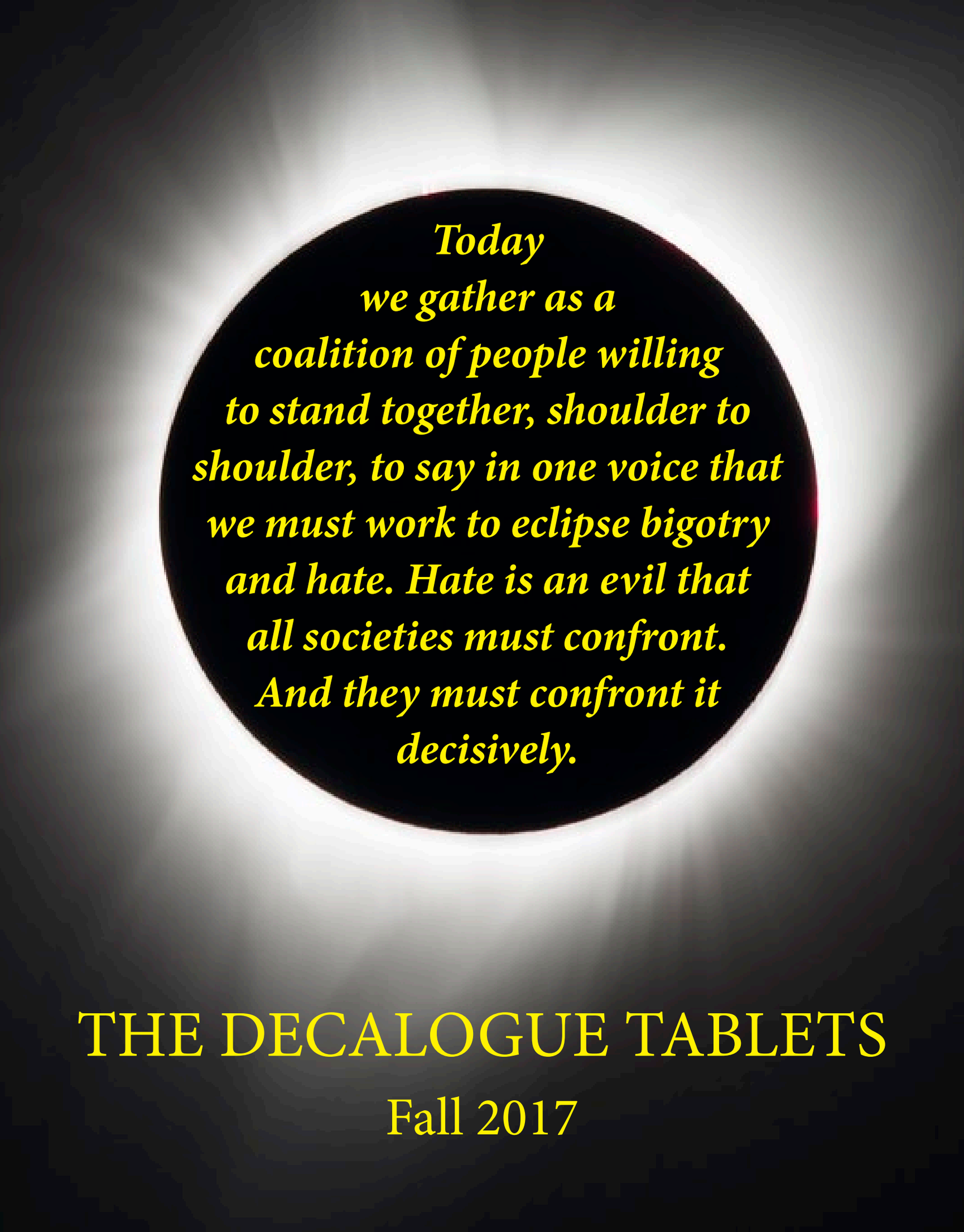

THE DECALOGUE TABLETS

Fall 2017

The Decalogue Society of Lawyers

TABLETS
Fall 2017

President's Column

By Mitchell B. Goldberg

Decalogue President's Remarks August 22, 2017 Loop Synagogue Press Conference Against Anti-Semitism and Racism

Thank you all for being here today. And thank you to Lee Zoldan, Loop Synagogue President, for your introductory remarks.

My name is Mitchell Goldberg and I am the president of the Decalogue Society of Lawyers. I am also the grandchild of a Holocaust survivor who grew up in Germany, enduring the humiliations and pain of the rise of the Nazis in the 1930s.

Yesterday was the eclipse of the sun. Today we gather as a coalition of people willing to stand together, shoulder to shoulder, to say in one voice that we must work to eclipse bigotry and hate. Hate is an evil that all societies must confront. And they must confront it decisively.

This is not a political issue. This is not a party issue. This is an American issue.

Represented here today are the following organizations (in alphabetical order):

Alliance of Illinois Judges
American Association of Jewish Lawyers and Jurists
Arab American Bar Association of Illinois
Asian American Bar Association
Asian American Bar Association Law Foundation
Black Women Lawyers Association of Greater Chicago
Chicago Bar Association
Chicago Loop Synagogue
Chinese American Bar Association
Cook County Bar Association
Decalogue Society of Lawyers
Filipino American Lawyers Association
Hispanic Lawyers Association of Illinois
Illinois State Bar Association
Jewish Judges Association of Illinois
Lesbian and Gay Bar Association of Chicago
Muslim Bar Association of Chicago
National Employment Lawyers Association of Illinois
South Asian Bar Association

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From the Judge's Side of the Bench

Courtesy, Civility, Candor – The Essentials of an Appellate Brief

By Justice Jesse G. Reyes

"Courtesy is an essential element of effective advocacy."
—Justice John Paul Stevens

The appellate brief is the single most important means available to an appellate advocate to communicate with the appellate court. A brief, therefore, provides counsel with an opportunity to make an impression on the court. What that impression will be is within the total control of the author. A brief written with discourteous or uncivil overtones is not the image of their case one would want to project. The court will be less inclined to favorably entertain a brief which attacks the integrity and competence of counsel's opponent.

Judges are interested in the merits of the case, applicable law, and well reasoned argument, not in personal attacks on opposing counsel. Even if opposing counsel did act inappropriately, the best approach and tenor to take in the brief is to set forth in a non-argumentative manner all of the relevant facts associated with said conduct, thereby allowing the court to draw its own conclusion. Why waste your precious page limit in a back and forth dissertation of opposing counsel's improper conduct?

Mischaracterizations and character assassinations have no place in an appellate brief. This view applies to criticisms of the lower court as well. Every appeal involves a party that believes the outcome in the lower court was incorrect. Counsel for the aggrieved party may more persuasively present their case by logically and respectfully arguing where or how the error occurred, rather than resorting to insinuations about the judge who presided over the matter below. Nor should appellate counsel disrespectfully make reference to the lower court's rulings that the appellate court is now being requested to consider.

Equally as important as courtesy and civility, an appellate advocate should be candid. The court always appreciates candor. Even more so in the area of appellate practice, because the appellate court renders its decision based on the record. If counsel's representations of what is contained in the record do not mesh with the record itself, that affects counsel's credibility Further, each matter and each party before an appellate court has a weakness in their case. Otherwise, an appeal would not have been filed. I recommend the author of the brief set forth the problem by acknowledging the weakness. Then, an effective advocate should provide the court with the rationale as to why their side should prevail. This approach will not only further your client's argument but will enhance your credibility with the court. Candor is also essential in addressing damaging case law. An appellate advocate should not ignore or sidestep unfavorable precedent. Rather, that advocate should contend with it by discussing and distinguishing it. If it can be distinguished, or if not, provide sound reasoning as to why the precedent should be modified or overruled.

Keep in mind that through your brief, your goal is to score points for your client with the court by communicating in a courteous, civil, and candid manner. The brief should not be utilized as a vehicle by which you settle a score with opposing counsel or the lower court. Such conduct is not only unprofessional but is quite possibly sanctionable as well, which is not the result you and your client were seeking in submitting the appellate brief.

At an address during the American Bar Association's Annual Meeting in Orlando, Florida, 1996, in reference to civility, Justice John Paul Stevens provided his audience with the following. "I can assure you that most judges regard incivility of counsel as a confession that they would rather not discuss the relevant facts or the controlling law"—an impression assuredly no appellate advocate would want to either directly or indirectly leave with the court.

Justice Reyes is currently serving on the Illinois Appellate Court, First District, Fifth Division.

President's Column *(Cont'd)*

I thank them for their support of this effort. I offer my sincere thanks to all those who made this press conference possible. I am especially grateful to Dartesia Pitts (CCBA President), Judge Thomas Mulroy (CBA President), Erica Kirkwood (BWLA Presedent), and Donna Haddad (AABAR President) for speaking today. And I want to give a special thanks to the Loop Synagogue for hosting us.

A generation ago, brave men and women fought across the globe to end the scourge of fascism that had brought the world to its knees. And in the decades thereafter, brave men and women fought in courtrooms around this country to ring true the founding words of our great nation in the Declaration of Independence—that all people are created equal. These battles were fought against toxic ideologies that saw the murder of millions in Europe, including six million Jews, and the lynchings and violence committed against African Americans and other people of color in this country.

The bar associations and legal organizations assembled here today have, for decades, fought to protect the rule of law and to make certain that the rights of all people are protected, regardless of race, religion, gender, national origin, or sexual orientation.

Yet, despite these efforts, the scourge of anti-Semitism and racist hatred have been on the rise lately, across this great nation.

Though it has reared its head in many forms, it has spared no region, including Chicago.

We are gathered here at the Loop Synagogue—which was the site of a hate crime just a few short months ago that awakened our community, and its allies, to the problem of a newly emboldened, and especially virulent strand of anti-Semitism. In February, a man shattered the windows of this very synagogue and defaced it with swastikas. Then, just like now, people of good conscience stood together to decry hate.

Other anti-Semitic crimes have occurred across the country, including just days ago at the Holocaust memorial in Boston. This phenomenon has unfortunately become widespread—with no end in sight.

Bigotry and hate reared its head just over a week ago in an ugly rally, spearheaded by neo-Nazis and the Ku Klux Klan, in Charlottesville, Virginia, which culminated in the murder of a counter-protester, with many more wounded. The hatred, anti-Semitism, racism, and xenophobia on display was simply horrifying. During that rally, reportedly, a large number of white supremacists approached a Jewish synagogue, Congregation Beth Israel, and chanted anti-Semitic epithets at the congregants, who were inside praying their Sabbath prayers.

Though the First Amendment does give people a right to speak, acts of intimidation and violence can never be permissible.

Sadly, too many leaders have failed to timely and unequivocally condemn acts of hatred and those that promote it. This is made all the worse in an environment where our society, it seems, has increasingly lost our civility in political discourse. Haters thrive in such a vacuum. And, unfortunately, we have seen too many examples of those who peddle their hate ideologies emboldened in recent months, weeks, and days.

Most scary are the efforts by these hate peddlers to coopt and infiltrate other causes with their corrosive ideologies. Nationwide we have been witnessing the mainstreaming of anti-Semitism and bigotry within many groups. The result is that we are unable to comfort ourselves with the notion that the bigots occupy some kind of conservative fringe. And we have seen those who would intimidate people of color, Jews, and other minorities feeling empowered to do so.

Jews know all too well the dangers of remaining silent in the face of these trends.

Many years from now, our children will ask us what we did during these turbulent times. I refuse to let my answer be "nothing." And I am extremely grateful to the leaders and members of all the organizations who are here today. Indeed, our unity of purpose here today is one of the bright spots these turbulent times have created.

The Lubavitcher Rebbe, Rabbi Menachem Mendel Schneerson (of blessed memory), used to say that in a hall of darkness, if you light one small candle, its precious light will be seen from afar. Our mission here today is to ignite our own candles of truth to illuminate our society to get us through the darkness.

In this spirit, we must call upon all of our national leaders to confront anti-Semitism, racism, Islamophobia, and xenophobia decisively and to unequivocally condemn all acts of hatred and those who peddle it. And they all must reaffirm the importance of civility in political dialogue and lead with clarity of purpose.

