protections for Privacy of Health Records*, N.Y. St. B. Ass'n J., June 2002, at 37–45.
2. 45 C.F.R. Pts. 160, 164; Pub. L. No. 104-191, 110 Stat. 1936 (1996).
3. 45 C.F.R. §§ 160.102(a), 164.104.
4. 45 C.F.R. §§ 160.103, 164.104.
5. 45 C.F.R. §§ 160.103, 164.104.
6. 45 C.F.R. §§ 160.103, 164.104.
7. 45 C.F.R. §§ 160.103, 164.104.
8. 45 C.F.R. §§ 164.504(e), 164.314(a).
9. 45 C.F.R. §§ 160.103, 164.501.
10. 45 C.F.R. § 160.103.
11. 45 C.F.R. § 160.103.
12. 45 C.F.R. § 164.504(e)(2)(i).
13. 45 C.F.R. § 164.504(e)(2)(ii)(A).
14. 45 C.F.R. § 164.504(e)(2)(ii)(B).
15. 45 C.F.R. § 164.504(e)(2)(ii)(C).
16. 45 C.F.R. § 164.504(e)(2)(ii)(D).
17. 45 C.F.R. § 164.504(e)(2)(ii)(E).
18. 45 C.F.R. § 164.504(e)(2)(ii)(F).
19. 45 C.F.R. § 164.504(e)(2)(ii)(G).
20. 45 C.F.R. § 164.504(e)(2)(ii)(H).
21. 45 C.F.R. § 164.504(e)(2)(ii)(I).
22. 45 C.F.R. § 164.504(e)(2)(iii).
23. 45 C.F.R. § 164.504(e)(4)(i)(A).
24. 45 C.F.R. § 164.504(e)(4)(i)(B).
25. 45 C.F.R. § 164.504(e)(4)(ii)(A).
26. 45 C.F.R. § 164.504(e)(4)(ii)(B)(1).
27. 45 C.F.R. § 164.504(e)(4)(ii)(B)(2).
28. 67 Fed. Reg. 53,182, 53,265 (2002).
29. 45 C.F.R. § 164.504(e)(1)(ii)(A); 45 C.F.R. § 164.314(a)(1)(ii)(A).
30. 45 C.F.R. § 164.504(e)(1)(ii)(B); 45 C.F.R. § 164.314(a)(1)(ii)(B).
31. 67 Fed. Reg. 53,182, 53,262-66 (2002); *see also* <http://www.os.dhhs.gov/ocr/hipaa/contractprov.htm/>.
32. 45 C.F.R. § 164.532(e).
33. 45 C.F.R. § 164.532(e); *see also* 67 Fed. Reg. 53,182, 53,250 (2002).
34. 67 Fed. Reg. 53,182, 53,250 (2002).
35. 45 C.F.R. § 164.532(e)(3); *see also* 67 Fed. Reg. 53,182, 53,250 (2002).
36. 45 C.F.R. § 164.302.
37. 45 C.F.R. § 164.318.
38. 45 C.F.R. § 164.314(a)(2)(i)(A).
39. 45 C.F.R. § 164.314(a)(2)(i)(B).
40. 45 C.F.R. § 164.314(a)(2)(i)(C).
41. 45 C.F.R. § 164.314(a)(2)(i)(D).
42. 67 Fed. Reg. 82,462, 82,505 (2000).
43. 45 C.F.R. §§ 164.504(f), 164.530(k), 164.314(b).

*Note that attorneys may be impacted by the regulations in other ways as well, including the necessity of drafting new authorizations to obtain medical records, new requirements placed upon covered entities in order to disclose medical information for litigation purposes and requirements placed upon health plans and the sponsors of those plans.

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Scenes from the Young Lawyers Section Fall Meeting

October 1-2, 2004
Turning Stone Casino

The Young Lawyers Section Fall Meeting was held October 1 and 2 at Turning Stone Casino, in Verona, New York. Mark L. Solomon, Managing Partner at the Ithaca law firm of LoPinto Schlather Solomon and Salk, presented a two-hour ethics program, addressing the critical ethical issues that new lawyers face in the *real world* of clients, deadlines, and opposing counsel. The day before the ethics program, early arrivals participated in a welcome reception and had some time to enjoy the gaming available after dinner at one of the beautiful restaurants on site.

