

AT ISSUE

A PUBLICATION BY AND FOR THE YOUNG LAWYERS DIVISION
OF THE PENNSYLVANIA BAR ASSOCIATION

JUST HOW DISABLED IS 'DISABLED' FOR PURPOSES OF THE ADA?

By Donna A. Walsh

The Americans with Disabilities Act (ADA), codified at 42 U.S.C. § 12101 *et seq.*, was enacted to serve a simple purpose: to eliminate discrimination against individuals with disabilities. Despite this uncomplicated objective, and even though the term "disability" is specifically defined in the ADA, it is not always easy to determine whether a particular individual qualifies for protection under the act.

Unlike the protected classes under

other civil rights statutes, disability status is not determined by reference to a uniform benchmark or irrefutable characteristic, such as age, race, color, religion or national origin. In order to qualify for the ADA's protection, an individual must make a threshold showing that he or she suffers from a "disability," which is defined as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." (An individual may also

qualify for protection

under the ADA if he or she is mistakenly "regarded as" disabled or has a "record of" a disabling impairment and is subject to discrimination on this basis.)

Therefore, any physically or mentally impaired individual may qualify for protection if his or her impairment limits one or more major life activities — defined to include walking, seeing, hearing and performing manual tasks — in a way that is substantial. The mere fact that an individual is diagnosed with an illness or infirmity will not satisfy this requirement. For example, not all persons who are HIV-positive or have prosthetic limbs are categori-

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INSURANCE COVERAGE: KNOW HOW TO FIND THE RIGHT POLICY

By Douglas Kreitzberg

Most young lawyers begin their professional careers trying to manage a tight budget overflowing with student loan payments and general living expenses. That's quite a debt burden to manage within the first 10 years of your legal career. Purchasing insurance is probably low on your priority list as you reconcile your checkbook each month. However, there are several insurance products every young professional should consider that are vital components of any successful financial portfolio and provide essential protection for you and your family's financial security.

Established law firms usually provide associates with an attractive employee benefits plan that includes health insurance and short-term disability insurance. Usually

only one type of disability insurance plan is available, whereas many firms offer one or more health insurance plans for associates to choose from. You should give careful consideration to your family's needs before selecting your health insurance plan.

Preferred Provider Organizations (PPOs) have made arrangements for lower fees with a network of health care providers. Policyholders are given incentives to stay within the network. If you decided to see an out-of-network provider, you'd typically pay the entire bill up front and then submit the bill to your insurance company for an 80 percent reimbursement. Also, you might have to pay a deductible if you choose to go outside the network, or possibly pay the difference between what the in-network and

out-of-network doctors charge. When enrolled in a PPO, you can refer yourself to a specialist without getting approval and, as long as you've chosen an in-network provider, enjoy the same co-pay. Choosing providers within the network means less money coming out of your pocket and less paperwork.

Point-of-Service plans (POS) are similar to PPOs, but they introduce the "gatekeeper" known as the Primary Care Physician (PCP). You will need to choose your PCP from the plan's network of doctors. As with a PPO, you can choose to go out of network and still get some kind of coverage. In order to get a referral to a specialist, though, you

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DON'T MISS THE PBA YOUNG LAWYERS DIVISION SUMMER MEETING!

AUGUST 2-4, 2002

ROCKY GAP RESORT, CUMBERLAND, MD

For additional information, contact Susan Donmoyer at 1-800-932-0311, Ext. 2223. To register with the hotel, call 1-800-724-0828. Please refer to the PBA Young Lawyers Group when making your reservation.

WHAT'S AT ISSUE

A Note From Your Outgoing Chair...

This is my final chair letter. In my experience as a member of various associations, these final columns are generally a summary of what a wonderful job the chair did, how the association benefited under the chair's leadership and how the outgoing chair wishes success for the new chair and the group as they continue to carry out the outgoing chair's plans.



Mendelsohn

It is my intention to break that mold. While I no doubt would like to sing the praises of the past year, that does not provide much (if anything) to you, the reader. Sure, my grandmother in Florida would like to read about what her grandson has done, but that does not provide you with any helpful information.

Newsflash — I realize that many of you may never attend a PBA or a YLD event. Maybe someday when you have more time, you will attend a Committee/Section Day meeting and discuss specific areas of practice with your colleagues. But for right now the demand of billable hours and the need to occasionally see family members possibly outweigh your desire to attend a bar event. The majority of you today are "mailbox" members. That is, your sole connection to the PBA is the fact that you receive our publications, such as *At Issue*, *The Pennsylvania Lawyer* and the *Pennsylvania Bar News*. Hopefully, your connection now also includes using the PBA's online legal research product InCite. (If you are not using InCite, try it today at www.pabar.org.)

Even if you are only a mailbox member, I want to give you another "attachment" opportunity with the PBA. The PBA employs staff members to assist not only in the running of the association, but also to assist members in their practices. By calling 1-800-932-0311, you can be put in touch with individuals who are ready and willing to serve you. So, in this final letter, I intend to tell you a little about what these staffers do and, in the

process, thank them for helping our division this year.

Susan Donmoyer: Sue is our YLD liaison. She is a tremendous asset to this division. If you ever want to know about YLD events or how to get involved, call Sue. She is simply a great person and friend who knows everything you need to know about the PBA.

Communications Department: Have an important case that may generate press coverage? Finding yourself receiving reporters' calls and not knowing how to respond? Give the Communications Department a call. Led by Marcy Mallory, these staffers are ready to give you guidance on how to deal effectively with the press. This department has been a tremendous asset to our division and can also be valuable for your practice. They also supervise all of the PBA publications that come across your desk, so if you are looking to write an article, give them a call.

While I no doubt would like to sing the praises of the past year, that does not provide much (if anything) to you, the reader.

Meetings Department: Want to take your spouse on a quick weekend getaway? Call the Meetings Department. To me, it seems that Sandy, Janelle and MaryAnne can give you advice on every hot spot in the Northeast and beyond. Planning meetings for a group of lawyers cannot be easy, but these individuals do a great job in helping us and they can help you with your meetings and get-aways.