The Bill of Rights and later amendments to the Constitution shows that our nation values diversity in our society. And those of us in the legal profession must use all of our tools to protect the rule of law, as well as to protect the rights of all of our diverse citizenry who make up the beautiful tapestry of the United States.

This is not a political issue. This isn't a party issue. It's an American issue.

Today marks the turn of the Jewish calendar to the month of Elul—a time of self-reflection and growth in the run-up to the High Holidays.

Jews have learned the wisdom that comes through painful experience, that in order to confront hate, it is simply not enough to look across to other communities, groups, or opposing political parties and point out the iniquities of those on the other side. Sometimes we must even look within ourselves and our own communities. Each and every one of us must be ever mindful of our own behaviors and to lead by example in our own speech and conduct. It is said that love overcomes hate. So let each of us commit to continuing to focus on what unites us as part of the human family.

With every challenge comes an opportunity. Today's challenges give all of us the opportunity to bravely confront hatred wherever it dwells. None of us can do this alone. We are stronger together. And together we can dedicate ourselves to uniting our separate candles into a blinding light of truth to drive back the darkness. Only together can we remove this evil from our midst.

As with the generations that came before us, the path ahead may not be easy or comfortable. But, for our children and those who come after us, it is incumbent on each of us to try.

This is not a political issue. This isn't a party issue. It's an American issue.

I thank you all for joining with us today. May G-d continue to bless the United States of America and may G-d bless our united efforts to defend the beautiful system of law that protects us and all Americans.

Case Law Update: Bail Reform in Cook County

by Adam Sheppard

On July 17, 2017, Chief Judge Evans signed General Order 18.8A that requires judges to set bond in an amount which the accused can afford, unless the defendant poses a danger or significant risk of nonappearance. The order takes effect on September 18, 2017 for felony cases and January 1, 2018 for misdemeanors.

"Defendants should not be sitting in jail awaiting trial simply because they lack the financial resources to secure their release," Chief Judge Evans said. "If they are not deemed a danger to any person or the public, my order states that they will receive a bail they can afford."

Although the Illinois Code of Criminal Procedure already instructs that bond be "considerate of the financial ability of the accused," 725 ILCS 5/110-5(b)(1-3)), Cook County bail hearings commonly proceed without a detailed inquiry into the accused's financial ability to post bail. Chief Judge Evans's order seeks to rectify that.

Under the new procedure, "prior to the initial bail hearing and at such other times as the court may direct, Pretrial Services shall request information from the defendant regarding the defendant's ability, within 48 hours, to post monetary bail." General Order 18.8A. Pretrial Services will provide this information to the court. For all bailable defendants, Pretrial Services shall use a risk-assessment tool approved by the chief judge to assist the court in establishing reasonable bail. *Id.* If the trial court determines that release on bail is not appropriate, it shall, in substance, make and state, on the record, in open court, one or both of the following findings, together with sufficient supporting facts:

> a. the defendant will not appear as required, and no condition or combination of conditions of release can reasonably assure the defendant's appearance in court; or
>
> b. the defendant poses a real and present threat to any person or persons, as defined in 725 ILCS 5/110-l (d).

Id.

Under the order, "there shall be a presumption that any conditions of release imposed shall be non-monetary in nature, and the court shall impose the least restrictive conditions or combination of conditions necessary to reasonably assure the appearance of the defendant for further court proceedings." *Id.* The court shall inquire into the defendant's ability to pay monetary bail prior to setting or modifying a condition of release that includes monetary bail. *Id.* Prosecutors and defense counsel may provide information regarding the defendant's ability to post bail by way of proffer. The defendant's relatives or other persons who are present at the hearing, and have information about the defendant's ability to post monetary bail, also may make statements. *Id.*

If the court decides to require monetary bail as a necessary condition of release, it must, in substance, make the following findings on the record:

> a. no other conditions of release, without monetary bail, will reasonably assure the defendant's appearance in court;
>
> b. the amount of bail is not oppressive, is considerate of the financial ability of the defendant, and the defendant has the present ability to pay the amount necessary to secure his or her release on bail; and
>
> c. the defendant will comply with the other conditions of release.

Id.

The order also provides for a prompt bail review for a person who is in custody due to inability to post monetary bail: "A person in custody due to an inability to post monetary bail shall be brought before the court at the next available court date or 7 calendar days from the date bail was set, whichever is earlier, for a review of the conditions of release pending further court proceedings." *Id.*

The order helps assure that defendants on bail remain aware of their court dates. To do so, it directs Pretrial Services, beginning no later than December 1, 2017, to provide reminders to all defendants released on bail in felony cases. It may do so by telephone, text message, or similar technology, unless the defendant declines such reminders. *Id.*

In summary, the new order elevates the financial ability of the accused to post bail to a principal consideration. Unless the defendant poses a safety threat or significant risk of nonappearance, the new order presumes that non-monetary conditions of bail should apply. Under the new order, bail hearings should proceed more like bond hearings in federal court, if defendants do not pose a safety threat or risk of nonappearance, then non-monetary conditions will generally suffice. The new order will help combat the mass jailing of pretrial detainees who are incarcerated solely because they lack the financial ability to post bail.

Adam Sheppard is a partner in Sheppard Law Firm which concentrates in defense of federal and state criminal cases. He is Recording Secretary of the Decalogue Society and a member of the editorial board.

Do you want to write for the Tablets?

Email the editors by January 10 at

decaloguesociety@gmail.com

with your proposed topic for the Spring issue.

Best Practices: Creating a Successful Attorney-Client Relationship

by Deidre Baumann

Oftentimes, attorneys validate and judge their performance on a particular area of law based upon their last "big win". While we ultimately strive to be successful for our clients, there is much that happens before we conclude a particular matter. Communication and solidifying relationships with clients are crucially important throughout the process. No matter the outcome, attorneys are more likely to get referrals and repeat business from clients who feel they received dedicated attention and were treated respectfully.

At the beginning of the attorney-client relationship, it is critical to determine the needs, concerns, and expectations of the client. This is not about meeting your professional responsibilities (which is a given); instead it is about identifying the client's true interests as early in the relationship as possible. How can an attorney do this? It is actually quite simple: listen carefully to the client. Ask appropriate follow-up questions. Request and review all available documentation. Determine the client's level of legal sophistication (i.e. establish whether the client is familiar with the legal system or whether this is the client's first experience with the process). Ascertain whether the client likely has the time and financial, emotional, and other resources to pursue what they desire.

The attorney must also determine the level of interaction both desired by the client and appropriate for the case. Is this a "hands-off" client who wants their legal problems fixed without a lot of personal involvement or communication? Or is this a client who needs the attorney available to discuss the case at all times, day or night, and needs to attend every court hearing and deposition? Every client and every case demand different levels of communication that depend upon the circumstances.

When determining the level of interaction, the attorney must then candidly discuss professional boundaries with the client. Does the attorney generally respond within two hours or within two days? Will the attorney provide their personal email and their cell phone number to the client? How about text messaging or instant messaging? Will the client be charged for any calls, emails, or texts? If respectful communication boundaries are not established with the client at the start, the result may be resentment on both sides of the relationship.

While these suggestions may seem like common sense, numerous clients have come to me after having had a negative experience with another attorney. Their complaints often concern attorney-client communication. Examples of complaints include the client arguing the former attorney did not listen or explain the process, or that the attorney did not discuss possible outcomes that were inconsistent with the client's expectations.

I am fortunate enough to continue to receive referrals from clients I represented nearly twenty years ago. As an owner of a small law practice, this is far more important to me than any recent victory. I believe this is due largely to the fact that I identify, from the outset, my client's needs, concerns, and expectations, and I endeavor to understand my client's level of legal sophistication to gauge the appropriate and expected level of communication and participation by the client.

Deidre Baumann is owner of Baumann & Shuldiner which concentrates on civil rights, employment discrimination, constitutional, and personal injury law. She is a Past President of Decalogue.

What's Coming Up for Decalogue? - Visit Our Website for more info!

Sunday, October 1, 12:30-3:30pm
Rock & Soul: Music for Social Change

Tuesday, October 17 (time TBD)
Decalogue Movie Night - "Marshall"

Tuesday, October 24, 6:00-7:30pm
Building Bridges Awards with the Arab American Bar Association honoring Judge (Ret.) William Haddad and Michael Traison

Thursday, December 14, 5:30-7:30pm
Decalogue Chanukah Party

Tuesday, February 27, 5:00-7:00pm
Decalogue Judicial Reception

Thursday, March 22 (tentative), 12:00-1:30pm
Decalogue Model Seder

Mitzvah Projects

Sunday, September 17, 9:00-10:30am
Deliver Maot Chitim Yom Tov food packages

Sunday, December 10, 1:30-3:30pm
Chanukah Party at CJE Robineau Residence

Monday, January 15, 7:30-10:15am
JUF MLK Day Service Project

Sunday, March 25, 9:00-10:30am
Deliver Maot Chitim Pesach food packages

Committee Meetings

Committee Against Anti-Semitism, Wednesday, September 13, 5:15pm
Social Action Committee, Tuesday, September 26, 12:00pm

Tech Tips: How to Use Decalogue's New Member Portal

by Peter J. Tessler

Welcome to the new member portal for The Decalogue Society of Lawyers!

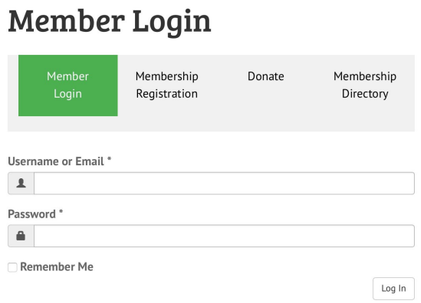
The new member portal will allow you to better manage your records as well as search for other members. The website is very straightforward to use, and we wanted to show you how easy it is.

Begin by heading to the Decalogue Society webpage at www.decaloguesociety.org.

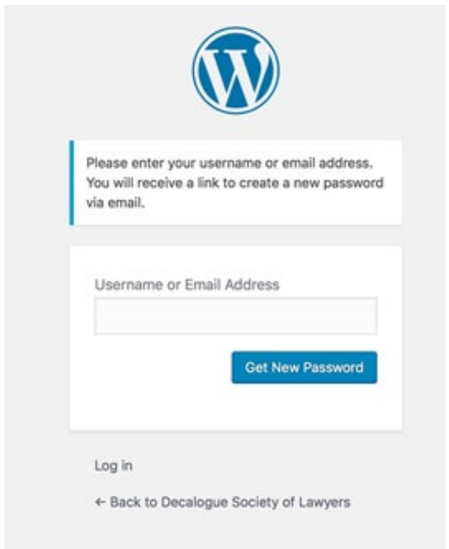
Next, go to "Membership" on the desktop, and click on "Membership Dashboard"

You'll arrive at the Member Login page. The first time a member visits, they don't have a password. But as a member, you already have an account, so now you just have to get a password.

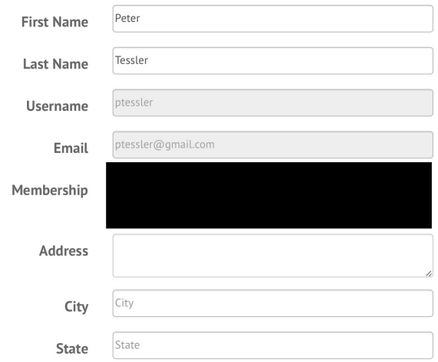
Your password will need to be at least 8 characters, including 1 capital letter, 1 number, and 1 special character.



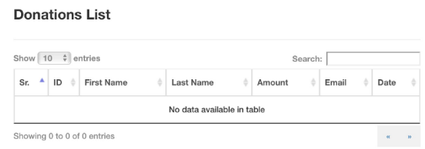
Use the email that you register for Decalogue with and it will prompt you to get a new password.



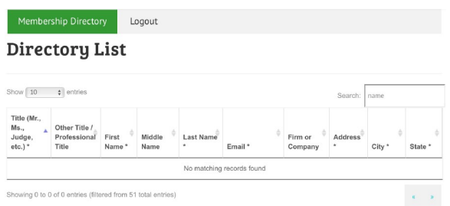
Once you obtain your password, log in and you will see your personal dashboard where you can modify your profile as a member.