Speaker Mark Solomon presented "Reality Testing—Life After the MPRE—New York Legal Ethics for the Young Lawyer" to participants at the two-hour MCLE ethics program. The program addressed the critical ethical issues that new lawyers face in the *real world* of clients, deadlines, and opposing counsel.

At left:
(l to r) Immediate Past Chair Gregory J. Amoroso, Current Chair Scott E. Kossove and *Perspective* Editor James S. Rizzo enjoyed dinner held at the Peach Blossom at Turning Stone Resort and Casino.

Members pause for a moment from the fun and food to pose for a group shot before they adjourn to the casino for some gaming.

Participants enjoyed the food and networking available during dinner.

The Lawyer's Bookshelf
Book Reviews

By James S. Rizzo

Leadership by Rudolph W. Giuliani (2002 Miramax Books, 394 pages)

> *"My staff, many of whom had been up most of the night, gathered around the table. One by one, the deputy mayors and commissioners, joined by Governor Pataki and members of his staff, detailed the challenges of the agencies they managed. We listened to each report; I decided some issues instantly, debated others, assigned task forces to some, and selected others to be acted on later. It was not unlike the way Judge McMahon tackled the stack of motions that accumulated on his desk, always pressing forward, making sure progress was made . . ."*
>
> — Former New York City Mayor Rudolph W. Giuliani, explaining the decision-making process that took place on September 12, 2001

When I originally received this book, I had expectations of an interesting read, good leadership advice, and a biographical and political history of the former New York City mayor. Being a municipal attorney for a small city, I was also curious exactly how a city the magnitude of New York is managed. While I definitely learned about the complexities of managing one of the biggest cities in the world (which in itself is of great value to municipal attorneys), I was greatly impressed by the depth and practicality of the advice offered. In short, the book far exceeded any expectations I had.

If you are seeking a solid book on leadership principles and values, with real-world experience and success stories to back up the principles espoused, I strongly recommend reading this book. Belonging to a different political party or disagreeing with any decisions Mr. Giuliani made as mayor should in no way deter you from this great learning tool. While his personal beliefs and political stances are utilized to exemplify the leadership principles expressed, it refreshingly does not contain proselytizing for a political cause or party.

Another surprise was reading how much the former mayor drew upon his training and experience as a young attorney to tackle the tremendous obstacles faced by New York City during his tenure. While the book contains numerous inspirational quotes, I chose the above to exemplify the importance Giuliani placed in his lessons learned as a young attorney clerking for a no-nonsense federal judge, and how that training permanently altered the way he worked and thought, to the point where he would utilize such training in the aftermath of 9/11. The descriptions and anecdotes of his experiences as both a law clerk and his varied trial work as a U.S. attorney are a valuable resource for young attorneys. Even as a world-renowned mayor of one of the largest cities in the world, Giuliani never loses sight of his roots as an attorney and his love for the practice of law:

> *"Being Mayor of New York City was extremely challenging, especially during the last few months of my second term [referring to the aftermath of 9/11]. But even the responsibility of being Mayor was somehow different from the weight of the decisions of the U.S. Attorney's office. I loved that job as much as I loved being Mayor. It was totally fulfilling . . ."* (p. 284)

The book also begins with a dramatic and detailed accounting of the events of 9/11/01 and how the ex-mayor utilized his lifelong experience and leadership skills to tackle the seemingly insurmountable and unprecedented tragedy at that time:

> *"Every single principle that follows was summoned within hours of the attack on the World Trade Center. Surround yourself with great people. Have beliefs and communicate them. See things for yourself. Set an example. Stand up to bullies. Deal with first things first. Loyalty is the vital virtue. Prepare relentlessly. Under promise and over deliver. Don't assume a damn thing . . . I was prepared to handle September 11 precisely because I was the same person who had been doing his best to take on challenges my whole career. I didn't dust off some secret book reserved only for national emergencies, but did my best to implement the same leadership I used throughout my two terms as Mayor, five years as U.S. Attorney, and two stints in the Justice Department . . .* (preface, p. x)

I would recommend this book without hesitation to anyone who has a desire to learn or improve upon their leadership and management abilities. Whether you are working in a government position, intend to run for, or currently hold, political office, or are a young attorney looking for practical advice on how to handle a multitude of difficult, complex tasks, you can't go wrong with this book.