Legislative Department: Although I work four blocks from the Capitol, I can tell you that it is a different world. Thankfully, the PBA has a Legislative Department ready to serve its members. Need a bill, want to learn more about your representative or senator, want to testify on how a particular bill will affect your clients? Give the Legislative Department a call. John, Peter and Janelle can assist you.

Members Service Center: Through the work of the Membership Development Committee and Elizabeth Kramer, the center's director, the PBA provides discounts for various services, including car rentals, office supplies and computers. Every day they are trying to find ways to provide benefits to PBA members. Curious if a discount exists? Call the membership office today.

Committees/Sections: The PBA offers a plethora of committees and sections that focus on substantive areas of

At Issue

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The materials printed herein are of general reference and are subject to interpretation consistent with state and federal laws.

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the law. You can network with your colleagues practicing in the same area of law or explore a new area of law. Fran O'Rourke, one of the deputy executive directors, oversees staff assignments to the various committees. He is an excellent source of information. He is also a great golf partner and friend. Michael Shatto, Diann Stinney and Louann Bell also are ready to assist you in finding out what committee or section is best for you.

County Bar Services: Want to get involved with your county bar association or learn what other county bars are

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COURTHOUSE CAFÉ

By Elizabeth J. Goldstein

Featuring: HARRISBURG

Restaurants

A Greasy Spoon

The Spot

100 North Second Street

The Spot is known for its hot dogs. It is cheap and fast.

A Food Court

Strawberry Square

Third and Market Streets, 2nd Floor

The food court contains the usual suspects, such as Chinese food, Taco Bell, Everything Yogurt, an ice cream stand and places that sell burgers and fries. The first floor offers a newspaper and candy stand.

Mexican

Neato Burrito

209 North Second Street

Neato Burrito offers good burritos (but not much else). This is a good vegetarian choice because they offer black bean or refried bean burritos, and you have a choice of brown rice, barbeque rice and Spanish rice. For the meat lovers, you can also pick buffalo or chicken burritos. The store is decorated with 50s decor. The burritos are custom-made at the counter.



Japanese

Tokyo Express

227 North Second Street

The restaurant will not impress those who can get sushi from Philly or Pittsburgh, but it is an enjoyable place to have a sushi or tempura lunch.

Eclectic Menu

Stocks on 2nd

211 North Second Street

Stocks is an excellent sit-down restaurant that has great soups, salads, burgers, vegetarian dishes and more elaborate meals. This is a good place for dinner too.

Courthouse Addresses

Dauphin County Courthouse

Front & Market Streets

Harrisburg, PA 17101

Federal Courthouse

228 Walnut Street

Harrisburg, PA 17108

Directions to Courthouses

From the Pennsylvania Turnpike

Take Exit 19 to 283 East. Then take 283 East to 83 South. Take Exit 23, the

Capitol/Second Street exit. Stay straight to go onto Second Street.

For the Dauphin County Courthouse

Make a left off Second Street onto Blackberry Alley. (This alley is the last left turn you can make before you reach the intersection of Second Street and Market Street.) Blackberry Alley will lead you to a parking garage behind the courthouse.

For the Federal Courthouse

Go straight through the traffic light at the intersection of Second and Market Streets. Make a right at the second traffic light, which will be the intersection of Second and Locust Streets. There will be a parking garage on your left directly across from the courthouse.

From 81 North or South

Take the South Front Street Exit. Go straight onto Front Street. Take Front Street for approximately three miles.

For the Dauphin County Courthouse

Pass the intersection of Market and

Front Streets.

Make the next left onto Chestnut Street. At the light go left onto Second Street.

After one-half block, turn left into Blackberry Alley. (This alley is the last left turn you can



Goldstein

reach the intersection of Second and Market Streets.) Blackberry Alley will lead you to a parking garage behind the courthouse.

For the Federal Courthouse

Make a left from Front Street onto Locust Street. Go straight through the traffic light. There will be a parking garage on your left directly across from the courthouse.

Elizabeth J. Goldstein focuses on business and corporate services, health-care law, and estate planning and administration at Keefer, Wood, Allen & Rahal's Camp Hill office.

POETIC



JUSTICE

CORRECTION:

The third place winner of the "Poetic Justice" poetry contest was incorrectly identified as Lawrence H. Fisher in the winter 2002 edition of *At Issue*. The author of "Semi-Something" is Christopher T. Hildebrandt.

The poem is reprinted here in its entirety.

Semi-Something

by Christopher T. Hildebrandt

The sun peeks through
the blinds.....semi-stirring
me from another restless
sleep;

Clock says eight, and
I curse the light for
waking me so damn
early;

I grip the pillow - bury my
face in the feathers of a goose
who is sleeping better than
I;

Swimming in some semi-
consciousness, semi-
dreaming some semi-happy
thoughts;

Too early, I tell
myself - to stop what I'm
doing now; to stop
dreaming.....

cally considered to be “disabled.” Similarly, temporary medical conditions with little or no long-term or permanent impact, such as a routine pregnancy or broken leg, and limitations that are simply inconvenient or bothersome, such as the inability to lift more than 10 pounds or walk long distances, are generally not “substantially limiting” and therefore do not satisfy the ADA definition of “disability.” Other conditions, including drug addiction, compulsive gambling and sexual behavioral disorders, are expressly excluded from protection under the act as a matter of policy.

Beyond these guideposts, there is considerable debate as to intended scope of the ADA. During oral argument last December in the case of *Toyota Motor Mfg., Ky., Inc. v. Williams*, U.S. Supreme Court Justice Sandra Day O’Connor suggested that the ADA was intended to protect the wheelchair bound, but not individuals with bad backs or carpal tunnel syndrome. Disability rights activists disagree and argue that the act was intended to cover persons with a wide range of medical conditions. So just how disabled does an individual need to be to qualify for protection under the ADA? In several recent decisions interpreting the ADA, including the landmark decision in *Williams*, the Supreme Court has further clarified the standards to be applied in determining whether an individual is “disabled” for purposes of the act.