You can register with the single login and within the portal you can not only make donations, but also see your donations history to Decalogue.



You'll also now be able to search for other members under the directory.



The member directory, like the rest of the website, will continue to evolve in the coming months, days, and years. This is just the beginning!

Peter Tessler is Chairperson of Decalogue's Technology Committee.

LinkedIn for Lawyers

By Helen B. Bloch

Have you ever wondered whether a lawyer can generate business from LinkedIn? The answer is a resounding yes. On May 22, 2017, LinkedIn expert J.D. Gershbein of Owlish Communications spoke at a joint event co-sponsored by the Decalogue Society of Lawyers and the Women's Bar Association at ISBA Mutual on this very topic. Afterward, participants enjoyed networking over wine and cheese with their colleagues and J.D.

Since 2006 J.D. has worked with individuals, including lawyers, to harness the power of LinkedIn to elevate their online presence and win new business. J.D. was a pioneer in the design and delivery of LinkedIn education. With a background in marketing communications, J.D. turned his business acumen to coaching folks on the use of LinkedIn. Here's some of what he had to say.

Generally, there are three aspects to creating business through LinkedIn: 1) Brand—What is one's personal brand? 2) Network-Building a professional online community; and 3) Building a business case for oneself—What makes me unique from the other lawyers? To use LinkedIn effectively, J.D. recommends spending an hour a day on LinkedIn. It does not have to be all at once. For instance, login at various times to "like" a person's comment. If an article is noteworthy, "publish" or "promote" the article. These simple undertakings will increase your online presence, which translates into getting your name discovered by prospective clients or colleagues who might be a resource for you.

One's profile is key. J.D.'s clients retain him to create their profiles. The profile is where one builds a personal brand and distinguishes herself from the rest of the pack. On the topic of profiles, look to see who has viewed your profile. If it is someone who might lead to prospects, reach out to that person. However, do not send a boilerplate connection request. Research the prospect and send a personalized request.

There is no need to accept requests from everyone under the sun. Conduct a personal audit of your internal network and feel free to expunge a person who will not lead to connections. It is likely that the individual will never know she was expunged. Why? Because you should reach out to your contacts every so often. Too many contacts are impossible to manage. Use your contacts to discover who may be a strategic partner for you. Keep in touch with your contacts to discuss business and leads.

LinkedIn is another great place to promote your blog. However, do not actually write your piece in LinkedIn. Cut and paste it from Word and then showcase your "article."

Looking forward to "liking," "commenting," and "sharing" with you on LinkedIn!

Helen Bloch is the president of the Law Offices of Helen Bloch, P.C., a general practice firm that helps businesses and individuals in matters including employment, contract review and negotiation, workers' compensation and municipal code violations. Also, she is the Decalogue Society of Lawyers' First Vice President.

Executive *Dis*Order - Travel *Restrictions* Ban*ish America's Greatness*

By Nancy M. Vizer

It is indisputable that the United States defeated Japan in World War II because Albert Einstein was not welcome in Germany. We will never know if similarly talented people were onboard the S.S. St. Louis.

On March 6, 2017, the President amended his January 27, 2017 Executive Order purporting to protect Americans from terrorists by banning all refugees and individuals from six (originally seven) countries for 90 days, awaiting new "extreme vetting" procedures.

The revised Executive Order addressed issues identified by *Darweesh v. Trump* (USDC, EDNY) and *Washington & Minnesota v. Trump* (USDC, WD Washington) that led to injunctions against sections of the ban.

The revised order included this sentence: "I am imposing a temporary pause on the entry of nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen . . ." Among the justifications for the "temporary pause" was that "In January 2013, two Iraqi nationals admitted to the United States as refugees in 2009 were sentenced to 40 years and to life in prison, respectively, for multiple terrorism-related offenses." This paragraph merits careful re-reading.

Iraq had been removed from the original list of seven countries because a named plaintiff in the New York case was Hameed Khalid Darweesh, a married Iraqi father of three. Darweesh had served 10 years as an interpreter for the US military, at great risk to his life. He was twice targeted by anti-American militias, and saw colleagues killed in one of the attacks. He had applied for Iraqi Special Immigrant Visa Status, created specifically for individuals in his circumstances, around October, 2014. The visa was finally granted on January 20, 2017, after extensive "vetting." A week later, American soldiers waiting at Kennedy Airport to give Darweesh a hero's welcome were sorely disappointed.

They learned that Customs and Border Protection agents had followed the executive order by placing Darweesh in a cage at JFK, waiting to send him back to certain death. Fortunately for Darweesh, the Second Circuit's preliminary injunction intervened, and he was released from his cage to reunite with the soldiers whose lives he had protected.

What can America now promise to those in the "banned" countries who could offer similar help?

Others affected by the travel ban include refugees. By definition, a refugee admitted to the United States is a person who has most likely fled for his or her life from atrocities such as the sarin gas unleashed by Bashar al-Assad on his own people in early April 2017.

The "lucky" individuals who survive and find their way to camps run by the United Nations then live in primitive conditions for a minimum of two years, while the UN verifies their identity. If their good luck continues, a hosting organization selects them. They then spend months or years traversing the organization's home country's security checks. Finally, years later, they travel to their new home.

Over the years, exactly one person who entered the United States as a refugee has been implicated in a terrorist attack (which was thwarted). The March 6, 2017 Executive Order confirms that this Somali refugee was radicalized years after entering the United States as a child.

Throughout the January 27, 2017 weekend, refugee families landing at American airports were turned away, sent back to the land they had abandoned. They were eventually allowed to return, but as the Ninth Circuit case has shuttled back and forth to the Supreme Court, the refugee program has been intermittently suspended and reopened. Final processing for virtually all refugees, including Iranian and other Jewish families, has been delayed by "additional vetting."

Others affected by the travel ban include Syrian citizen Kinan Azmeh, a virtuoso clarinetist and permanent resident of the United States. When the ban was announced, Azmeh had just finished performing his latest work in Germany with cellist Yo-Yo Ma, as a fellow member of the Silk Road ensemble. Azmeh's return to his home was delayed for several frantic days.

Iranian/Canadian Babak Seradjeh, a permanent resident of the United States and associate professor of physics at Indiana University, came here after eight years in Canada. His research, funded by the National Science Foundation, was compromised when he fearfully cancelled a trip to Tel Aviv to meet with his research partner, a professor at Ben Gurion University.

Hadi Alhassani, a Yemeni father of five with a University of Kansas MS in aerospace engineering, works in Saudi Arabia for an international company that does business in America. He has a visa to travel here on business, but cancelled a trip to a trade show in March, impacting his employer and American business partners. Alhassani's children have cancelled their plans to attend universities here, opting instead for New Zealand.

Similarly, tens of thousands of international students (whose full tuition subsidizes our children's) have decided to study in other countries this fall due to delayed visas or fear of risking being caged on arrival. This deprives the United States of "future Einsteins." We also have lost faculty who have abandoned plans to teach at American universities.

Another impacted program requires certain immigrant physicians to work for five years in underserved areas before becoming permanent residents. This chronically undersubscribed program is losing its "pipeline," leaving it unable to fulfill its mission of providing medical care to those most in need.

(Continued on next page)

Travel Ban *(Cont'd)*

Among my clients is an Iranian postdoctoral researcher who used a grant from the US military to develop a robotic device, currently used in Afghanistan, that searches for land mines and chemical weapons, saving countless American lives. The client, a permanent resident allowed to live here indefinitely, was, luckily, in America when the President imposed the travel ban. He will wait until the next administration to visit his family, for fear he may not be able to return to his adopted homeland.

We are faced with the question that we faced as World War II approached: Do we want this researcher and others like him in the United States or abroad?

Nancy Vizer is the founder of Nancy M. Vizer, P.C., a firm which concentrates its practice in immigration law.

Decalogue Joins Launch of Cook County Sheriff's Tolerance Council

The Decalogue Society has joined with other community organizations and leaders to launch a Tolerance Council convened by Cook County Sheriff Tom Dart. The Tolerance Council is designed to help advise Sheriff Dart's office on how to combat discrimination in all its forms and strengthen relationships between individual communities and the Sheriff's Office. The Tolerance Council is a follow-up initiative to the Sheriff Office's 24/7 Discrimination Hotline. Current Decalogue President Mitchell Goldberg and Second Vice President Jonathan Lubin attended that Hotline's launch in December 2016, which was covered by various news agencies. For over eight decades, Decalogue has led the fight against discriminatory practices. Decalogue is proud to continue its core mission as part of the Tolerance Council.

The Discrimination Hotline number is 773-674-4357

Martin Niemöller revisited

by Michael A. Strom

In America, Muslim communities are often refused permits to build new houses of worship, they are subjected to hateful insults, and hijabs are ripped off women's heads on the street.

We aren't Muslims—will we speak up?

American Sikhs, Hindus, and Arab Christians receive the same abuse. They are presumed on sight to be radical Islamic terrorists, but they are not radicals, Islamic, or terrorists.

We aren't Sikhs, Hindus, or Arab Christians—will we speak up?

In America, police and immigration officers can hunt legal Latino U.S. residents where they work, where they live, when they travel, and sometimes where they pray. Their families may be separated entering or leaving the U.S.

Most of us aren't Latinos—will we speak up?

Police have pulled over many African Americans because they are driving nice cars a few blocks from their homes. Traffic stops for a broken turn signal can result in fatalities. Their children are taught to act with extreme caution around police. They question whether others believe black lives even matter.

The police usually treat us well—will we speak up?

In America, the LGBTQ community has long been subjected to intense verbal hatred, bullying, violence, exclusion from marriage, and denial of public accommodations and commerce. Hospitals often refuse to allow them to comfort their partner or spouse in their dying days.

Will we speak up about hatred of the LGBTQ community regardless of our own gender orientation?

In America, Jews have been subjected to periods of intense verbal and physical attacks, including today. We are often blamed for hard economic times. Our houses of worship, schools, fraternities, businesses, and homes have been tagged with large, hateful symbols, illustrations, and vile insults. Windows were smashed and swastikas were posted on a synagogue in downtown Chicago—only a few blocks away.

Will victims of hatred turn away from each other's pain? If we don't stand up for each other, if we are manipulated by haters into ignoring or opposing each other, G-d help us all. To paraphrase Hillel, if I am not for others, who will be for me?

Michael Strom is a Past President of Decalogue.

Germany's Latest Prosecution of Holocaust Perpetrator Adds to a Grotesque Mockery of Justice

By Justice Michael B. Hyman

One of the last trials in Germany against a Holocaust perpetrator was upended recently after members of the three-judge panel were removed for deliberately delaying the trial to benefit the 96-year old defendant, Hubert Zafke. The defendant, who served as an SS medical orderly at the Auschwitz concentration camp, is unlikely to ever be tried, a final ignominy.

"Medics" such as Zafke were not involved in medical care. To the contrary, they poured Zyklon-B pesticide pellets down vents to the gas chamber, gave deadly injections, and participated in selections on the ramps. The indictment identifies Zafke "as a functionary in the Nazi murder machine which he enabled." The charges carry a maximum sentence of 15 years.

At the Nuremberg trials, Justice Robert H. Jackson, Chief Counsel for the United States, warned the presiding judges that no defendant should receive "special consideration." Still, in the six decades since then, whether called "special consideration" or something more nefarious, German courts have tried a piddling number of individuals responsible for the inhuman crimes committed under Nazi authority. The German legal process, from the beginning, has lacked a sense of necessity, urgency, or resolve. At Auschwitz alone, some 6,500 guards survived the war, but fewer than 50 men were ever sentenced.

Although German law forbids denying the Holocaust, its criminal code is silent regarding the prosecution of Nazi era crimes and persecutors. And, like Germany, the United States and its World War II allies, with rare exceptions, have refused to bring those with blood on their hands to justice.