Leadership Secrets of the Rogue Warrior, A Commando's Guide to Success by Richard Marcinko, (1996 Pocket Books, A Division of Simon & Schuster, Inc.)

"You must attack your self-imposed limitations—because that's the first step to being a leader. . . . You must attack the jobs you hate with even more zest than the jobs you love. . . . To survive and succeed, you must accept one plain and painful truth: Business can be war. Life can be war. If you want to win that war: attack. Attack! ***ATTACK!****"*

— Richard Marcinko

Forget the free coffee and bagels for the office, get out your fatigues and combat boots. In a mere 155 pages, Richard Marcinko takes corporate managers and leaders through a boot camp of various managerial techniques, with all the bravado and tough talk that can be expected from a former Navy Seal and Special Ops commander. Mr. Marcinko is definitely from the "***I ain't got time to bleed***" school of hard knocks and expertly transfers his battle experiences to everyday corporate management. Each chapter expands upon a different "Warrior Commandment," the core of which follows:

"The Rogue Warrior's Ten Commandments of SpecWar

1. I am the War Lord and the Wrathful God of Combat and I will always lead you from the front, not the rear.
2. I will treat you all alike—just like sh**.
3. Thou shalt do nothing I will not do first, and thus will you be created Warriors in My deadly image.
4. I shall punish thy bodies because the more thou sweatest in training, the less thou bleedest in combat.
5. Indeed, if thou hurteth in thy efforts and thou suffer painful dings, then thou art Doing It Right.
6. Thou hast not to like it—thou hast just to do it.
7. Thou shall Keep It Simple, Stupid.
8. Thou shalt never assume.
9. Verily, thou art not paid for thy methods, but for thy results, by which meaneth thou shalt kill thine enemy by any means available before he killeth you.
10. Thou shalt, in thy Warrior's Mind and Soul, always remember My ultimate and final Commandment: There Are No Rules—Thou Shalt Win at All Cost."

Reading these "Commandments" in a vacuum might give one the impression that the book is bloodthirsty macho-ism run amok, but such an interpretation would not only be inaccurate but an oversimplification. Mr. Marcinko's style is both informative and entertaining. He intermixes corporate success stories with life-and-death battle scenarios, and always emphasizes the pragmatic over the theoretical. The techniques he advocates, while not filled with the typical office niceties one might expect from a leadership novel, focus on teamwork, earning the respect of your subordinates (and vice versa), strength of mind and body, creativity and getting the job done with expediency and integrity. His advice is down-to-earth and workable.

If you are tired of lengthy, esoteric books on management and are looking for something to send you charging into the office "ready for combat," this is the book for you.

"In matters of style, swim with the current; in matters of principle, stand like a rock."

— Thomas Jefferson (1743–1826)

Young Lawyers Section News and Events

The **2004 YLS Fall MCLE program** entitled, **"Reality Testing–Life After the MPRE"** was held on **October 1 & 2, 2004** at the Turning Stone Casino and Resort in Verona, New York. Mark J. Solomon, Esq., Managing Partner at the Ithaca Law Firm of LoPinto Schlather Solomon and Salk, adjunct law professor at Syracuse University, and a frequent lecturer on ethics and professionalism, spoke to attendees on critical ethical issues that new lawyers face in the real world of conflicts of interest, professional competence and lawyer compensation. Mr. Soloman gave an update on significant new developments in the areas of ethics and professional responsibility, and directly addressed questions on those topics. After the conference YLS members retreated to the Peach Blossom restaurant and enjoyed the other amenities available at the Turning Stone Casino and Resort.

The next YLS Executive meeting and MCLE is scheduled for **January 26, 2005,** in conjunction with the NYSBA Annual Meeting in New York City. There will also be a reception honoring the **2005 Outstanding Young Lawyer Award** recipient. The deadline for nominations for the award is **Friday, November 19, 2004.**

The YLS is also hosting a 16-credit MCLE on **February 9 and 10, 2005**, entitled **Bridging the Gap: Crossing Over Into Reality**. Members will be receiving more detailed information as the event draws closer.