The inability to perform job-specific tasks does not render an individual “disabled”

In *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002), the Supreme Court held that the inability to perform tasks associated with a single job or even the employee’s job of choice does not automatically qualify the employee for protection under the ADA. The plaintiff in *Williams* was an automobile assembly line worker who developed carpal tunnel syndrome as a result of her use of pneumatic tools while on the job. Her condition worsened to the point where she was unable to perform one of the tasks associated with her job, specifically, wiping down cars with her arms at shoulder height for several hours at a time. The plaintiff’s employment was terminated and she brought suit under the ADA, alleg-

ing, among other things, that her physical impairments substantially limited her ability to perform manual tasks at work. The district court concluded that the employee’s impairment did not qualify as a disability under the ADA because it did not substantially limit any major life activity and entered summary judgment in favor of the employer. The 6th U.S. Circuit Court of Appeals reversed, finding that the employee’s condition prevented her from performing a wide range of manual tasks associated with an assembly line job.

In a unanimous opinion authored by Justice O’Connor, the Supreme Court reversed the 6th Circuit and held that it was error to focus exclusively on an employee’s inability to perform manual tasks associated with her specific job. The court reasoned that there is no support in the ADA for the notion that disability status is to be determined only by analyzing

In a unanimous opinion authored by Justice O’Connor, the Supreme Court reversed the Sixth Circuit and held that it was error to focus exclusively on an employee’s inability to perform manual tasks associated with her specific job.

the effect of the impairment on occupation-specific tasks. Rather, the critical inquiry is whether the employee is able to perform the variety of manual tasks that are central to most people’s daily lives, including household chores, bathing and brushing one’s teeth. The employee in *Williams* was not so limited: Despite her inability to perform repetitive work with her hands extended at shoulder level, the employee was nonetheless able to brush her teeth, wash her face, bathe, tend her flower garden, fix breakfast, do laundry and pick up around the house. Since she was able to perform these tasks deemed centrally important to daily living, the court concluded that she was not disabled for purposes of the ADA.

Mitigating measures must be taken into account in determining whether an individual is “disabled”

Resolving a split among the circuits, the Supreme Court ruled in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), that corrective measures must be considered in

determining whether an individual is “disabled” for purposes of the ADA. The plaintiffs in *Sutton* were twin sisters with severe myopia who applied for employment as commercial airline pilots. Because they did not meet the airline’s



Walsh

minimum vision requirement, which was uncorrected visual acuity of 20/100 or better, neither plaintiff was offered a pilot position. The plaintiffs asserted a charge of disability discrimination under the ADA, alleging that the airline had discriminated against them on the basis of their poor eyesight. The Supreme Court affirmed the dismissal of the plaintiffs’ complaint for failure to state a claim upon which relief may be granted, reasoning that if a person is taking measures to correct a physical or mental impairment, the effects of those measures (both positive and negative) must be taken into account when determining whether that person is “substantially limited” in a major life activity and thus “disabled” under the ADA. Since the sisters’ visual acuity was 20/20 with corrective lenses and they were able to function identically to non-impaired individuals while wearing corrective lenses, the court concluded that they were not substantially limited and therefore not disabled within the meaning of the ADA.

The Supreme Court reached the same conclusion with respect to an employee suffering from hypertension in *Murphy v. United Parcel Serv., Inc.*, 527 U.S. 516 (1999). The plaintiff in *Murphy* was a mechanic whose blood pressure was so high that he was unable to satisfy certain health requirements imposed by the U.S. Department of Transportation. The Supreme Court affirmed the grant of summary judgment in the employer’s favor, holding that the employee’s high blood pressure condition, when medicated, did not substantially limit him in any major life activity since he was able to function normally. Citing *Sutton* as support for the proposition that disability status is determined with reference to corrective measures, the *Murphy* court held that the employee was not “disabled” for purposes of the ADA.

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INSURANCE

CONTINUED FROM PAGE 1

usually must go through your PCP. You can still choose to refer yourself, but it will mean more money coming out of your pocket. Usually, you will have to pay a deductible and will receive a reduced reimbursement.

Health Maintenance Organizations (HMOs) usually offer the lowest premiums but are the least flexible type of health plan. In exchange for a low co-payment, low premiums and minimal paperwork, an HMO requires that you only see its providers and that you get a referral from your primary care physician before you see a specialist. Most HMOs require that you get clearance from your primary care physician before you can visit the emergency room. In general, you must see an HMO-approved physician or pay the entire cost of the visit yourself.

If your only disability insurance is part of an employee benefits package, your benefits may fall short of your total income replacement needs. After taxes, group disability benefits typically are reduced to about 40 percent of your salary. Also consider that any benefits you receive from an employer-paid disability income policy are considered taxable income. Statistics show that between the ages of 25 to 35 the average length of disability is 2.2 years. According to the National Safety Council, one in 117 people dies each year, one in 219 homes has a fire and one in 14 people becomes disabled. Most of you have homeowners and life insurance, but have not considered protecting against the risk most likely to happen — a disability. Take note that when purchasing an individual disability income policy, if you pay the premiums yourself with after-tax dollars, the benefits are generally tax-free.

The amount of coverage you can obtain is based on your earned income (net of business expenses) and other disability coverage you have in place. Many carriers provide coverage for up to 60 percent of your income, but there are riders available that could cover 100 percent of your income if you are catastrophically disabled. When reviewing your disability insurance options, make sure that you understand how the benefits “integrate or coordinate” with other disability coverage, Social Security or workers’ compensation. Some policies (typically employer group disability plans) will reduce their payments if you are receiving benefits from another source.

As an attorney, you are well aware of the need for professional liability protection. Most of you are covered under your firm’s professional liability insurance policy. What many of you don’t realize is that your firm’s protection is specifically for work you perform on behalf of the firm. Or maybe your employer is the government, or perhaps you are only practicing law part-time on your own and currently not with a law firm. In any of these situations, if you review and sign off on a real estate transaction for a friend, neighbor or family member, you have no protection. If you are ever accused of any wrongdoing, you won’t have professional liability protection. Fortunately, there is a professional liability policy available for lawyers who practice “after hours” or part-time.

Financial stability is among the most important factors in determining which insurance company to use. Beyond having an excellent financial rating, the carrier should be solvent and admitted in the state. You should also select a carrier that has many years of experience in lawyers’ professional liability insurance and one that carries a high rating from A.M. Best.

There are differences in coverage from carrier to carrier. It is important to know whether defense costs are included within the policy’s limit of liability or paid in addition to the limit of liability, if full prior acts are included, who pays the defense counsel fees and what are the extended reporting period options.