In this case, Zafke's prosecution followed the convictions of Sobibor guard John Demjanjuk in 2011; Oskar Groening, referred to as the "Bookkeeper of Auschwitz," in 2015; and Auschwitz guard Reinhold Hanning in 2016. Not until the highly-publicized Demjanjuk trial was the legal principle established that a concentration camp worker could be convicted without proof of committing specific crimes.

Prosecutors in the northern German city of Neubrandenburg accused Zafke of nearly 3,700 counts of accessory to murder during a one-month period, from August 15 to September 14, 1944, during which 14 trains arrived at Auschwitz. Among the prisoners who might have come in contact with Zafke were Otto and Edith Frank and their daughters, Margot and Anne.

Zafke belonged to the Hitler Youth as a teenager in Schoenau, now part of Poland. In 1939, Zafke joined the SS and was assigned to several camps. In the summer of 1944, he went to Auschwitz. Before the camp's liberation, Zafke fled and was captured by the British. He was later transferred to Poland and imprisoned for his SS membership. Eventually he settled in the former East Germany, where he married, raised a family, and sold agricultural products including pesticides. News reports quoted Zafke as admitting he served at Auschwitz but insisting, "I heard nothing, saw nothing, killed no one."

Controversy has been constant throughout the case. Chief Judge Klaus Kabisch ruled more than once that Zafke was neither mentally nor physically fit to stand trial. In 2016, Kabisch stopped the trial after just two hours when, during the proceedings, a court physician determined that Zafke's blood pressure had risen to 160:90.

In addition, Kabisch, along with his two co-judges, barred brothers Walter and William Plywaski, both in their eighties, from testifying, despite their having arrived at Auschwitz on August 15, 1944, and their mother having been sent directly to the gas chamber. Judge Kabisch ruled that their train was not one of the 14 trains listed in the charges.

Each time the panel's rulings were appealed, the higher court reversed, but the trial was successfully obstructed and stalled.

The news magazine *Der Spiegel* lamented, "The justice system has rarely offered a spectacle that is so undignified." The Plywaski brothers' lawyer asserted that the court was "not interested in this going to trial at all."

In March of this year, the International Auschwitz Committee, comprised of Holocaust survivors, historians, and others, demanded that Zafke be tried as soon as possible. The group denounced Presiding Judge Kabisch for preventing or sabotaging the trial, and "perpetuat[ing] the decades-long practice of non-prosecution of Nazi perpetrators."

Zafke's lawyer accused the prosecution of using the case "to correct the ugly legacy of the German judiciary in the 1960s and 1970s, when they had almost all the people responsible for Auschwitz and didn't prosecute them." A news report quoted Zafke's attorney as saying, "My client was unfit to stand trial from the beginning. The court was dealing with several thousand counts of the murder of Jews. On the last trial day, my client was convinced that he was being charged for animal abuse. I had to call for a break to explain to him that this was about the murder of Jewish people, and not about abusing chickens and ducks."

This past June, Judge Kabisch and his co-judges were removed for bias and replaced. The lawyer for the Plywaski brothers hailed the ruling, saying that "finding bias in three judges is a very important step towards justice," and "[b]ias is always a sign of injustice, so this is a victory for the rule of law."

In reality, however, Judge Kabisch and his colleagues probably succeeded in derailing the trial for good.

As one observer of the case noted, "The courtroom will now get new personnel, who will have to familiarize themselves with the case. Our hopes that there will still be a trial are now relatively marginal." Under German law, Zafke will have to again undergo a series of medical tests to determine his fitness to stand trial.

So Zafke will likely escape justice's reach as have hundreds of thousands of Nazi murderers before him.

There will never be justice for the six million Jews. For the countless millions of others murdered by the Nazis. For the survivors of the Holocaust. Even if the dead could speak.

Shards

by Robert S. Schwartz

Shards of pottery.

Shattered glass.

What is it about these objects—and "brokenness"—that is so evocative for the Jewish people? And what lessons do these symbolic objects impart to us? I was fortunate enough to visit Israel last month on a JNF tour and feel inspired, and recently imbued with the sights, sounds, tastes, and smells of the Holy Land, to try to offer some insights.

A week before my trip, *Newsweek, Time,* and the *New York Times* ran a story from a peer-reviewed scholarly journal concerning a 2,600 year-old shard of pottery housed in the Israel Museum. The pottery shard, technically known as an ostracon, was discovered in the desert in 1965 and has been on display for more than 50 years. The ancient Hebrew inscription visible on the front side has been studied extensively and concerns detailed information about various military finances and logistics. The back side appeared blank; this year, researchers decided to take a closer look. Archaeologists utilized the latest multispectral imaging technology to reveal scribblings invisible to the naked eye, specifically three new lines of text. The message: "Please send wine."

Jewish soldiers in 600 BCE, risking their lives on the front lines defending their people and their land, were seeking a little respite. Yes, they were heroes, like our military heroes today, but they were also people, our people, trying to live their lives, perhaps to imbibe a little with their comrades.

Be sure to look at the "reverse side"; there is a message there even if you don't see it readily. Especially so for the opinion of your fellow Jew. Our strength and continuity has never been in numbers; it has been in the ability to unify (and also overcome negative impulses). Just when we think we know that shards are encased in museums, sometimes we find surprises and insights.

My tour included a visit to a JNF-sponsored facility, Aleh Negev-Nahalat Eran, a world-leading rehabilitative village that provides high-level medical services and unparalleled care to profoundly disabled children and adults. If a society is to be judged by the compassion and dignity with which it treats its most vulnerable citizens, then this facility alone commends Israel as the world leader. Brokenness in physical ability need not equate to brokenness of spirit and hope, as I was privileged to witness firsthand.

At the conclusion of a traditional Jewish wedding ceremony, the groom shatters a glass to remind us that our joy is incomplete because the holy Temple in Jerusalem was shattered. What other people disrupt a festive event with a dramatic reminder of a tragedy? The same people who face Jerusalem three times daily in prayer, and remind themselves with shattered glass that striving only for joy is not an end in itself, but part of a larger effort to bring happiness, healing, and redemption to themselves and the world.

In Israel, I saw the location where one of Judaism's leading sages, Rabbi Akiva, laughed when he saw the destruction of the Temple while his peers appropriately wept, rended their garments, and mourned siting in ashes. The other rabbis were appalled at Rabbi Akiva's reaction. He explained: "Now that we have witnessed the fulfillment of the dreadful prophesy of Jeremiah, we can also be certain that Zechariah's prophesy about the rebuilding of the Temple will be fulfilled…" Dear readers, I can now report with absolute certainty that much prophesy has been fulfilled, but much remains to be achieved.

The Second Temple was destroyed due to "causeless hatred" amongst Jews. How did our people forget the exhortation to love, not only fellow human beings, but even their own co-religionists? I suggest that symbols of brokenness may remind and compel us to, if not love, then at least respect, care for, and unify with our fellow Jews and humankind.

The Temple will one day be re-built when there is "causeless love" among our people.

Transform and make meaningful the brokenness in the world around you, and you will indeed be a partner in our people's prophetic vision. As a JNF staffer reminded me, "you can be a pioneer for Israel and Jewish people in 2017, just as much as our early settlers were."

By the way, since the tour was sponsored by the JNF, I planted a tree. I hope to return soon, through Ben Gurion Airport, whose signpost exclaims, "Welcome *Home,*" in order to see how it is growing, along with the vision of my people.

Robert Schwartz is a partner with Robinson & Schwartz, where he practices commercial litigation.

Jewish Holidays 2017-2018

Holidays begin at sunset the previous day

September 21-22 Rosh Hashanah	October 12 Shmini Atzeret	March 1 Purim
September 30 Yom Kippur	October 13 Simchat Torah	March 31-April 7 Passover
October 5-11 Sukkot	December 13-20 Chanukah	May 20-21 Shavuot

Visit our website for fast days and festivals and details about activities and customs practiced on the various holidays.

www.decaloguesociety.org/events/jewish-holidays

My Interview with Judges Thorne and Esrig

By David W. Lipschutz

Last year, I was lucky enough to enjoy a platonic dinner date with Judge Martin "Marty" Moltz of the Circuit Court of Cook County (*see My Dinner with Marty,* The Decalogue Tablets, Spring 2017). Following what I hope will become an annual tradition, this year, I had the incredible opportunity to chat with two judges who happen to be married to each other—Judge Deborah L. Thorne of the United States Bankruptcy Court for the Northern District of Illinois and Judge Jerry A. Esrig of the Circuit Court of Cook County.

I have previously appeared before Judges Thorne and Esrig and have always been in awe of the professionalism and respect they provide to all who enter their courtrooms, especially pro se litigants. When I found out they were a happily married couple, I excitedly (yet sheepishly) reached out to them to ask if I could interview them on what life is like being married judges. To my surprise, they agreed. I met with them during lunch in Judge Thorne's chambers one recent afternoon.

The interview began with the following question: "How long have you been married?"

Judge Jerry Esrig ("JE"): Let's see. We have been married since 1984, so if you are able to calculate how long that's been…
David Lipschutz ("DL"): Oh, 33 years. But I only know that because I was born that year.
Judge Deborah Thorne ("DT"): Well, don't say that! This interview is over.

At this point, both judges started smiling; they may have even chuckled. I had made these two generally serious judges smile! The conversation then continued.

DL: How did you meet? Please tell me you two were opposing counsel on a contested matter. That would be an amazing story.
JE: We met through mutual friends.
DT: They were teaching Jerry how to cook meatloaf, which is quite ironic since we are now both vegetarians.

I asked when they first aspired to become judges. Both told me that they had no thoughts about it until shortly before they were appointed. For Judge Esrig, it was the perfect time as his practice was transitioning and his partner was retiring. When a seat became vacant, his best friend from high school (and former partner, who had become a judge) urged him to apply for the vacancy. As for Judge Thorne, she explained she was active in the Seventh Circuit Bar Association and was the Chair of the Bankruptcy Committee. Retired Bankruptcy Judge Wedoff encouraged her to apply for the judicial vacancy.

I asked if Judge Esrig's appointment to the bench two years before Judge Thorne's created a determination for Judge Thorne to match wits and join him in getting appointed to the bench as well.

DT: No, not really. But I could tell he certainly was having more fun with his job.
JE: Oh, yes. I was having more fun.

I was curious how they celebrated the day each was appointed to the bench; what activities they did, what emotions they felt, etc. I first asked about Judge Esrig.

DT: (looks at Judge Esrig) Well, I can tell you where I was. I was out of town at a coffee shop when you called me.
JE: I don't recall what exactly I did that day, but you have to understand. It is a long process. I had to apply for the vacancy and then be screened before I was eventually selected.
DL: But was it exciting?
JE: Oh yes, it was exciting.

I asked the same question for the day Judge Thorne was appointed to the bench. In my mind, I presumed it would be as dramatic as an episode of Law & Order—Judge Thorne hangs up the phone after hearing the news, and informs her husband of the appointment. They both calmly but with a soft smile say, "Your Honor" and "Your Honor," before hugging!

DT: No, we did not do that. It was also a long process. It was 5-6 months before I was even interviewed. They also did federal background checks and interviewed friends, family, and neighbors.
DL: Your neighbors received calls from the FBI asking about you?!
DT: Yes.…
DL: When you were sworn in, was it exciting?
DT: Very exciting. It was all very fast once I was sworn in.…
DL: So did either of you celebrate? Go out for a special dinner? Take a trip somewhere?
JE: Oh, we both had receptions.
DT: Yes, my law firm hosted a reception when Jerry was sworn in. And I had a reception as well… The only regret I have is that my father, a long time bankruptcy attorney, was unable to attend.

As she brought up her family, I turned my questions to that topic.

DL: I read you have two children—are they legal practitioners as well? If so, are they interested in following in their parents' footsteps and donning robes one day?
DT: Oh. No.
DL: What do they do?
DT: Our older is at Babson College, obtaining his MBA.
JE: And the younger one is in college at University of San Francisco. But this fall, they are doing a 1,000 mile hike along the Appalachian Trail.
DL: Oh wow, that's so fun! So I guess neither wants to become a judge one day?
JE: No.
DL: I have to ask this, so please bear with me. Do you (pause) do you ever make them call you both, Your Honor?
Both: No.