The always popular and memorable **United States Supreme Court Admissions Program** will take place in **Washington, D.C., on June 4–6, 2005**, in conjunction with the YLS Spring Executive Committee Meeting. Participants will have the privilege of standing before the justices of the U.S. Supreme Court as their names are read for the swearing in. During previous programs, admittees were able to meet and speak with some of the justices after the program, in addition to hearing decisions announced and read from the bench. While a detailed packet of materials will be sent to YLS members, the primary eligibility criteria is that you must be an attorney in good standing for at least three years and that you have two attorneys sponsor you who are already admitted to the High Court. The YLS will provide you with a list of attorney-sponsors in your area to make participation as trouble-free as possible. Don't miss out on this once-in-a-lifetime opportunity!

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.

Ongoing activities of the Section include committees on Bridging 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.

Please contact any of the Young Lawyers Section officers if you are interested in an Executive Committee, Alternate or Liaison position which may currently be vacant. Also, stay tuned to the YLS website: **http://www.nysba.org/young** for more up-to-date information on YLS activities and upcoming district events near you.

"Einstein said that if quantum mechanics is right, then the world is crazy. Well, Einstein was right. The world is crazy."

— Daniel Greenberger

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@lbcclaw.com.

Available on the Web

Young Lawyers Section Newsletter *Perspective*

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 or call (518) 463-3200.

Perspective Index

For your convenience there is also a searchable index in pdf format.
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Ethics Opinions:	Attorney Resources —› Ethics Opinions —› Choose "Opinion Number" (or use Search to find opinions by topic)	
Guide to the NYS Court System:	Public Resources —› The Courts of New York	
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Legal Research:	Attorney Resources —› Online Reference —› Choose Loislaw (free for members) or Lexisone.com	
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To submit requests for ethics rulings: E-mail ethics@nysba.org. All ethics requests must be made in writing.

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Your convenient information source for everything legal.
One more way NYSBA members have the edge.

(Continued from page 1)

Liaisons to other sections within the NYSBA. With respect to our district representatives, there are twelve districts, each of which has district and alternate district representatives. These representatives serve their district on the YLS Executive Committee and plan social and CLE events for their district. Our Executive Committee is also comprised of liaisons to all of the other Sections of the NYSBA, such as the Business Law, Municipal Law and Trial Lawyers' Sections. Every Section of the NYSBA has a YLS liaison who also sits on the executive committee of that Section. These positions provide a wonderful opportunity for young lawyers in their particular area of specialty to meet and develop relationships with Bar leaders throughout New York. We have several openings in our district representative and liaison positions, so if you are interested, again please e-mail either Terry Scheid or myself.

The YLS runs many CLE programs throughout the state during the course of the year. YLS members receive discounts to all of our CLE programs. Our two major programs are presented in New York City during the **NYSBA Annual Meeting**. This year the Annual Meeting runs from **January 24–28, 2005**. On Wednesday, January 26, 2005, the YLS will present its Annual Meeting program, from 9:00 a.m. to 12:00 noon. This three-credit CLE program will deal with various topics important to our members, such as balancing work and family, ethics, starting early to plan for your retirement, and the importance of life outside of the office. Later that day we host a cocktail reception, and that evening, all members get together for a casual dinner in the city. I strongly encourage all of you to try and attend these events.

Later that week, on Friday, **January 28, 2005**, the YLS runs its full-day **Bridging-the-Gap Program**. This eight-credit CLE program is designed to cover many different practical issues important to new attorneys, including topics such as attending preliminary conferences, conducting and defending depositions and ethical issues for new attorneys. A featured highlight of this program is that a panel of judges from across the state will provide tips to new attorneys.

We also offer several opportunities for our members to get published. First, this publication, ***Perspective***, is always seeking new articles from YLS members. We strongly encourage all of our members to consider this great opportunity. Further, the YLS, for the past few years, has been involved in an exciting endeavor called ***On the Case***. This is a program in which all members who volunteer are called upon to write a very brief and general statement that is used by news reporters to help them understand different concepts of the law that they are covering. Since reporters, and not attorneys, use these, our members find them very easy to do because they only require a limited amount of time and a very general explanation of broad principles of law.

The YLS is also very proud of its mentor program. The importance of a mentor cannot be overstated. The **Mentor Directory** is a list of mentors throughout the NYSBA that our members can contact if they have questions or need help on specific issues. We are in the process of improving and updating our Mentor Directory and are looking for volunteers to help work on this initiative.