It is also important to know if the carrier needs the insured’s consent to settle a claim. If the insured does not consent and chooses to pursue the case, a carrier with a “Broad Consent to Settle” will continue to defend or pay a claim up to your chosen limit of liability. Some carriers’ policies do not state that they must have the insured’s consent to settle; however, the insured’s limit of liability is reduced to an amount for which the claim could have been settled.

After health insurance, disability insurance and professional liability insurance, all young professionals should consider term life insurance. Shopping for term life insurance used to be easy and you could shop on premium alone. Now you need to compare products and features to be sure you are comparing “apples to apples.”

Companies offer different types of level term plans. One series might guarantee rates

for five or 10 years and the premiums are expected to remain level. Another series might offer premium guarantees for a 15-year period. Annual renewable term, decreasing term, increasing term — there are a variety of options and each has distinct nuances.



Kreitzberg

Most important, you must spend some time reviewing your needs for coverage. Consider the economic loss your survivors will suffer at your death. How will they replace your income, pay off debts (including student loans or a mortgage) provide for college, plan for retirement and meet other objectives you have set for your family?

Another item to take into consideration is your health history. Everyone likes a low rate; however, not everyone is eligible based on previous and current medical history. Carriers may underwrite different medical conditions differently. For instance, some carriers can offer preferred rates to an applicant who has been treated for hypertension, while others will not. So, one carrier may quote a lower rate, yet the applicant might not qualify for that premium.

It is important that you find an individual term life plan that will allow you to lock in rates for a guaranteed length of time that matches your needs.

As the endorsed insurance administrator for the PBA, USI Colburn provides you with the convenience of using one source for all your insurance coverage by offering a comprehensive array of insurance products designed especially to meet the needs of lawyers. Through the strength of your PBA membership, USI Colburn is able to provide the highest quality insurance products at competitive prices — a one-source purchase that not only saves you time and money, but also provides you unsurpassed service.

USI Colburn has earned a reputation for excellence among PBA members by listening to their specific needs, studying trends and working with insurance carriers to design insurance plans to meet the changing needs of lawyers. Highly trained and experienced staff reduces the time consuming and often confusing paperwork process by working directly with you.

Douglas Kreitzberg is president of USI Colburn Insurance Service. USI Colburn Insurance Service markets and administers insurance programs in Pennsylvania and New Jersey for over 200 associations and 30,000 employer groups. Visit www.colburn.com for more information, or call 1-800-COLBURN (Eastern Pa.) or 1-800-WCOLBURN (Western Pa.)

A WORD FROM YOUR INCOMING CHAIR ...

By Chuck Eppolito

With the change of season comes the changing of the guard of the PBA Young Lawyers Division. Just as I am excited about the arrival of the warm weather, barbecues and the beach, I also am excited about the coming year during which I will serve as chair of the Young Lawyers Division. We have plenty of wonderful programs and events for the benefit of our PBA members, the legal profession and the community as a whole. However, before acquainting (or reacquainting) you with those opportunities and benefits, I would like to congratulate and thank my predecessor, Seth Mendelsohn, for the outstanding job he has done leading the YLD this past year!

During the coming year, we want to focus on making the YLD relevant and important — even indispensable — to young lawyers. One of our major goals is to increase the YLD's membership while encouraging our members to become more involved in both the YLD and the PBA. I am convinced that such involvement will inure to the benefit of the individual members, the association and the legal profession.

The YLD and the PBA have much to offer our members. The YLD provides numerous opportunities to meet and form professional relationships and friendships with other lawyers, members of the judiciary and government, and others in various fields of practice from all over the commonwealth. In many instances, these relationships will last a lifetime.

Of course, the YLD offers a variety of substantive programming and opportunities for young lawyers to earn CLE credits. This year, I want to encourage young lawyers to be speakers and presenters at these programs. This is a great opportunity to share what you have learned with others and earn CLE credit in the process.

We also have this nationally recognized quarterly newsletter. All articles in *At Issue* are written and edited by young lawyers. The articles relate to a myriad of topics that are of particular interest to young lawyers, including practice tips, substantive legal issues, ethical considerations and leisure activities (e.g., fitness, entertainment and poetry written by our own members). Any young lawyer may submit material for consideration for publication.

The PBA also offers all of its members free

YLD Chairperson Chuck Eppolito is with the firm of McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc. in Hershey.

online legal research by simply logging onto our Web site (www.pabar.org) and clicking InCite. For those who may not be as comfortable with computerized legal research, the YLD provides one-on-one or group instruction through its Reverse Mentoring Committee.

Looking for a job? Seeking to hire? Through its Career Center, the PBA offers its members online recruiting and job seeking services. The "Job Search" feature allows you to review thousands of national, regional and local legal jobs posted by law firms and legal employers. Legal professionals can post their resumes anonymously under the "Resume Posting" section for prospective employers.

The YLD listserv offers young lawyers an opportunity to send and receive messages from other young lawyers with the click of a mouse. All you have to do is subscribe and you can instantly correspond with Pennsylvania's young lawyers about any subject, including legal issues, ethical dilemmas, making and receiving referrals, and anything else affecting your practice. To subscribe, simply send an e-mail to the following address: YLD-subscribe@list.pabar.org. (Leave the subject line and the message body blank.)

During the coming year, we want to focus on making the YLD relevant and important — even indispensable — to young lawyers.

The YLD will also be working with the Senior Lawyers Committee to provide mentoring to young lawyers. The senior lawyers in the mentoring program offer young lawyers a wealth of wisdom and knowledge as well as the values of professionalism and ethical practice.

The YLD will continue the tradition of the Bar Leadership Institute to provide training to newly admitted attorneys. The members of the BLI class will learn vital information about the practice of law and how to assume a leadership role within the association and the profession. These leadership opportunities are not limited to the BLI class. By serving as a YLD officer, executive council member or chairperson of one of the YLD's nearly two dozen committees, young lawyers receive leadership experience that will prove to be invaluable throughout their careers.