(Continued on next page)

I am proud to admit that this ridiculous question made them chuckle. I apologized and told them I had to ask as it was too good of an opportunity to pass up. We then continued our discussion of family life.

DL: Because you are both judges, who wins arguments at home? Do the arguments need to be fully briefed with oral arguments presented? More importantly, who is the judge overseeing these decisions?
JE: (with another smile!) Oh, I just defer to Debbie.
DT: But it has affected our lives in other ways. We are less judgmental.
DL: Well that's quite ironic.
JE: We do not jump to conclusions... I think this helps particularly as we often deal with pro se litigants in court. And to them, we as judges are the face of government. I feel a strong obligation to ensure the face of the court system is fair and just.
DT: We are aware of how we are treating everyone.
DL: Of course. That makes sense. For many individuals, this is their first time in court.
DT: Exactly. And they will remember if you gave preference to someone.
JE: It is all about basic civics.
DT: …I was a civics teacher after all.

I then asked a question that I love to ask judges: "Have you ever banged the gavel?"

DT: (points behind where I am sitting) No. In fact, my gavel is right there. I was told I must have a gavel, so there it is. In my chambers.
JE: The only gavel I ever had was when I was president of AZA in high school. [Aleph Zakik Aleph is a youth-led fraternity for Jewish teenagers.]
DL: So you don't even have a gavel now?
JE: No.

Judge Thorne then joked she has a bailiff who is able to do the work of a gavel much more effectively.

The interview lasted nearly an hour, and it was a wonderful and informative conversation. Before parting ways, I asked one final question: "How was the meatloaf?" Judge Thorne responded, "From our first date? Oh I don't remember. But (pause) let's just say there's a reason I am now a vegetarian."

David W. Lipschutz is an Associate Staff Attorney at Arnold Scott Harris, P.C.

Study in the Loop with
Rabbi Vernon Kurtz

Thursday, November 9
Thursday, January 11
Thursday, February 8

12:00-1:30pm
at the Decalogue Office

Call the Rabbi's assistant, Lennie Kaye 847-432-8900x221 to make a reservation.

From Employee to Entrepreneur
How to start your own business from a legal and financial perspective

Tuesday, November 14, 6:30-8:30pm

Speakers: Jessica Merino, Michelle Katz, Helen Bloch
Co-sponsored with the National Association of Women Business Owners

Catalyst Ranch, 656 W Randolph
1 hour General MCLE credit for all attendees

Networking Reception admission $35
($10 for Decalogue & NAWBO members)

http://www.decaloguesociety.org/services/legal-education

President Mitchell B. Goldberg's Remarks at the Annual Meeting

I thank Curtis Ross for his kind words, as well as his leadership and continued friendship. As Curtis said, a bar president is only as good as his or her team. I am very grateful to my very talented team and I offer my sincerest thanks and congratulations to Decalogue's newly installed officers and board. I look forward to working with you all.

I also offer my thanks and hearty congratulations to all of the honorees this evening. Their inspiring efforts should be recognized every day. But, tonight, I am glad we could recognize them all for their dedication.

Sincere thanks also goes to Chief Judge Timothy Evans for presiding over our oaths of office. Judge Evans has been a dear friend of our Society and a champion of justice in Cook County for many years. Thank you for being here Judge.

I also offer my sincere thanks to Illinois Supreme Court Justice Anne Burke for serving as our keynote speaker. Justice Burke's contributions to the bench and bar in Illinois are longstanding. Her friendship to the Jewish community and leadership in Illinois is unwavering. Justice Burke, we are extremely fortunate to have you this evening.

I offer my sincere thanks to my wife, Natasha, for your support and patience. You are the rock of our family. I also want to recognize my father, Dr. Jack Goldberg, and my brother Andrew Goldberg who are here, as well as my partners and colleagues from my law firm, Lawrence Kamin Saunders & Uhlenhop – which served as a sponsor tonight. Their patience and support have been instrumental in all of my volunteerism, including my efforts for Decalogue.

And I echo Curtis's thanks to our Executive Director, Aviva Patt, as well as to our Events Committee members, for their efforts to make this evening possible.

Finally, I want to thank all of you, including my friends, for attending and supporting our Society and honorees. Your being here means the world to me.

I am humbled by this sincere honor to stand before you as the newly installed President of America's oldest Jewish bar association. I first joined Decalogue in law school, and have been an active member since passing the bar. When I first joined the board of managers, Justice Michael B. Hyman, our master of ceremonies this evening, was President. Thank you Justice Hyman for serving as our emcee. But, more importantly, I thank you and all of our past presidents for your past and continued leadership for our Society, the Jewish community, and the broader legal community. You all have set a very high bar for me to follow. But it is a challenge I look forward to.

I was asked just this morning to explain the longevity of my participation in Decalogue. After thinking on it, the answer is simple: It's because Decalogue is a family. And like my biological family, I am immensely proud to be part of something bigger than myself that stands for rather significant principles. Decalogue's motto comes from Scripture, *Tzedek, Tzedek Tirdof*, which translates to "Justice, Justice Shalt Thou Pursue." The Hebrew word *Tzedek*, "justice," shares the root of the Hebrew word for charity, *Tzedakah*, because charity is a form of justice, by which those with means assist in providing for their brothers and sisters of humanity who are without. And promoting justice in the form of protecting the rule of law and in the form of social action to better our fellow citizens has been a principle goal of this Society for all of its 83 years.

Decalogue maintains a broad range of programs to benefit its members, the Jewish community, the legal community, and the general public. Over this past year, under Curtis Ross's leadership, Decalogue has continued its mission of raising the standards of the bar, and to educate the public on legal issues, maintaining vigilance against public and private practices which are discriminatory, and to foster friendly relations with other groups.

I am proud of my efforts and that of our Society's members to build bridges, and to foster improvements to our community, including working with the Cook County Sheriff's Office in the establishing of a hate crimes hotline; supporting alternative dispute resolution and restorative justice; and standing shoulder-to-shoulder with the Arab American Bar Association and every major bar association in Chicago to speak out against discriminatory policies.

These efforts have also included our innovative legal lectures and co-sponsored events with other bars, and encouraging our members to volunteer in the service of others, including through our various committees. Our social action committee has devoted efforts to improving the lives of those in need in our community. The Decalogue *Tablets* committee produces our remarkable legal journal. Our Judicial Evaluation Committee, along with those of the Alliance of Bar Associations, works diligently to evaluate judicial candidates. Our Anti-Semitism Committee has confronted and addressed the rise of Jew hatred and prejudicial acts around Chicagoland. Our Amicus Committee provides a venue for our members, both new and experienced, to help prepare legal briefs in cases of significance. Our Young Lawyers and Law Student Committees offer great programing and support our younger members. And our Mentoring Committee has connected new practitioners with seasoned attorneys to offer guidance in best practices.

I inherit the reins of a robust bar association that offers a supportive network for its members, as well as extraordinary options for its members to really make a positive impact for the legal community and our fellow citizens.

For over 83 years, Decalogue has been at the forefront of promoting justice in society and improving the legal profession. In the coming year, I hope to build on the partnerships and ties we have made with others to combat injustice, to fight anti-Semitism, and to strengthen our Society's footprint.

No one can deny that this past year has been a tumultuous one in terms of politics and in the rise of intolerance. As we have seen, this intolerance has manifested in many ways on both the right and the left. Many communities, especially minority communities, have been impacted. For Jews, this has included the rise of hate crimes throughout our community, intimidation of Jewish students and academics on campuses, and even the exclusion of Jewish LGBTQ participants during Pride weekend. But in this environment of uncertainty, we have all been granted the gift to see that we are not alone. From various other bar associations, many represented here tonight, to community organizations, to local and state officials, we have created solid partnerships to effect real change and to positively impact real people.

My wife and colleagues have patiently supported me in donating time to my efforts with Decalogue and elsewhere. My reason is simple: At some point, my kids may ask me about these turbulent times. And they may ask me "Dad. what did you during those times?" I refuse to allow my answer to be "Nothing." And I am grateful to Curtis, and the dedicated officers, board members, committee leaders, and rank and file members of Decalogue for their efforts, as well as the leaders of the various groups who have stood up alongside Decalogue.

On its 83rd birthday, the Decalogue Society stands strong. But it can be even better. Indeed, any group is only as strong as those who volunteer to help. I challenge each one of you to join us in our efforts. Volunteer for our committees. If you have an idea, tell us. We are stronger together. And together we will be able to tell the generation that comes after us that we acted during times of turbulence.

Along with our brothers and sisters in the bar, under my term as president, Decalogue shall continue to pursue Justice in our society and to promote the protections guaranteed to all citizens under our country's beautiful system of law.

83rd Annual Installation and Awards Dinner

Thank You to The Sponsors of Our 83rd Annual Dinner

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Life Matters Media Agency Award Acceptance Speech

By Randi Belisomo

The Decalogue Society is a group I have watched from multiple vantage points. As a journalist, I have witnessed your recent efforts to clarify the Constitution in times of political strife, collaborate in your fight for justice, and--so importantly-- extinguish the stain of anti-Semitism that still infects our city.

I have also watched your organization from the standpoint of a friend, blessed as I am to be among the many who can call incoming President Mitch Goldberg and his family my friends. He has been, from the moment I first spoke to him, an exemplar of Decalogue's values of justice, dignity, raising standards, loving one's neighbor, and always doing good works. Most often, he does them under the radar.

Shortly after my husband Carlos passed away, I received a phone call from Mitch, who attended DePaul University with him.

I was in a haze, but Mitch quite confidently and kindly said that he would like to assist in making a memorial scholarship at DePaul named for Carlos. I was not in much shape to make this happen, so I said, "Sure, great." When I heard the number of dollars it would take, I could not imagine this happening. Certainly not if I had anything to do with it at that time!

However, before you knew it, the Hernandez Award was endowed for a journalism student. Mitch came through, honoring his friend, supporting students whose names we did not yet know, and most certainly, comforting the grief-stricken.

You can then understand that when Dr. Mary Mulcahy and I first had the idea to create *Life Matters Media*, the first phone call I made was to Mitch Goldberg.

Five years later, we are celebrating four years in operation, as well as thousands of end-of-life planning conversations started and continued. Our first hire--still working with us today--happened to be the first Hernandez Award winner at DePaul. Daniel Gaitan remains an integral part of *Life Matters Media*, and Mitch joined Celeste and Reto Gallati as founding board members and true champions of what we exist to do.

The Proverbs tell us that when we give freely, we gain even more. All of us believe that wholeheartedly.

It is "heart first," as a supporter recently described, that we work to help others have end-of-life choices, end-of-life quality, and a greater understanding of the capacity that end-of-life decisions have to nurture the human spirit.

We started *Life Matters Media* on an act of faith, facing an urgent need in public health to improve the current end-of-life experience. Such faith and necessity keep us going every day to meet the demand for what we do.

We approach our work as an issue of justice, of honoring our mothers, fathers, loved ones, ourselves, and our own values and beliefs.

For many reasons, the vast majority of Americans have not received the opportunity to participate in the process that we facilitate, advance care planning: considering, communicating, and documenting our end-of-life care preferences.

Among those least likely to have done so, tragically, are our society's most vulnerable--medically, economically, and socially. The consequences are so very real: worse care, worse symptom suffering, impeded communication with physicians, worse pain, more acute caregiver burden.

That isn't right, so it is why we now direct the significant portion of our programs and resources to our city's most vulnerable areas. There, residents hope for the same things most of us do--comfort, peace, autonomy--but thus far have lacked someone connecting the dots to make those hopes more possible to achieve.

It is a true privilege to do this work, because in doing so, the answers to some of the questions we ask of those we serve are ones that reveal the essence of a person. The questions so essential to the conversation:

What do you do that gives your life meaning?

What can you not imagine living without?

What are your fears and concerns about future care?

What gives you strength in difficult times?

If you know the answers, share them with those closest to you. These conversations unfailingly reveal aspects of ourselves that our families may not know. In sharing them, you are telling your loved ones how to care for you--how to love you--when you cannot speak for yourself.