Finally, we are again running one of our most exciting programs, our **United States Supreme Court Admissions Program**. The Supreme Court admissions program will take place the weekend of **June 4–6, 2005**. The actual admission to the U.S. Supreme Court will take place on the morning of June 6, 2005. This is a great program that is only available to members of our Section. We combine this exciting program with our **Spring 2005 Executive Committee Meeting** so that our members can enjoy the weekend in Washington, D.C. Presently, the night before the admission, Sunday, June 5, 2005, we have a special dinner planned with a very prominent guest speaker. Two years ago, when we last ran this program, our guest speaker was former Solicitor General and Independent Counsel Kenneth Starr. We are looking forward to another exciting program this June and will be sending materials about this program in the coming months.

In addition to the opportunities and events listed above, there are also additional ways for young lawyers to get involved in the YLS. I, again, strongly encourage all of you to contact Terry Scheid or me to get involved, or if you have any questions about the YLS.

Scott E. Kossove

"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

(Continued from page 1)

While many of us reside a mere two offices away from our best friend's office, it's much faster to type what you have to say than walk 10 feet away. Besides functioning as critical distraction to mind-numbing document review, e-mail is loved by all lawyers because, devoid of human emotion, it offers completely neutral delivery of any message, even from the most evil partner. Yelling, stomping and degrading tones are undeliverable. It's virtually impossible to detect the mood of the sender and/or tone of the message in most cases (the exception being when you insert those little yellow smiley faces at the bottom of your e-mails to friends) even though you may spend half a day obsessively dissecting every word to try to figure out what was *really* meant by the sender.

E-mail also facilitates our anal-retentive disorder, an ailment with which we are all plagued. We type, review, revise seven times, save as draft, review a few hours later when we've had a chance to think about things, and then send, but only after checking three times to make sure each recipient is correct. Of course, by the time we hit "send," all that is left is the subject line because we're so neurotic that our written words (which can't be taken back or denied) will be misinterpreted, printed and shown to the rest of the world.

Since we are all so time-crunched, e-mail is also perfect for enabling us to multitask—we can have a blow-out fight with our significant other via insta-messaging while simultaneously participating on an overseas conference call, drafting schedules to a deal document and eating lunch. Oftentimes, the mere banging away on the keyboard in a message to our friend about how inconsiderate our boss may be (with the most egregious behavior always spelled out in capital letters) is therapeutic in and of itself because it takes four times longer to type the story than to tell it. By the time you hit "send," your anxiety has completely dissipated.

2. Surfing

What did we do before the advent of Saint Google? Whether it's looking for a piece of information or just filling our tired noggins with brain candy, we all spend more time than we are willing to admit surfing the Web for periodic stress relief. From the comfort of our office chairs, we can check our stock portfolios (an activity closely followed by a trip to Niemanmarcus.com for many of us if the market is up), plan our next extravagant vacation, read the recipe of the day on Epicurious.com (as if we had time to cook) and watch a movie trailer, all while giving the appearance that we are answering a 50-page interrogatory.

3. E-Shopping

Since most of us don't have time to hit the stores during the week (and for many of us, during the weekends), there really isn't any time left in the day to shop outside the office. For most lawyers (particularly those without the Y chromosome), there is no better therapy than spending our hard-earned greenbacks without leaving the comfort of our chair. A few simple clicks of a button (usually occurring at the tail end of two hours of Web window shopping and price comparisons) and a thousand dollars later ($300 of which are overnight delivery fees) gets you the fruits of your labor delivered right to your chair.

B. Live Office Therapists (a/k/a Bitching Buddies)

Sometimes, there's only one way to deal with the stressful practice of law without internally combusting: bitching, complaining, kvetching (Yiddish for black-belt, master complaining), grumbling, nagging, nit-picking and whining about how much everything and anything SUCKS to ANYONE who will listen. For many of us, nothing is more therapeutic than storming into a colleague's office, closing the door and venting (and for many of us in the early years, crying) about the partner who just chewed us up and spit us out. The scenario usually goes something like this:

> *Evil Partner hands you your red-sea memorandum and tells you that you "dropped the ball" and missed an important research point, so you can't leave the premises until it's done (which won't be until next Tuesday because it's so complicated and you have no idea what you're doing). You run into your Bitchin' Buddy's office, call Evil Partner all of the George Carlin words you can't say on TV, and threaten to: (1) quit; (2) give up your personal trainer; (3) sell your Hamptons share; and (4) open a flower shop. After consuming 300 M&M's with your buddy, she calmly reminds you that: (1) you are florally challenged and a herbicidal maniac; (2) because all of the other people in your Hamptons house are lawyers, there is a transferability restriction on your share; and (3) without a personal trainer, you would develop an incurable case of Lawyer Ass Spread Syndrome (the dreaded "LASS"). Before you know it, you have calmed down, regained your composure and even discussed how you may go about tackling the memo from Hell (thereby rendering the entire bitching session billable).*

II. De-stressing Breaks

Even the most obsessive billing machine cannot be in the office 24/7. Everyone needs a break. While short breaks (i.e., bathroom runs or grabbing a sandwich to eat at your desk)

are generally accepted, lawyers tend to be neurotic about letting anyone know that they have left their workstation for anything more than that (thereby causing every attorney to brainwash their secretary to always tell callers that "lawyer X *just* stepped away from his desk, may I take a message?").

A. Midday Breaks

So what are lawyers doing when they take their long midday breaks that are completely unrelated to work? While marathon-eating escapades do occur from time to time during the "extended lunch break," this break usually has nothing whatsoever to do with food. Most of us will use the midday work reprieve for shopping, workouts, interviewing with kinder and gentler firms, mani/pedis for the ladies, shoe shines for the guys, doctor (and shrink) visits, or running home to visit baby, pet or pillow.

B. The Nightly Break

At the end of the workday (assuming there is an "end") even the most dedicated workaholics tend to vanish without a trace. Most of us understand that preparation for this type of break is much more extensive than the other breaks because it's a bigger time commitment away from billing (i.e., at least 6 hours). Even amateurs know that at a minimum, you should consider littering your desk with paperwork and open books, leaving an open lit-bag (the one you never use) in your client chair, throwing a suit jacket behind your chair and of course, leaving the lights on. More experienced attorneys may also leave an extra set of keys and glasses on their desk, along with a half-eaten sandwich, in addition to spraying cologne in the air to give the impression that you "must have just stepped away."

C. The Vacation Break

Many lawyers confess that they live to vacation and vacation to live. Since lawyers generally have a low tolerance for boredom, nothing but the most exotic, adventurous and luxurious holidays will do. No sooner do we return to post-vacation Hell than we start researching our next journey. As an aside, it seems that the Blackberry does not function optimally in cold climates, European countries, and while flying at altitudes of 30,000 feet. Perhaps this would explain why so many lawyers are now vacationing in Alaska, Italy and/or Costa Rica.

III. De-stressing Outside the Office

Once we have escaped the office, there are a myriad of diversions we turn to for relaxation. The most obvious de-stressor, of course, should be doing nothing and getting some sleep. For most of us, however, peace, quiet and solitude drive us mad after about 10 minutes.

A. Exercise

While almost all of us shell out money to belong to a health club, the trouble with exercise is that, like eating, lawyers can't seem to do it in moderation. We don't feel fulfilled unless we submit ourselves to hour-long, high-impact cardio workouts where our heart rate tops 170 and sweat drips out of every pore of our body. We can't just jog three miles—we have to train for marathons.

On the other hand, if we suspect that we have anything less than an hour to kill ourselves, it's not even worth it to waste our precious time. Similarly, if we don't stick to our new carb-free, under-1,200-calorie fantasy diet (i.e., we binge on a giant size bag of Hershey kisses in the morning, indulge in a greasy burger and fries at noon, and slurp down a Carmel Macchiato at 3 p.m.), all the working out in the world will not burn off those calories, so why bother?

B. Canine and Feline Therapy

What better way to help you de-stress than to know that you have a furry companion who loves you unconditionally, doesn't talk back and thinks you are the nicest, smartest, most loving person that ever walked on the face of this earth? Although it may be scary for a risk-adverse, obsessive-compulsive lawyer to be responsible for keeping something alive other than herself (and we barely manage to do that sometimes), lawyers say there's nothing like it. A simple lick, bark, snuggle or wag of the tail can brighten even our worst days. And it's blatantly clear that you will never find a significant other who can live up to this perfect furry lover. Relationships involve mind games, sexual needs, and battles over the remote controls. All your snuggly boarder wants from you is a scratch on his tummy and a toss of the tennis ball. And they will never correct your grammar or punctuation, either.