One of the YLD committees that will be very active this year is the Minority Outreach Committee. This committee is one compo-

nent of our overall theme of inclusion within the YLD and PBA. Other YLD committees will emphasize the importance of serving the community. For example, the Children's Issues and Education Committee will send



Eppolito

young lawyers into schools to work with children at different grade levels. These school programs will cover a variety of topics, including mediation and tolerance education. We will also be working with various underprivileged or disadvantaged groups such as the homeless and victims of domestic abuse. There is plenty of room on these committees for more young lawyers to become involved. Just fill out the form on the next page or contact me if you are interested in joining a committee.

Of course, the YLD will continue with its staple programs, such as the High School Mock Trial Competition (which was initiated by the YLD approximately two decades ago), PBA Day on the Hill (where young lawyers have an incredible opportunity to meet and converse with state legislators) and Project KidCare (where we create photo identifications for children), to name just a few.

This summer, the YLD's annual Summer Conference will be held Aug. 2-4 at Rocky Gap, Md., for the second year in a row. The beautiful resort, nestled in a serene state park near Cumberland, offers a Jack Nicklaus Signature Golf Course, lake, indoor and outdoor swimming pools and many other activities for children and adults. Of course, we have several fantastic CLE programs planned. Last year's Summer Conference was so popular and successful that the decision to have the conference at Rocky Gap again this year was a no-brainer. All are welcome to attend. Sign up now!

With all of the above (and more) planned, one might ask: How can you accomplish all this? The answer lies in the dedicated, talented and energetic officers, executive council members and committee members of the YLD. There is still plenty of room for more young lawyers to participate. I am so proud of the terrific group with whom I will serve during my year as YLD chair! I am grateful for the privilege of serving all of you as chair of this great division!



PBA YOUNG LAWYERS DIVISION PARTICIPATION FORM

PLEASE COMPLETE THIS FORM TO BECOME MORE INVOLVED WITH THE
PBA YOUNG LAWYERS DIVISION:

1. I would like to be involved in one of the following YLD committees:

- Children's Issues and Education Committee
- Committee for the Disadvantaged and Underprivileged
- Minority Outreach Committee
- Other (Please specify: _____)

2. I would like to submit an article for publication in *At Issue* _____

Please specify the subject of the article: _____

3. I would like to be considered as a speaker/presenter _____

Please specify the subject you would like to present: _____

4. I would like to be involved in the YLD in another capacity _____

Please specify: _____

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

PLEASE FAX THIS FORM TO SUSAN DONMOYER AT (717) 238-1204.



A STRONGER YOU (PART TWO)

By Ryan C. Blazure

Thanks for joining me for the second installment of my strength training series. As promised, what follows is a total body workout based on a three day per week schedule. Initially, let me say that the plan set forth below is intended to give you basic knowledge of some exercises that can be performed at first in the comfort of your home and then easily in any gym. With that, let's get to it.

STARTING OUT

Where to go

As mentioned above, you'll want to start out getting the feel of the moves at home. This will allow you to be more comfortable and eliminate most excuses you can think of for not trying these exercises.

When to do it

Because this will be a three day per week workout, you should space those days as evenly as possible. Ideal candidates for exercising would be Monday, Wednesday and Friday. However, there's no real harm in working on two days back-to-back. Actually, throwing your body that kind of curve ball is what keeps your metabolism and mind in the game. I don't suggest you go three days in a row, though. Your body just isn't ready for it.

Equipment

As far as equipment goes, you'll need to pick up some simple things to do it right. Get yourself some dumbbells. Any kind or style will do, but you'll need two three-pounders, two five-pounders and two 10-pounders. If you're lucky, you might be able to find an all-inclusive set that consists of two bars and interchangeable weights for a number of combinations.

At this point I wouldn't suggest the "rubber band" weight systems. True free weights offer you more than you need to get started. Also, dumbbells teach you proper form — something that's invaluable.

EXERCISES

Please take a moment to peruse the "Working Out" section of my previous article. The way of moving the weight described therein is something you should think of before, during and after each of the exercises set forth below. Also — this may sound simple — try to feel the individual muscle working. For example, if you're performing bicep curls, feel your bicep working, not your entire upper arm. (This is tougher than it

sounds.)

Work your legs and abdominals on one day; chest, triceps and shoulders on another; and back and biceps on another. The reasons for these pairings are discussed below.

Legs

Lunges

Pick up a dumbbell in each hand. Stand erect and step forward. Lower your body in a controlled movement until the knee of your back leg almost touches the floor. Step back up and alternate legs. An even better way to do this exercise, if you have enough room, is to take giant steps in a walking fashion while carrying the weights at your sides. You will feel a nice burn in the tops of your thighs from this one.

Go for about 10 to 20 steps for three sets.

Calf Raises

Find a stairwell or some other sort of platform. Get a single dumbbell in one hand, and place the balls of your feet onto the edge of the platform. You don't want just your toes on here, and you don't want the platform's edge to touch the arch of your foot. Once you've found the right position, center the dumbbell in front of your body and lower yourself until you feel a nice stretch in your calves. Finally, raise yourself back up to the starting position.

Go for eight to 12 repetitions, for three sets.

Abdominals

Crunches

Lie on your back on the floor. To perform the exercise, cross your arms over your chest and lift up at your shoulders. There's no need to do a "sit-up." Keep an even pace and exhale, really tightening up your abdominal muscles, at the top of the crunch.

Go for 20 to 30 repetitions for three sets.

Chest

Quite frankly, chest exercises are difficult to do without a bench, so what you'll need to find is some piece of furniture that will allow your elbows to come below the plane of your shoulders when you're lying in the prone position.

Also, once you've progressed, the angle of your body in relation to the floor can be altered to hit different sections of your pectoral muscles. For now, though, we'll stick with a parallel position.

Chest Press

With a dumbbell in each hand, sit on the bench, raise the dumbbells to your shoulders and, while keeping the dumbbells to your shoulders, lower your back to meet the bench. Now, extend your arms up and out from your body and bring them back down, allowing your elbows to go below the plane of your body. Really pinch those shoulder blades together and then push the dumbbells back up.

Go for eight to 12 repetitions for three sets.

Flyes

Get into the same starting position as in the previous exercise (prone on the bench with dumbbell-laden arms outstretched above you). Turn your elbows out and bend them slightly. Now, bring your arms down and out without bending your arms any more. Once your arms are as low as they'll go (again, feel the pinch of your shoulder blades), bring your arms back up. The best way to describe this movement is "hugging a tree."