(Continued on next page)

Life Matters Media *(Cont'd)*

We emphasize that the conversation is what is most important. However, as attorneys, you know to get things in writing. Advance directives are the last step, not the first. When you make one or encourage a client to do so, you are in a long line of faithful people who have done this.

Another bit of wisdom from scripture scholar Mitch Goldberg: the first advance directive in recorded history dates back to the book of Genesis. In the account of Jacob's death, Joseph is summoned with his sons so they can receive their grandfather's blessings. Jacob instructs them, asking to be buried in a cave alongside parents Isaac and Rebecca, grandparents Abraham and Sarah, and his wife Leah. Some Jewish scholars have called this the first hospice death in history. It's a good death; his family was there, and they had guidance.

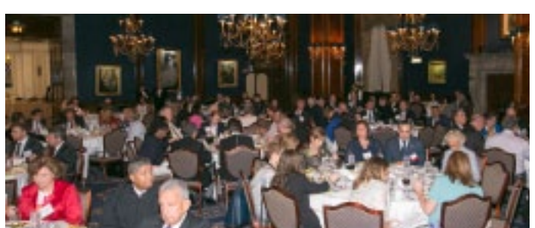
Thank you to the Decalogue Society, its board, and incoming President Goldberg. On behalf of our board and the older, the ill, the caregivers and the families we serve, we are grateful for this tremendous honor. It comes from an organization doing vital work for justice in the richest tradition, and with true faith.

Life Matters Media aims to be the premiere provider of information, resources, and support for all involved in end of life decision-making. Through fostering better communication, the organization empowers those of all ages and stages of health to navigate this life phase with confidence and dignity. The Chicago-based organization is among those leading a national cultural shift that prioritizes the planning that can lead to true quality of life at the end of life. Since its 2013 founding, Life Matters Media's work throughout the region and online has inspired thousands to consider, communicate, and document their end of life preferences.

Currently, Life Matters Media provides year-round community education for the City of Chicago Department on Aging, the Chicago Public Library, retirement facilities, houses of worship, and numerous health and community organizations.

The organization provides professional education to health providers, attorneys, financial professionals, and others on the front lines of planning to exponentially increase the initiation of the most significant conversation that most Americans are not having.

Learn more about starting the conversation online at lifemattersmedia.org and on Twitter: @LifeMMedia.



Decalogue Tablets

Founders Award Acceptance Speech

By Senator Arthur L. Berman (Ret.)

Ladies and Gentlemen:

You are looking at a very lucky guy. Last month I celebrated my 82nd birthday.

Next year I will celebrate 60 years as a licensed attorney and 60 years as a member of the Decalogue Society of Lawyers. I am blessed by wonderful family and friends. Joining us tonight are my wonderful wife, Barbara Berman, my son, attorney Adam Berman, his wife, Robyn Berman, my daughter Marcy Padorr, and her husband, Joe Padorr. I have five grandchildren, each of whom are much smarter than their grandpa, and tonight we have my oldest grandson, Joshua Berman, and his girlfriend, Zoe Weisberg.

We are also joined by attorney Steven Elrod, managing partner at Holland & Knight, and his mother, Marilyn Elrod, the wife of deceased Sheriff of Cook County and Circuit Court Judge Richard Elrod. Richard and I go back to law school days together.

I am very active in five important charities, their Boards or committees, and I am still playing a lot of tennis. To family, friends, and Decalogue: Thank you, thank you, thank you!

Chapter 15 Bankruptcy – A Powerful Tool for Cross-Border Distressed Entities

by Aaron L. Hammer, Michael H. Traison, and Jeffrey M. Goldberg

General trends of globalization have impacted international businesses, and more companies are finding themselves involved in multiple jurisdictions internationally. Distressed international businesses have led to a need to recognize that insolvency proceedings may also be international. Thus, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act in 2005, adding Chapter 15 to the Bankruptcy Code (11 U.S.C. § 1501-1532).

Chapter 15 of the Bankruptcy Code is based on the United Nations Commission on International Trade Law ("UNCITRAL") Model Law on Cross-Border Insolvency and was designed to efficiently help international businesses.

The UNCITRAL Model Law has five main objectives: (1) to promote cooperation between the United States court and parties of interest, and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (2) to establish greater legal certainty for trade and investment; (3) to provide for fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor; (4) to afford protection and maximization of the value of the debtor's assets; and (5) facilitate the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Chapter 15 deals with situations where an insolvency proceeding has been initiated outside the United States. Once the debtor initiates a foreign proceeding, the debtor, through a "foreign representative," files a Chapter 15 petition in the United States for recognition of the foreign proceeding.

After notice and a hearing, the court determines if the foreign proceeding will be recognized in the United States. A foreign proceeding may be recognized in one of two forms – a "foreign main proceeding" or a "foreign non-main proceeding." A foreign "main" proceeding is a proceeding pending in the country of the debtor's center of main interests ("COMI"). A foreign "non-main" proceeding is a proceeding pending in a country where the debtor has an "establishment" that is not home to the debtor's COMI.

Courts have continually been tasked with determining if a foreign proceeding is located within the debtor's COMI or if the debtor only maintains an "establishment" in the country. Absent evidence to the contrary, a debtor's COMI is presumed to be the location of the debtor's registered office. Generally, when determining a debtor's COMI, a court bases its decision on evidence as of the time the Chapter 15 petition was filed. However, to deter COMI manipulation, a court may look at the debtor's actions during the period between the initiation of the foreign proceeding and the filing of the Chapter 15 petition.

A foreign proceeding will be recognized as "non-main" if the proceeding is filed in a country where the debtor has an "establishment," but it is not home to the debtor's COMI. Under Chapter 15, "establishment" means any place of operations where the debtor carries out non-transitory economic activity. If the foreign proceeding is found not to be located within the debtor's COMI, nor is there evidence of an establishment, a court may deny recognition entirely.

The distinction between recognition as "main" or "non-main" is important. In a foreign "main" proceeding, the debtor's American bankruptcy estate is entitled to certain protections under the Bankruptcy Code. As an example, immediately upon recognition as a foreign "main" proceeding, an automatic stay is implemented, preventing creditors from acting against a debtor's assets. However, if the foreign proceeding is recognized as "non-main," a foreign representative must request the court to invoke the automatic stay. Another example of relief immediately offered in a foreign "main" proceeding is the ability to invoke Bankruptcy Code Section 363 (11 U.S.C. § 363), allowing a debtor to use, sell or lease property outside the ordinary course of business.

Chapter 15 instructs courts to adhere to the cooperative principles of comity, so long as there is no violation of United States public policy. The U.S. Supreme Court has defined comity as "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws."

A court's duty to strive for comity makes Chapter 15 a powerful tool in cross-border insolvencies. Chapter 15 allows debtors to take advantage of two potentially very different insolvency regimes, and under certain circumstances foreign representatives may be granted relief available under foreign law that would generally be impermissible under the Bankruptcy Code.

The case *In re Petroforte Brasilerio de Petroleo Ltda*., 542 B.R. 899 (Bankr. S.D. Fla. 2015), offers an illustration of a United States court applying foreign law traditionally not available to Chapter 11 debtors. In *Petroforte*, the U.S. Bankruptcy Court for the Southern District of Florida recognized Petroforte's Brazilian bankruptcy proceeding recognition as a foreign "main" proceeding, and extended recognition not only to the debtor, but to third parties involved in a transaction deemed to be in large part responsible for the insolvency. *Petroforte*, 542 B.R. at 902.

(Continued on next page)

Supreme Court Once Again Limits Where Out-of-State Businesses Can Be Sued

By Jack A. Gould

Since the watershed case of *International Shoe v. Washington*, 66 S.Ct. 154 (1945), the U.S. Supreme Court has continued to tighten the rules concerning personal jurisdiction relating to where out-of-state companies can be sued. In the pivotal case of *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), the Supreme Court curtailed the ability of courts to assert general jurisdiction over out-of-state corporations. The Court rejected as "unacceptably grasping" the concept of finding general jurisdiction simply because an out-of-state corporation engages in such continuous and systematic activity within a state that it can be said to be "doing business" there. *Daimler AG*, 134 S.Ct. at 760–61. The Court held instead that "all-purpose" or "general" personal jurisdiction—the ability to hear claims unrelated to the forum state—is proper only where the corporation is "at home," which is not synonymous with "doing business." *Id*. at 762 n.20 ("A corporation that operates in many places can scarcely be deemed at home in all of them."). As a result, *Daimler AG* limited general jurisdiction over a corporation to essentially two locations: (1) the state of incorporation and (2) the principal place of business. Id. at 761–62.

This year, the Supreme Court reaffirmed its *Daimler AG* opinion. In *BNSF Railway Co. v. Tyrrell*, 137 S.Ct. 1549 (2017) the Court once again found that general jurisdiction over a corporation is, except in the most exceptional of circumstances, limited to the forum in which the corporation is incorporated and where its principal place of business is located. If a corporation is not incorporated in a state, does not maintain its principal place of business in that state, and is not "so heavily engaged in activity in [that state] 'as to render [it] essentially at home," then that state does not have general jurisdiction over that corporation. *BNSF Railway Co*., 137 S.Ct. at 1559 (citing *Daimler,* 134 S.Ct. at 761). In *BNSF Railway Co*., the estate of a railroad employee filed a state court suit in Montana under a federal statute, the Federal Employers' Liability Act ("FELA"), for an injury that occurred outside of Montana and where the decedent was not a resident of Montana. The Supreme Court held that Montana could not exercise general jurisdiction over the BNSF Railroad as FELA did not allow state courts to exercise personal jurisdiction over a railroad simply because the railroad does business in their states.

Similarly, in *Bristol-Myers v. Superior Court of California*, 137 S.Ct. 1773 (2017), the U.S. Supreme Court recently overruled the California Supreme Court and found that a California state court did not have specific personal jurisdiction over Bristal-Myers Squibb, a foreign corporation, in relation to state claims made by non-resident plaintiffs. The case involved over 600 plaintiffs, most of whom were not California residents, that brought a civil action in a California state court for injuries sustained as a result of using a drug called Plavix. Bristol-Myers Squibb challenged the personal jurisdiction of the California state court over it in relation to the non-resident plaintiffs' claims. The case worked its way up to California Supreme Court, which held that the California state court did have specific personal jurisdiction over Bristol-Myers Squibb. The California Supreme Court applied a "sliding scale" approach and reasoned that although Bristol-Myers Squibb was incorporated in Delaware and headquartered in New York, it had "wide ranging contacts" with California – notably, a national marketing campaign, corporate contacts with a California distributor, nearly a billion dollars in drug sales in the state, and the nonresidents' claims were substantially similar to that of the California residents' claims. The U.S. Supreme Court, however, held that this expansive view was not compatible with the due process clause of the 14th Amendment and reversed the California Supreme Court – noting in part, "[o]ur cases provide no support for this approach, which resembles a loose and spurious form of general jurisdiction." *Bristol-Myers*, 137 S.Ct. at 1781.

These recent decisions involving personal jurisdiction plainly indicate the U.S. Supreme Court's desire to curtail forum shopping by plaintiffs. Forum shopping is very prevalent in certain types of litigation, such as toxic torts where tort claims involving non-resident plaintiffs and out-of-state injuries are routinely filed in favorable state court venues against foreign corporate defendants.

Jack Gould is an associate at Swanson, Martin & Bell, LLP. He concentrates his practice on defending premises, product liability, and contractor liability claims, primarily involving asbestos and toxic torts.

Chapter 15 Bankruptcy *(Cont'd)*

Under Brazilian law, a trustee may pierce the corporate veil of third parties if it is demonstrated that those parties intended to defraud creditors. Under United States law, a trustee has far less expansive veil-piercing power. Nonetheless, the court held that even though the third parties were brought into the Chapter 15 proceeding under "different procedures" from that of the Bankruptcy Code, the use of the Brazilian veil-piercing powers was not contrary to United States public policy. *Petroforte*, 542 B.R. at 903.

Chapter 15 has established itself as a viable alternative for cross-border insolvency issues. A distressed cross-border entity should speak with a professional to determine if Chapter 15 is the correct option for their business.