C. Hobbies

Lawyers have a fascination with signing up for classes that will ostensibly unleash their creative juices which have been quashed by the practice of law. Despite our initial curiosity in, for example, cooking and pottery classes, and tennis and golf lessons, our interest generally peters out after the first few classes when we discover that we are completely mediocre in these activities. Yet again, we are hit by the brutal reality that we cannot give up our day jobs.

D. Professional (i.e., Expensive) Therapy

For those of us who remain stressed-out messes despite our computer therapy, breaks and outside diversions, it may be time to hit the professional's couch. Formerly a stigmatized activity limited to crazy people, it has now seemingly become a mandatory line-item on every lawyers' maintenance budget. The only problem is, we usually don't have enough down time to research the perfect therapist for our particular problem, and even when we manage to finally pick a shrink, we incur even more stress when we worry about whether or not we'll be able to fit the appointment into our

busy schedule. In fact, some of us may have to retain therapist #2 to make us feel better about repeatedly canceling on therapist #1 due to "work-related emergencies." Whatever these highly paid listeners do, however, seems to be working. Or maybe we are just nostalgic for the Socratic method of our law school days—we long for the perpetual circular reasoning and illogical analysis in which we eventually wind up answering all of our questions ourselves anyway.

IV. Relax!

The first few years of practice knocks even the most hardened attorneys off balance, and sometimes the only thing that keeps us from falling flat on our LASSES are our comrades in training. Seek out your Bitchin' Buddies early in your career and make nice with your electronic therapist. And don't forget, if all else fails, at least you'll be making enough money to pay someone to tell you that you are still sane.

Deborah L. Turchiano, Esq. is a graduate of Cornell University and the University of Florida College of Law. She clerked for the Honorable Susan H. Black on the Eleventh Circuit Court of Appeals and then worked as an ERISA attorney for a large Wall Street law firm for seven years. She currently practices at an executive compensation consulting firm in New York City, and is a member of the New York and Florida bars.

Lisa G. Sherman, Esq. is a graduate of the University of Rochester and Washington University School of Law. She has practiced labor and employment law for the past eleven years, and currently practices at a mid-size defense firm in Los Angeles. She is a member of the California and Nevada bars.

The above article is excerpted from Chapter 8 of a new book entitled ***Sisters-in-Law: An Uncensored Guide for Women Practicing Law in the Real World***, by Lisa Sherman, Esq., and Deborah Turchiano, Esq., and is reprinted here with permission.

> ***"We are what we repeatedly do. Excellence, then, is not an act, but a habit."***
>
> **— Aristotle**

REQUEST FOR ARTICLES

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

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

SOUND OFF!

Young Lawyers Respond to the Questions:
HOW DO YOU MANAGE STRESS IN YOUR LIFE AND WORK?

WHAT ADVICE WOULD YOU GIVE TO LAW STUDENTS OR NEW ATTORNEYS?

(Continued from page 4)

"I manage stress in my life and work through regular exercise, especially weight training. Not only is regular exercise a way to clear my mind, it also helps my physical well-being."

* * *

"There is no other way to handle stress other than to leave it at work. Use the commute time to clear your head before you get home, listen to music, call a friend you have not spoken to in a while, etc. Bringing home your stress from work can very quickly destroy your personal relationships."

Svetlana Sobel, Esq.

* * *

"I was particularly interested in this topic especially since I think first-year law students just hear all the horror stories of how impossibly difficult law school is and that essentially you should not even think about maintaining a social life. This is certainly not true once you can master the art of good time management. Another huge factor is DO NOT PROCRASTINATE! Do your utmost to keep up with the assigned readings and give yourself time off on a Friday or Saturday night. Do not try and force yourself to remain in the library when all you can think about is the latest movie release or that concert or that new nightclub you've heard about on the radio. Go out—it's not like your mind will be 100% focused on torts or contracts anyway! It's like a diet; do not deny yourself everything and then binge a week later. Take that break when you know you need it and that way you will be refreshed the next time you tackle that property law text.