Go for eight to 12 repetitions for three sets.

Triceps

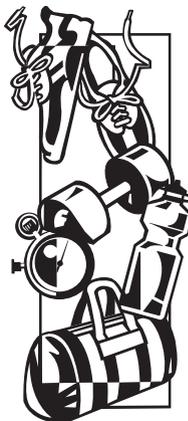
Behind-the-neck presses

With a single dumbbell in your hands, sit in a chair. Now, while holding the dumbbell by one of its heads in each hand, bring the dumbbell up and over your head. Your upper arms should be in line with your torso with your lower arms extending out behind you perpendicular to your body. The weight should be hanging down toward the ground. To perform the exercise, simply straighten your arms out in an arc-like motion. While this exercise hits everyone a little differently, one thing to remember is not to straighten your arms, as you want to feel a stretch in your triceps and a contraction when they're arced into position.

Go for eight to 12 repetitions for three sets.

One-arm raises

Grab a lighter dumbbell and get into the same position as above. The only difference here is that you do the exercise with



A STRONGER YOU

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only one arm. You can use the other arm to brace the working arm.

Go for eight to 12 repetitions for three sets.

Shoulders

Seated Military Press

Remaining in the sitting position, grasp a dumbbell in each hand and bring them up to your shoulders. Now, press them up in as straight a line as possible. Feel the pinch of the tops of your shoulder against your neck. Now bring them back down.

Go for eight to 12 repetitions for three sets.

This set of exercises illustrates an important part of weight training. You want to work big to small. By this I mean work the largest muscle groups, then fine tune with concentrated movements. For example, when you work your chest, you're also working your triceps and shoulders. Similarly, when you work your back, you'll also be working your biceps. I paired abs with legs for the sake of convenience. There's really no harm in doing them at the end of every workout.

Back

Bent-over row

With a dumbbell in your right hand,

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place your left knee on a bench. Bend over and place your left hand on the bench to stabilize yourself. Now, lower your right hand until you feel a nice stretch in your back. Now, pull the weight up until it comes to the plane of your chest. Get your elbow up as high as possible, then lower the weight.

Go for eight to 12 repetitions for three sets per arm.

Rear Flies

Grasp a dumbbell in each hand and sit on the edge of the bench or a chair. Bend at the waist toward your knees and allow the weights to hang down by your feet. Turn your elbows out and bend them slightly. Now, bring your arms out and up without bending your arms any farther. Once your arms are as high as they'll go (after feeling the pinch of your shoulder blades), allow your arms to come back down.

Go for eight to 12 repetitions for three sets arm.

Biceps

Curls

Stand erect with a dumbbell in each hand with your arms hanging at your sides, palms in. Slowly bend one arm at the elbow and bring the weight up to your shoulder in an arc-like motion, turning your palm to face your shoulder. DO NOT move your elbow from its position, however. Keep it locked to your side. Once elbows leave their position,

you'll be prone to swing the weight, which can cause injury. No matter what the exercise, you always want to be in total control of the weight.

Go for eight to 12 repetitions for three sets per arm.

Hammer curls

This is the same exercise as above, sans the turning of your palms. Bring the head of the dumbbell to your shoulder. This exercise brings your forearm into play and, once you do it, it's obvious where this exercise gets its name.

Go for eight to 12 repetitions for three sets per arm.

CONCLUSION

To make progress, after time you'll need to change the exercise program. First, try doing all the exercises set forth above in one day, three times per week. Next, increase the number of sets to no more than five, alternating the amount of weight and number of reps per set. As a guideline, if the weight is heavy, a set of four is fine.

Good luck and good health. Remember, always control the weight.



Blazure

ADA

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Receipt of disability benefits does not necessarily preclude an ADA claim

Employees who are disabled in ways that limit, but do not prevent, their ability to work may be entitled to protection under the ADA even though they have applied for or received disability benefits. The unanimous decision in *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795 (1999), holds that an employee who seeks and obtains Social Security disability insurance (SSDI) benefits is not automatically precluded from pursuing an ADA claim. The *Cleveland* court reasoned that an individual may qualify for SSDI benefits under the Social Security Administration's rules, but nonetheless be capable of performing the essential functions of his or her job with reasonable accommodation mandat-

ed by the ADA. The court explained: "[A]n ADA suit claiming that the plaintiff can perform her job *with* reasonable accommodation may well prove consistent with an SSDI claim that the plaintiff could not perform her own job (or other jobs) *without* it." (Emphasis in original.) To prevail under the ADA, however, the employee may be compelled to explain sufficiently any apparent inconsistencies between the ADA and SSDI claims.

Determination of whether an individual is "disabled" must be made on a case-by-case basis

The combined teaching of these rulings is that determining whether a person is "disabled" is necessarily an individualized inquiry. A claimant must do more than prove a medical diagnosis of impairment,

regardless of the condition or its severity, to meet the statutory definition. A claimant must also submit specific proof of the substantially limiting effect of the impairment on his or her daily life, taking into account the effect of correcting or mitigating measures. A finding that an individual is not actually disabled because his or her impairment is not substantially limiting or is mitigated by corrective measures such as eyeglasses or medication does not end the inquiry. An individual may still qualify for protection under the ADA if he or she is mistakenly "regarded as" disabled or has a "record of" a disabling impairment and is subject to discrimination on this basis.

THE REAL DEAL: SERVING AS AN ATTORNEY ADVISOR TO A HIGH SCHOOL MOCK TRIAL TEAM

By Karoline Mehalchick and Cindy A. Sheridan

Sometime in early January of this year, a fellow law clerk approached us about being the attorney advisors for a local high school's mock trial team. After some hesitation, we agreed, figuring we would spend a few days talking to some students about standing up straight or speaking more clearly. Perhaps we could teach them a little about the rules of evidence; who knew? We could not have been more wrong. Three months later, we were gladly spending four out of five weekdays after work and one, if not both, of our weekend afternoons helping coach our team to compete in the PBA Young Lawyers Division Statewide Mock Trial Competition. And, believe it or not, we cannot wait to do it all again next year.