Aaron L. Hammer and Michael H. Traison are partners, and Jeffrey M. Goldberg is an attorney, at Sugar Felsenthal Grais & Hammer LLP. The firm's insolvency and commercial law work often involves cross-border issues and transactions, particularly with regard to Poland and Israel.

Heller's Choice: Which Weapons and Uses Are Protected by the Second Amendment?

by Michael A. Strom

Decalogue Tablets recently featured an excellent article accurately summarizing the U.S. Supreme Court's Second Amendment interpretations in *District of Columbia v. Heller* (2008). *What Does the Second Amendment Really Mean?* M. Goldberg, Spring 2017. This article addresses what types of "arms" are now deemed protected by the Second Amendment, and for what purposes. We presume all holdings, findings, and characterizations stated in *Heller* are correct, notwithstanding this author's disagreement with them, to clarify *Heller's* scope before further analysis.

Heller addressed the scope of Second Amendment protection against Washington D.C. laws banning handgun possession in the home, and requiring any other lawful firearm at home to be rendered incapable of immediate use by trigger lock, locked container or inaccessibility to children. The District of Columbia is a federal enclave not within any state, and subject to congressional legislative authority. *Heller* involved fundamental questions on Second Amendment applicability to types of weapons, purposes for which weapons are used, and how the "right to bear arms" applies to individual self-defense as opposed to collective defense (i.e., state militia, local police).

Before *Heller*, the most recent Supreme Court case on the scope of the Second Amendment was *U.S. v. Miller*, 307 U.S. 174, 178 (1939). *Miller* held interstate commerce regulations on short-barreled shotguns constitutional, since such weapons were not eligible for Second Amendment protection. Short-barreled shotguns are not "part of the ordinary military equipment or [useful to] *** contribute to the common defense." *Miller*, at 178.

Two schools of constitutional interpretation have competed for many years: (1) "living constitution," where constitutional principles are applied as those principles are now understood; and (2) "original intent," where the understanding of constitutional language and applicability of such language as of the date enacted must apply. The Constitution and Bill of Rights (including the Second Amendment) were enacted in 1791. *Heller* applied original intent to interpret the Second Amendment. *Heller*, 554 U.S.570, 625.

Various cases or commentaries have stated the following are included in the original intent of the Second Amendment:

- A well regulated state militia's defense of each sovereign state and its citizens, to deter a future tyrannical central government from infringing their freedom, i.e., the collective right of self-defense;
- Defense of local communities from actual or perceived threats of attack by Indians,[1] insurrectionists, counterrevolutionaries, looters, outlaws, or wild animals;
- Allowing armed citizens to fight for their common liberties, minimizing the need for standing armies, which are deemed inherently dangerous to liberty;
- The unalienable right of revolution, endowed by the Creator, to alter or abolish a government that becomes destructive of rights to life, liberty, and the pursuit of happiness. See Declaration of Independence;
- Individual self-defense against burglars, looters, etc.;
- Individual self-defense against government oppression;
- Hunting;
- All of the above.

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The segment "A well regulated Militia, being necessary to the security of a free State" is deemed the prefatory clause, and "the right of the people to keep and bear Arms, shall not be infringed" its operative clause. *Id*, at 576-77.

Some of the intended purposes listed above relate to collective self-defense of states, municipalities or neighborhoods. Some relate to an individual's defense of home or person. Does the right change substantively when applied to individual or collective usage, now that militaries use much more than pistols and single-shot muskets?

Individual use: A handgun might suffice to defend against a burglary, but might not be enough to defend against riots or mass looters in the wake of a natural disaster. Clearly, one person with a handgun will not fend off a massive insurrection against an elected government or armies/mercenaries of a tyrant. *See infra*, re: armed individuals comprising a collective self-defense militia.

Collective self-defense: The founding generation knew tyrants suppressed political opponents by confiscating arms, not banning peoples' militias. This empowered tyrants with select militias or standing armies in England, prompting codification in 1689 of the right to have arms in the 1689 English Bill of Rights. *Id.* at 598.

In 1788, James Madison was confident a citizens' militia, fighting for common liberties, would be an insurmountable barrier to threats of force by a Federal army. Federalist Paper No. 46. When the Bill of Rights was ratified in 1791, military weapons were muskets and pistols -- essentially the same as the most common personal weapons for self-defense or hunting. But *Heller's* 2008 majority opinion conceded a citizens' militia might find common weapons ineffective against current military bombers and tanks. *Id*. at 627-28.

Many of the intended purposes listed above require choices today that were unnecessary in 1791. Does the Second Amendment protect the *weapons* originally intended or the *purposes* originally intended? Are the "natural right of revolution" and right of self-defense against governmental tyranny unconstitutionally infringed if the "arms" needed to effectuate those rights can be restricted or banned?

(Continued on next page)

Heller adamantly touts the superiority of interpreting the Constitution by original intent. The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary meaning. Normal meaning excludes secret or technical meanings unknown to ordinary citizens at that time. *Id*. at 576-77. Justice Scalia elaborated on the relative merits of "living Constitution" in his scathing McDonald concurrence:

> "Historical analysis *** [sometimes requires] making nuanced judgments about which evidence to consult and how to interpret it. *** But the question to be decided is not whether the historically focused method is a perfect means of restraining aristocratic judicial Constitution-writing; but whether it is the best means available *** I think it beyond all serious dispute that it is much less subjective *** because it depends upon a body of evidence susceptible of reasoned analysis rather than a variety of vague ethico-political First Principles whose combined conclusion can be found to point in any direction the judges favor. ***_McDonald_, 561 U.S. at 803-05.

Heller chose an interpretation of the "right to bear arms" consistent with staunch protection of individual self-defense, but little to no protection against government infringement of all other purposes listed above. The right to bear arms as understood in 1791 applied to citizens capable of military service bringing "the sorts of lawful weapons that they possessed at home to militia duty." Thus, it is unconstitutional to ban handgun possession in the home or encumber its immediate use, since handguns are now "the most popular weapon chosen by Americans for self-defense." A handgun ban would be unconstitutional even if it allowed possession of long guns. Rifles useful in military service may be banned, since they are not as commonly found in homes. *Heller*, 554 U.S. at 627-30.

Heller acknowledges that extending constitutional protection for handguns but not military rifles renders the Second Amendment right to bear arms completely detached from the "well regulated militia" clause. *Heller* cites extensive historical indicia that the Second Amendment was intended to address fear the Federal Government would disarm the people to impose rule through a standing army (*Id.* at 598); however, although a citizens' militia might find handguns ineffective against current military bombers and tanks, that "cannot change our interpretation of the right." *Id*. at 627-28. In other words, the common law right to bear arms for defense of home-as-castle is the fundamental right protected by the Second Amendment.

Second Amendment rights are not unlimited. While disclaiming any exhaustive historical analysis of the full scope of the Second Amendment, *Heller* stated: "nothing in our opinion should be taken to [question] longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." Limiting Second Amendment protection to weapons in common use at the time is consistent with historical prohibitions against carrying "dangerous and unusual weapons." *Id.* at 626-27.

***Heller's* Result**: In summary, based on the majority opinion's view of how voters in 1791 understood the Second Amendment, handgun bans and requirements to lock or encumber immediate use of handguns are unconstitutional since handguns are the most popular weapon chosen by Americans for home self-defense. *Id*. at 629. Long guns (rifles and, by analogy, shotguns) could be regulated or banned. "Dangerous and unusual weapons" could be limited since there were historical prohibitions against them. Legislative studies/findings that handguns are now more dangerous to citizens than long guns would not change *Heller's* determination of original intent.

Analysis: Scalia's opinion excoriated Justice Breyer's dissent, stating: "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." Quite a breathtaking display of chutzpah for someone who noted favoring handguns over rifles is consistent with original intent, since a handgun "can be pointed at a burglar with one hand while the other hand dials the police." *Id.* at 634-35. It is ludicrous to mention if the rights must comport with voters' common understanding 85 years before invention of the telephone.

In *Heller*, "the right to bear arms" must be construed as of 1791, but inexplicably the popularity contest for arms entitled to the most Second Amendment protection can occur today. Declaring that handguns have a more fundamental Second Amendment status than long guns is bizarre, since use of shotguns and rifles to protect the home long preceded the convenience of using one hand to telephone the police.

Equally baffling on an original intent basis is the apparent abandonment of Second Amendment protection for arms allowing citizens to defend against tyrannical central governments. The imperative need to bear arms was never debated based on citizens' need to defend against each other. Given the opportunity to choose whether the Second Amendment protected collective defense or personal defense, *Heller* opted for the handgun in the nightstand.
Per *Heller*, a "well regulated Militia, being necessary to the security of a free State" was just one of many uses for "the right of the people to keep and bear Arms." The right to maintain citizen militias for collective defense (including, if necessary, a second American Revolution against a tyrannical central government), became the "Militias clause," which *Heller* deemed "prefatory." Self-defense of person and home per ancient common law "home-as-castle" doctrines was the "keep and bear Arms clause," which *Heller* deemed the "operative clause." By reducing the constitutionally protected right to "home self-defense with handguns" and dismissing the effect on any state Militia, *Heller* essentially reduced James Madison's citizens' militia, an insurmountable barrier to threats of force by a Federal army, to a neighborhood watch group at best.

In this author's humble opinion, *Heller's* fetish for "original intent means handguns" ultimately imperils the Second Amendment right for effective militias independent of the federal government. The *Heller* and *McDonald* opinions fondly cite early commentator Joseph Story's famous 1833 reference to the right to bear arms as the "palladium of the liberties of a Republic." However, the quotation generally stops before this part:

(Continued on page 26)

Heller's Choice *(Cont'd)*

"[T]he importance of a well-regulated militia would seem so undeniable, it cannot be disguised that, among the American people, there is a growing indifference to any system of militia discipline, and a strong disposition *** to be rid of all regulations. *** There is certainly no small danger that indifference may lead to disgust, and disgust to contempt; and thus gradually undermine all the protection intended by the clause of our national bill of rights."

2 J. Story, Commentaries on the U.S.Constitution § 1897, pp 620-621 (4th ed. 1873) (footnote omitted). See *Heller* at 667-68 (Stevens, J., dissenting).

As Story recognized, 175 years before *Heller*, the Second Amendment was intended to protect well regulated militias. The intended protection is undermined without protecting state militias from Federal infringement.

Americans chose a long time ago to form local police and state militia units under local control. Such police/militias much of the collective self-defense intended. The Second Amendment would assure such local militias could not be disbanded by a tyrannical national government as feared in 1791. Under *Heller's* interpretation, the tyrants the founding generation feared could neutralize state militia/police by confiscating all "dangerous and unusual weapons" from individuals and local forces, but allowing Deputy Barney Fife to keep his revolver. *Heller* does not support Second Amendment protection for state militias to use arms beyond handguns, since it contends the Militia is armed by weapons kept at individuals' homes.

Presser v. Illinois duly noted the relationship between the Second Amendment and local police power in 1886: "[T]he Second Amendment] has no other effect than to restrict the powers of the National government, leaving the people to look for their protection against any violation by their fellow-citizens of the rights it recognizes to what is called [citation omitted] the 'powers which relate to merely municipal legislation, or what was perhaps more properly called internal police,' 'not surrendered or restrained' by the Constitution of the United States." *Presser v. Illinois*, 116 U.S. 252, 265 (1886).

What about an individual's right to bear arms? According to *Heller*, that right existed before the Constitution, and the Second Amendment codified it. *Heller* makes that assertion, citing a prior Supreme Court case stating the opposite:

> "U.S. v. Cruikshank, 92 U.S. 542 (1876) *** held [the Second Amendment] right "is not a right granted by the Constitution [or] in any manner dependent upon that instrument for its existence."