Also, keep in mind the big picture which is never stressed enough your first year at law school—the BAR exam is what really counts in the end since it's the gateway for an attorney into the real working world. Law school is intense and it does require a lot of self-discipline, but you can still get through it all successfully. I managed to keep my sanity, have a fairly good experience at law school and even graduate with honors. Same applies for life after law school—remember that being a lawyer is only part of who you are, it does not define all that you are. Do not let life pass you by because you are too busy being a lawyer."

Columbus School of Law,
Washington, D.C.

* * *

"In my experience the most stressful situations occur when you lack control of outcomes, processes and, of course, time. It is vital to remain focused on those tasks/responsibilities that are most important. Bringing an issue to completion is what gives us a sense of release and ultimately de-stresses us. When dealing with ongoing projects, at work or school, it is important to break the project out into steps that you can realistically finish throughout the duration of the project. By simplifying complex tasks into time manageable sections, your stress level is bound to come down. Also, it is important to communicate your feelings of stress to others. I meet with my staff at the end of each week to refocus the group, as well as to allow them to verbalize any stresses or frustrations they have been coping with before they leave for the weekend. By Monday morning, everyone is aware of what is expected of them for the week and hopefully had a more enjoyable weekend because of it."

* * *

"Stress at work often arises when you are given deadlines and/or when you have more than four or five major tasks/jobs on at the same time. Keep a running list of "deadlined tasks" on your desk/PC and look at it every morning on arrival at work. Choose the one/two most urgent task/s (even if they are not needed for another week) and make it your day's aim to complete them. If the task is large, consider aiming to complete a section a day over the next three to four days. When leaving the office at night, check off the work completed and look at what is outstanding. The crux of it is to constantly review and manage your workload so you always know what is still to be done and what you have achieved each day."

* * *

"I was a 5th year corporate law associate with an international law firm who didn't want to deal with the trade-off between money and my life anymore, not to mention the stress and long hours, so I quit, and I am now applying to B-school to get my MBA to pursue a different career that will hopefully be more rewarding—even if it also requires some longer hours. But while I was a young associate, I would work out and exercise to deal with the stress. I would go to the gym from 8–9 p.m. and then go back to work for an hour or so."

* * *

"I have two pointers for new attorneys/law students for managing stress: (1) Learn how to say no—that way you won't overburden yourself and will have less stress to begin with, and (2) Keep (or make) friends that are not lawyers/law students—that way you will be more likely to leave the office at the office, and avoid shop talk when you should be enjoying yourself."

3d Year Associate, New York, N.Y.

The Young Lawyers Section Welcomes New Members

Emily Anne Aldridge
David Rosse Anderson
Kamilla Aslanova
Che L. Banjoko
Jean-David Barnea
Michael Colin Barrows
Vidisha Barua
Jessica Ellyn Bash
Abigail Julia Berry
Laura K. Biggerstaff
Jason J. Bowman
Tarryn T. Brennon
Jessica Wescott Catlow
Claude A. Charles
Michael M. Chelus
Dan Chen
Maya Chose
Stacy-Ann N. Christian
Lusan Clarissa Chua
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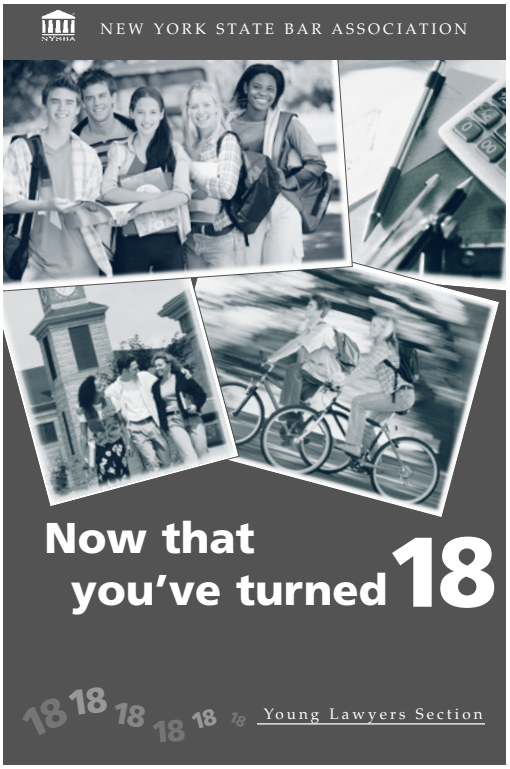

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