As we made our way up the hill in Clarks Summit to Abington Heights High School that first afternoon in January (noticing glumly that at 4 p.m. it was already getting dark), we didn't really know what to expect. It had been quite some time since we were in high school, and neither one of us interacts with teenagers on a regular basis. We wondered, What would these kids be like? What would Judy Castrogiovanni, the teacher advisor for the team, expect from us? The unanswered questions were many.

That very first day we did not really say too much about anything. After introducing ourselves and meeting the students, the case was explained to us and we learned the basic procedure of the competition. The case, *Commonwealth v. Morgan McGrath*, involved a charge of arson, and the students had already been practicing for about a month. The district tournament would be at the end of the month, with the top four teams (out of 16) in our district moving onto semifinals and then advancing to the district championship.

The first night of competition arrived quickly, and we were both really excited about the team's potential. There were four seniors on the team, all of whom had previously participated in mock trial competition. The remainder of the team was made up of juniors and a few sophomores. After a month of practice, we felt they all had a good grasp on the rules of evidence that pertained to this trial. They were all confident and took direction well, which made our job a lot easier. The first trial went real-

ly well, and we were in awe of the students' abilities. We won the trial, and went out afterwards to a local restaurant to celebrate our victory.

The second trial didn't go as smoothly as expected, and we were not sure if our team would be advancing into the top four. We sat at the restaurant after the trial and wondered what the future would hold. To our surprise, we found out the next day that we did in fact advance into the top four. We were headed to the district championship and were very excited.

We competed against another local high school in the district championship. The stakes were high, and the two schools had a legendary rivalry. All of the participating students were outstanding in that trial — better than most lawyers we encounter in the courtroom — but we won. The regional semifinal competition was set for the following week, and we were determined to get the kids ready.

Regional semifinals arrived, and once again the kids were great. We won, and found out afterwards that regardless of the outcome in the final round, we would be advancing to the state semifinals because our region was one of the largest regions in the state — this meant that the top two schools in our region would advance. We decided to keep that information from the students, as we wanted them to do their best in the final round. We won again, becoming the regional champions, but it was clear that the level of competition had definitely risen, and it gave us a taste of what we should expect at the state competition.

We had a couple weeks to prepare for the state semifinals. During that time we had one of our seniors drop out from the competition. After discussing our options with Judy, we decided to have one of the juniors step into her place. Driving to the high school after work became second nature to us, since we were now practicing with the students every day. And since Judy was now a few weeks from her due date, she was going to be unable to accompany the students to the state competition. That meant that we were not only going to have to coach the students, but we also

were now the main chaperones for the trip to states.

The day finally arrived to leave for the state competition. We met the students at the high school, loaded them onto the bus and said our goodbyes to Judy. It was so hard to leave her behind. She is such an inspirational teacher, and the students really care about her. She has been involved with the mock trial competition in one way or another since she was in high school. It was a pleasure to work with her, and her enthusiasm is contagious.

After we arrived in Harrisburg and settled in at the hotel, we headed over to the Dauphin County Courthouse. All teams would be participating in two trials, with the top four teams advancing to the semifinal round the next morning. The students felt very comfortable in our courtroom, since it reminded them of the courtrooms in the Lackawanna County Courthouse. The trial went very well, but we only had a few hours until the next round of competition. We quickly regrouped and headed to the next courtroom. Once again, we thought the students did a great job in the second round, but we wouldn't find out which teams made it into the top four until the awards banquet that evening.

When the time came for the announcement, we gathered all the kids around us and held hands. The anticipation was building, but once we heard "Abington Heights" it was utter joy and excitement. We quickly called Judy on our cell phone and gave her the good news. We were scheduled to compete against Quigley Catholic, a six-time state champion. We decided it would be best to practice for about an hour and get the students to bed.

The next morning arrived, and we once again headed over to the courthouse. The semifinal round against Quigley was difficult, and we ended up losing. The students were very disappointed since this was the first time we lost. We gathered them up and convinced them that they were fantastic, and had just finished third out of 250 teams in the state. This helped them to deal with the disappointment, but the ride home was still understandably tough.

All in all, we must say that this was one of the most rewarding experiences of our young careers. We helped these students get a peek into the world of law and saw them perform better than most practicing

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MOCK TRIAL MANIA: 2002 MOCK TRIAL RECAP

By Jane E. Meyer

Quick! What was the most litigated case in Pennsylvania for the first half of 2002? Here's a hint: The case went to trial over 300 times this winter alone, was presented to over 1,000 attorney-jurors and was presided over by a few hundred Pennsylvania judges! Still don't know? The answer is *Commonwealth v. Morgan McGrath*, a fictional arson prosecution tried by high school teams from across the state in the 2002 PBA Young Lawyers Division Statewide High School Mock Trial Competition.

This year's version of the YLD competition involved approximately 2,500 students from 234 Pennsylvania high schools, making it one of the largest in the country. Currently in its 18th year, the competition has arguably become the premier high school scholastic event in Pennsylvania. It provides high school students with a hands-on experience of the American judicial system and the rule of law. As one teacher coach recently told me, "I truly believe, as a career educator, that mock trial as an educational tool is one of the finest methods I have ever encountered to expand young minds and sharpen thinking and communication skills. ... When I see what these young people are capable of, it restores my faith in our combined futures."

The success of the Pennsylvania mock trial program would not be possible without the efforts of the Pennsylvania bar. As noted, well over 1,000 Pennsylvania lawyers volunteered their time in 2002 to be scoring jurors. Attorneys also volunteered in droves to advise individual high school teams about legal issues, while still others coordinated the competition throughout the state. These attorney volunteers are universally enthusiastic about their experiences and continually impressed with the quality of the students. All of us with mock trial experience have heard at one time or another the refrain from attorneys about how favorably the student attorneys compare to practicing attorneys.

One of the unique features of the Pennsylvania high school mock trial competition is that a new problem is written every year specifically for mock trial, alternating yearly between criminal and civil actions. This year's mock trial problem was written by Todd Cook, a third year student at the Temple University Beasley School of Law.