Heller at 619. Hard to put it more clearly than that–an individual right to bear arms exists, but the Second Amendment does not grant that right. It is an ancient common law right, understood in its development from the Magna Carta in 1215 through the 1689 English Bill of Rights. Since it suited the philosophical and political agendas of the majority opinion, *Heller* ignored 132 years of contrary Supreme Court construction to find an individual right (as opposed to the collective militia rights) in the Second Amendment. *See Colo. Outfitters Ass'n v. Hickenlooper*, 24 F. Supp. 3d 1050, 1064 (D. Colo. 2014): "Until 2008, most courts did not construe the Second Amendment to protect an individual's right to possess and use firearms. Courts were guided by the Supreme Court's decision in *Miller*, 307 U.S. 174, 179 (1939), which held that a right protected by the Second Amendment required 'some reasonable relationship to the preservation or efficiency of a well regulated militia.'" *Colo. Outfitters* cited 1971 – 2001 cases from the 6th, 7th and 10th Circuit as examples of such holdings, but noting a contrary 5th Circuit case.[2]

Heller and *Miller* are unique in Second Amendment case law since they do not concern application of the Bill of Rights to state or local legislation. Cruikshank and Presser, supra, rely in part on inapplicability of the Second Amendment to such laws. Subsequent cases holding Bill of Rights provisions "incorporated" by the Fourteenth Amendment undercut that aspect of the holdings in *Cruikshank* and *Presser*. However, if there is no individual right to bear arms unrelated to militias (as stated in *Cruikshank*, *Presser*, and *Miller*, *supra*) there is no individual Second Amendment right to incorporate by the Fourteenth Amendment. Since *Miller* concerned federal law on interstate transport of firearms–still within Congressional power under the Commerce Clause–the subsequent selective incorporation cases concerning state laws had no effect on *Miller's* findings.

Reasonable minds may differ on interpretation of the Second Amendment's wording, historical underpinnings, and intentions of the Framers. But it seems unlikely that the Framers or voters of 1791 would have ceded, in favor of conveniently sized home defense weapons, all effective ability to rise up to confront overbearing federal forces. *Heller* misread original intent as well as any reasonable analogous living constitution application; it was wrongly decided.

Michael Strom is a Past President of Decalogue.

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[1] The correct term "Native Americans" was not commonly used at times relevant to *Heller's* Second Amendment analysis.

[2] *See, e.g., United States v. Haney,* 264 F.3d 1161, 1164-66 (10th Cir. 2001); *Gillespie v. Indianapolis*, 185 F.3d 693, 710-11 (7th Cir. 1999); *Stevens v. United States*, 440 F.2d 144, 149 (6th Cir. 1971). *But see United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001).

Welcome New Members!

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Young Lawyers' Corner

Decalogue Young Lawyers Co-Chairs
Martin Gould mgould@rblaw.net
Lauren Cohen laurencohen8@gmail.com

Young Lawyer/Law Student Fall Social

Thursday, September 7, 2017
5:30-8:00pm

Moe's Cantina
155 W Kinzie St (River North)

Decalogue will buy first round (domestic beer or house wine)

Chai-Lites

By Sharon L. Eiseman

On April 15, 2017, an NBC News television report featured Margarita Fitzpatrick and her Decalogue member attorney, **Richard Hanus,** chronicling Margarita's fight to remain in the U.S. after she was wrongly solicited for voter registration at her local DMV. Find the story here: http://www.nbcnews.com/nightly-news/peru-native-who-voted-illegally-two-u-s-elections-now-n746721. We are pleased to know that Margarita has a champion in her corner. Many others might not be so fortunate.

The prodigious talent of Decalogue Past President **Joel L. Chupack** has once again been acknowledged by his recent appointment to the position of Secretary of the ISBA's Task Force on the Unauthorized Practice of Law which we're certain will make good use of Joel's knowledge. For the new bar year at the CBA, Joel has moved into the role of Vice-Chair of the Real Property Law Committee.

Howard Rosenburg has been named Chair of the CBA's Securities Law Committee for the 2017-18 bar year. We look forward to hearing about that Committee's programming and projects under Howard's able leadership.

Mark Karno has been elected Treasurer of the Illinois Bar Foundation. This position will give Mark an opportunity to utilize his financial acumen as well as his understanding of how the marketplace works and affects the organization's budget and its funding responsibilities.

And how about this distinction for our Immediate Past President, **Curtis Ross**! Curtis was awarded the ISBA's Presidential Commendation by then-President Vincent F. Cornelius at the ISBA's annual June meeting in Fontana for his "outstanding leadership of and contribution to the ISBA Assembly Finance Committee." Now that Curtis has stepped down from his position on that committee, perhaps he can offer his words of wisdom to Mark Karno, the new IBF Treasurer.

On August 10, 2017, Board Member **Nicole Annes** kicked off the first meeting of Decalogue's Social Action Committee which she chairs with Board Member **Jessica Berger.** The meeting was very well-attended (we almost ran out of chairs at the DSL Office!), indicating a heightened interest this year in volunteering to serve, in meaningful ways, the most needy residents in our communities. Nicole reviewed the full agenda of projects she and Jessica hope to complete. While it takes time from our work to visit and entertain seniors and children and to deliver meals to the hungry, we must consider that our time spent with and for them gives purpose to their lives and uplifts their spirits. Please check the DSL website (www.decaloguesociety.org) for news of our upcoming service projects and sign up immediately for at least one of them this year! You will surely feel good about the joy you bring to others!

Sugar Felsenthal Grais & Hammer LLP hosted a luncheon in New York City in its Park Avenue offices on August 10, 2017 during the ABA's Annual Meeting. Luncheon guests were treated to a presentation by law firm partner, **Michael H. Traison**, who chronicled his quarter century experience with legal and historical issues that arose in Poland after the fall of communism, including the evolution of commercial and bankruptcy law in that country. Not surprisingly, Michael is a member of the firm's bankruptcy department. When Michael isn't traveling or speaking, or attending a Decalogue Board meeting, he commits his time to writing. Recently, The Israel Journal of Foreign Affairs published Traison's review of Yale Law School Professor James Whitman's new book, *Hitler's American Model*, in which Traison discusses the American legal system and its application in Germany.

First Vice-President **Helen Bloch** is a contributing author featured in the American Bar Association's recently published book *Grit, the Secret to Advancement: Stories of Successful Women Lawyers.* Using a study performed by the ABA's Commission on Women in the Profession, the book contains research on the importance of having a 'grit and growth' mindset, especially for women lawyers. The autobiographical essays by the women selected for inclusion in the publication are both compelling and inspiring as they offer a very personal perspective from those who have ultimately thrived in their careers despite or perhaps because of the challenges that confronted them and the barriers they had to surmount. We all know Helen to be a devoted mother, wife, friend and colleague as well as a talented lawyer who is running a successful business; but reading her account of the paths she travelled to make her complex and demanding life work for her, her family and her clients is both instructive and awe-inspiring. Maybe the next item on her agenda will be a book signing!

Our most visible member **Charles Krugel**, who has surely earned the title of 'man about town', was quoted in Rocket Matter's July 21st article "Marketing Tips from Ten Successful Lawyers". His commentary can be found at http://www.charlesakrugel.com/charles-krugel-media/im-quoted-in-rocket-matters-72117-article-marketing-tips-from-ten-successful-lawyers.html.

Chai-Lites editor and Decalogue Board member **Sharon Eiseman** was recently elected by its trustees to the position of Secretary of the Decalogue Foundation for the current bar year. Maybe she'll lighten up the minutes to keep its readers awake. Sharon also continues this year working with the ISBA as a member of the Real Estate Law Section Council, ex-officio on the Racial and Ethnic Minorities and the Law Standing Committee and was newly appointed to the Committee on Law Related Education for the Public.

Last but certainly not least, here is another inspiring example of a fellow lawyer in a 'juggling act' which is a term applied to multi-talented lawyers who manage to stay (or appear) sane and function well. Decalogue Board Member and Tablets Co-Editor **David Lipschutz** recently performed in the Jeff-Award winning production, *At the Table*, with Broken Nose Theatre. This winter, he will be directing the play, *Speech & Debate*, with Brown Paper Box Co. The production runs February 2, 2018, through March 4, 2018. For more information about the play, please visit brownpaperbox.org. Add those dates to your calendar!

Want to be in the next edition of 'Chai-Lites'? All you have to be is a member! Let us know about you or any other members who were celebrating, presenting, publishing, being recognized, volunteering, acquiring more titles, running to the office or even running for office!

CLE Schedule 2017-2018

Unless stated otherwise, all classes are at 134 N LaSalle, Room 775
and earn 1 hour of General MCLE credit for Decalogue members
Registration opens 4-8 weeks prior to the class at www.decaloguesociety.org/services/legal-education

Wednesday, September 13, 11:30am-1:30pm
CLE - The Good Wife: "Unorthodox"
Speakers: Prof. Cliff Scott-Rudnick and Dick Adler
John Marshall Law School, 304 S State, Room 1200A
Co-Sponsored with John Marshall Law School
2 hours Professional Responsibility credits pending
CLE credit for Decalogue members and John Marshall faculty

Wednesday, September 27, 12:15pm-1:15pm
Employment Law: Highlights from 2017 and Beyond
Speakers: Nate Lichtenstein and Amy Gibson

Wednesday, October 18, 12:15pm-1:15pm
Best Practices for Non-Profit Boards
Speaker: Barry Goldberg
ISBA Mutual, 20 S Clark Ste 800
1 hour General MCLE credit for Decalogue members

Wednesday, November 1, 12:00pm-1:30pm
DCFS Investigations
Speaker: Diane Redleaf
1.5 hours General MCLE credit for Decalogue members

Wednesday, November 8, 12:15pm-1:15pm
Best Practices in Filing an Appeal
Speaker: Justice Jesse Reyes

SPECIAL CLE:
Tuesday, November 14, 6:30-8:30pm
From Employee to Entrepreneur
How to start your own business from a legal and financial perspective
Speakers: Jessica Merino, Michelle Katz, Helen Bloch
Co-sponsored with the National Association of Women Business Owners
Catalyst Ranch, 656 W Randolph
1 hour General MCLE credit for all attendees
Networking Reception admission $35
($10 for Decalogue & NAWBO members)

Wednesday, November 29, 12:15pm-1:15pm
Traffic
Speaker: Judge Cecilia Horan

SPECIAL CLE:
Sunday, December 3, 9:30am-12:00pm
Hon. Gerald C. Bender Memorial Lecture
Topic and Speakers: TBA
Lincolnwood Jewish Congregation AG Beth Israel
7117 N Crawford Avenue, Lincolnwood
Co-sponsored with LJCAGBI
CLE credit for all attendees

Wednesday, January 17, 11:30am-2:00pm
MLK Day Video CLE: "Loving"
Speaker: Prof. Cliff Scott-Rudnick
John Marshall Law School, 304 S State Room 1200A
2 hours Professional Responsibility credits pending
CLE credit for Decalogue members and co-sponsors

Wednesday, January 24, 12:15pm-1:15pm
Judicial Recusals & SOJs
Speaker: Patrick John

Wednesday, January 31, 12:15pm-1:15pm
e-Discovery and Cyber Security
Speaker: Jeff Salling

Wednesday, February 7, 12:15pm-1:15pm
Mediation: What is the Object of the Exercise? If You Don't Know Where You are Going, You Just Might Not Get There
Speaker: Kent Lawrence

Wednesday, February 14, 12:00pm-1:30pm
2018 Income Tax Update
Speaker: Lawrence Krupp
1.5 hours General MCLE Credit for Decalogue members

Wednesday, March 7, 12:00pm-1:30pm
Burnout in Lawyering III
Speaker: Alice Virgil, Ph.D., L.C.S.W.
1.5 hours Professional Responsibility Credits pending

Wednesday, March 14, 12:15pm-1:15pm
Condo Law Update – The Good, the Bad and the Ugly
Speaker: Joel L. Chupack

Wednesday, April 11, 12:00-1:30pm
2018 Ethics Update
Speaker: Wendy Muchman
Location: TBA
1.5 hours Professional Responsibility Credits pending

Mark your calendars for these dates for topics in Criminal Law, Civility, and Jewish Multi-Culturalism - speakers TBA:

Wednesday, April 25, 12:15pm-1:15pm
Wednesday, May 9, 12:15pm-1:15pm
Wednesday, May 23, 12:15pm-1:15pm

And watch your email for a special CLE in April:
Reproductive Life: Ethical Issues from a Jewish Perspective

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Chicago IL 60602

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