The problem centered around an alleged arson that destroyed a science building on the campus of James State University. Morgan McGrath, a James State University junior, had been in the science building conducting a chemistry experiment on the night of the fire. The commonwealth alleged that McGrath intentionally placed a hot plate, set at 700 degrees, against the wall of the lab. Records indicated McGrath had been the last person to exit the building that night. The commonwealth claimed McGrath's motive was his/her anger at English Professor Hemingway Bode who had given McGrath a low grade during a creative writing class the previous semester. McGrath, the top-ranked junior at James State, had never received a grade below an "A." McGrath became unusually distraught and wrote some threatening notes to Professor Bode and family. Professor Bode's wife was a chemistry professor who had an office above the lab where the fire started and was allegedly the target of McGrath's wrath.

The 2002 competition commenced in early February in courthouses throughout the state with trials at the local level. Each team participated in at least two trials, presenting both sides of the case using materials posted on the PBA Web site. For any one trial, each high school team consisted of three student-attorneys and two student witnesses. In addition, each team also was directed by a teacher coach and a local attorney who advised on trial basics. Trials were presided over by Pennsylvania judges and tried to a jury panel — usually made up of Pennsylvania attorneys — who scored the students' performances. Winners of local competitions advanced to the regional level of competition.

This year's competition culminated with the state finals tournament March 22-23, held for the first time in Harrisburg. The 12 teams competing in the finals were Abington Heights, Cumberland Valley, Devon Prep, Gateway, Greensburg Salem,



The winning team members from Quigley Catholic High School display their trophies.

Holy Ghost Prep, Overbrook, Quigley Catholic, St. Joseph's Prep, West York, Williamsport and Wyoming Seminary. Each team competed in two rounds of trials in the Dauphin County Courthouse on Friday afternoon, alternating sides of the case. Later that evening, during a reception at the Harrisburg Hilton, the four semifinalists were announced and all teams were recognized and received a team trophy and individual team member medals. The semifinals were held early the next morning in the Dauphin County Courthouse and involved Abington Heights, Devon Prep, Gateway and Quigley Catholic. Gateway and Quigley Catholic won their respective trials and advanced to the final, held immediately thereafter in the State Capitol Senate Chamber. Pennsylvania Supreme Court Justice J. Michael Eakin presided over the final trial, which was won by Quigley Catholic before an 11-member jury.

Our congratulations to the Quigley team as they took second place at the National Mock Trial Competition in Minneapolis/St. Paul, May 9-12!

THE REAL DEAL

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attorneys. We were given the opportunity to give something back to the community that we grew up in. Being mock trial attorney advisors helped us shape the futures of "our kids" in at least some little way, and that is the most rewarding experience of all. We highly recommend participating as attorney advisors in this great program!

Jane E. Meyer is the state chairperson for the PBA/YLD Statewide Mock Trial Competition. She serves as law clerk to Judge Jeannine Turgeon of the Dauphin County Court of Common Pleas and has been involved in mock trial for the past 10 years.

BOOK REVIEW

The Magnificent Ambersons by Booth Tarkington (Tor \$6.99)

The recent miniseries has revived interest in this 1918 Pulitzer Prize winner. It is one of the most enjoyable books I have read in ages. It is an extremely interesting slice of our American past.

Set somewhere in the Midwest sometime in the late 1890s, this novel follows the Amberson family from the pinnacle of their fame and fortune through their fall to genteel obscurity. George Amberson Minafer and Lucy Morgan are the two main characters. While George is always somewhat offensive and haughty, Lucy is the epitome of goodness and fairness. Their love and relationship drive the rest of the story.

The Magnificent Ambersons is a delicate morsel to be savored, but you need to give this book your undivided attention.

THUMBS UP READING ...

by Anonymous Avid Reader

Collected Stories by Ellen Gilchrist (Back Bay Paperback \$16.95)

This is one of my all-time favorite authors: She is very funny and her style is utterly unique. Her characters, while eccentric, are familiar to us all. I am usually not a huge fan of the short stories, but Gilchrist transcends the limitations of the genre. She is an author who can be read many times over, with new surprises meeting us with each read. Many characters reappear from story to story, and it is these characters of which the reader cannot help but become genuinely fond.

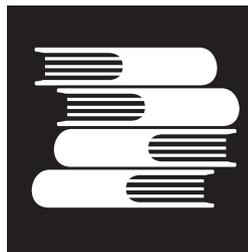
Collected Stories is a real treat. Read it and you will want to run out and get her other 17 novels and collections.

The Corrections by Jonathan Franzen (Farrar, Straus & Giroux, \$26.00)

This book has received a tremendous amount of press springing from the "Oprah controversy." I, for one, agree that Franzen's book is of a caliber far beyond her usual monthly selections.

Franzen set out to write a "great American novel" — one that could be appreciated by readers of all sexes and ages. He has definitely succeeded. *The Corrections* is occasionally funny, but generally it is dark and always quite real. Every member of the Lambert family is fascinating: Enid is desperate; Alfred is pitiful; and their grown children, Denise, Chip and Gary, are each intriguing. These are people who are universally recognizable. As you read this, you cannot help but wonder — Why can't things go right for this family, ever?

This is an important novel that deserves to be read. Do not miss it.



WHAT'S AT ISSUE

CONTINUED FROM PAGE 2

doing? Give Arthur Birdsall a call. Art is a walking encyclopedia of institutional history and is known throughout the commonwealth as an asset to county bars. In fact, he is so good that they named an award after him. Interesting tidbit: In the late '60s, my father ran for city council in Harrisburg and Art served as one of his volunteers. My father lost, but talk about a small world.

Barry Simpson: Our executive director gets his own category because he is everywhere. Barry was a successful attorney in Pittsburgh and moved to

Harrisburg to become a bar association's director a few years ago. He is always looking for new ideas and ways to improve membership. He is a true supporter of this division. He is also a resource for you to use in your practices. Being a true fan of Barry, my wife A.J. and I recently purchased a house near him. No doubt, he is now thinking of moving.

The preceding is the mere tip of the iceberg as to what resources the PBA possesses that can help you in your practices and your career. Call these individuals;

they are ready and willing to serve you.

Finally, it has been a great year because of our volunteer young lawyers and all of these PBA staffers. It is hard to give up being chair when I have enjoyed it so much. Hopefully, we have done some good for the law and the public. I wish Chuck Eppolito all the best as he becomes your next chair. Thank you.

Seth A. Mendelsohn is YLD immediate past chairperson. He may be reached at smendelsohn@attorneygeneral.gov.

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