# THE DECALOGUE TABLETS

*Published by the Decalogue Society of Lawyers,*
*America's Oldest Jewish Bar Association*


## Judicial Reception to be Held November 29, 2012

*by Michael A. Strom*

One of the most popular Decalogue events – and a personal favorite of mine – is the Annual Judicial Reception. Many bar organizations have judicial receptions where they serve fancy food, held in posh banquet halls. Sometimes, people even wear tuxedos. What really sets Decalogue's Judicial Reception apart is the fact that we don't do any of that.

Decalogue's Judicial Reception holds a special place in the hearts of many judges -- especially those with who may not be Jewish. The popularity of our judicial reception, based on numerous anecdotal reports received by Decalogue members over many years, is simple: ours is the only event in which the judges can be assured that instead of the usual chicken of questionable texture and quality, there will be kosher hot dogs.

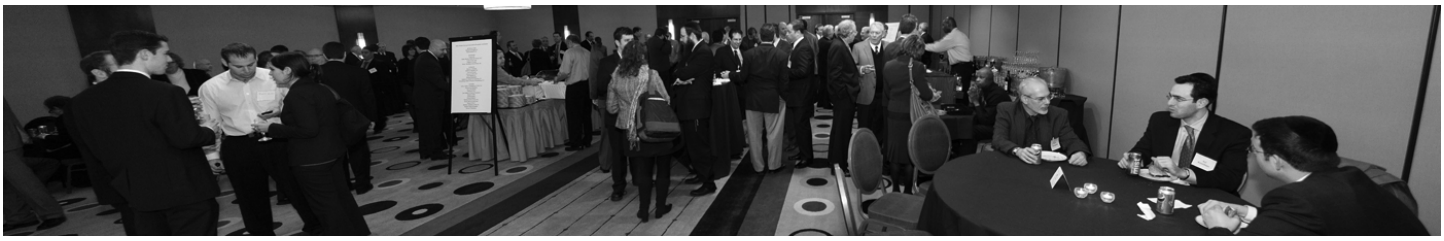
When I first became involved with Decalogue Society, a surprising number of judges made a point of telling me how much they look forward to the kosher hot dogs at our judicial reception. These conversations were "sua sponte" -- which is Latin for "Michael, I would rather talk about kosher hot dogs than your boring brief." Still, the point was made. A few judges went out of their way to confirm that we were going to have the kosher hot dogs at our next judicial reception. It was clear from the look in their eyes that this was not idle chatter.

For years, we held the judicial reception in the basement of Loop Synagogue. However, the popularity of the event outgrew the available space. Personally, I am not sure whether we had to move the event away from Loop Synagogue because of fire code regulations or a common sense concern for an overly crowded room where everyone was applying condiments to their food.

In recent years, Decalogue has held the event at the Crowne Plaza Chicago Metro, 733 W. Madison, Chicago. The facility is a little off the beaten path, and the room is conducive to a nice opportunity to chat with our fine local judiciary in a decidedly un-stuffy setting. The location is considered a blessing to the many Cook County judges who do not have downtown Chicago assignments. As result, this event tends to draw more judges from the criminal, juvenile and some of the outlying districts, in addition to the usual complement of judges from the Daley Center.

Although there are those who would insist that failure to consume a hot dog at this event is a breach of tradition, in deference to those who may have a more precise understanding of exactly what goes into a hot dog, rest assured that hamburgers, soft pretzels, and something identified in the banquet event order as "assorted fresh garden vegetables presented with gourmet crackers and hummus" are available, along with cookies and brownies. No need for concern that you will be tucked away at a table at an unsettling distance from any actual judges -- technically, we do not actually have tables. There are chairs, but people tend to mill about.

The programming is straightforward for this event. The president of Decalogue (i.e. me!) will thank the judges, sponsors and other guests. After that, there are no speeches. This is because, within a matter of minutes, no one will be able to hear anything anyway.



# President's Column

*by Michael A. Strom*

If you live long enough, you'll see everything. If I'd told you two years ago that with one program requiring little time per member Decalogue could help the following problems, you would have given me that puzzled look I'm used to seeing anyway:

- A severe economic downturn affecting the Jewish community, including north suburban Highland Park, Western suburbs in DuPage County, south suburbs and Chicago.
- A weak job market with few opportunities for new attorneys to get courtroom experience.
- Lack of hands-on, practical training needed by new attorneys for the transition from law school to real-world legal practice.
- Severe court management problems requiring help beyond the resources of the Illinois Supreme Court, government attorneys, private agencies and volunteers.
- Decalogue's ongoing need to connect with young lawyers to sustain our growth.

The JUF Community Legal Services (JCLS) program addresses all of the above, and they need our help. Incredible, right? We hear the expression: "No crisis should go to waste" a lot lately. We are facing just such a crisis right now. Decalogue has talent and resources unusually well-suited for this time and place in history. We see a solemn duty to help others and an unusual opportunity to help us grow while nurturing our own young attorneys.

JCLS provides pro bono representation to needy individuals and families in the Jewish community. JCLS screens and evaluates the requests for help, so the most worthy matters are referred to volunteers. Chicago Volunteer Legal Services Foundation (CVLS) provides administrative support, legal malpractice insurance for all volunteer attorneys, training and legal resources, including CLE credits, for attorneys handling cases outside their areas of practice. CVLS provides detailed training materials and staffs a private telephone hotline to support the volunteers throughout the case. Although this program is especially beneficial to young attorneys, the leadership of Decalogue has embraced the unique duties and opportunities provided. Every current officer of Decalogue has agreed to accept 1 or 2 JCLS pro bono matters per year. Including me.

As economic problems cascade throughout our area, we see families unable to afford rent or mortgage payments, and building owners unable to meet their obligations when houses, apartment buildings and newly constructed developments become vacant. Sudden declines experienced by financial institutions, businesses and investments have led to bankruptcies. Typically, the resulting stresses are manifested in families requiring assistance in even affluent areas.

As lawyers, we can help. Here's how:

- Someone in your own community needs legal assistance they cannot afford to get through this harrowing cycle. If we do not help in areas such as Northbrook, Buffalo Grove and Naperville, who will?
- Young attorneys have always struggled to get valuable experience in direct client contact and courtroom work. The best law school graduates typically spend up to three years grinding out long hours doing legal support work that never provides such opportunities. JCLS cases allow them to develop skills in legal analysis, client relationships and often courtroom motion/trial practice. Many firms welcome the chance to have JCLS/CVLS provide that training. Decalogue and JCLS can coordinate to assure that attorneys who want to focus on our community first can do so, and those who prefer reaching out to other communities can do so.
- Many attorneys have been too busy or overwhelmed to fit in pro bono work. But an extraordinary number of attorneys with little or no experience now must "hang out a shingle" on their own without the resources, structure or guidance of experienced attorneys, firms or agencies. JCLS cases allow our best and brightest to develop their abilities in a practical context, with real cases, but with the "safety net" of expert CVLS resources and training.
- Attorneys experiencing the trauma of unemployment, have the opportunity to develop skills and capabilities in previously unfamiliar areas of law – assets much more valuable than an obvious resume gap while looking for work.
- Due to the uptick in foreclosures, bankruptcies, and resulting economic/personal maladies, so many litigants unable to afford counsel are representing themselves, the Illinois Supreme Court asks and expects the organized bar to provide pro bono services so these matters can be more efficiently resolved in the courts. All Bar Associations – big, little or ethnic – are expected to do their share. Please volunteer so I do not have to tell Supreme Court justices at bar events why Decalogue cannot provide pro bono services in its own community.
- Our participation in this program allows us to help fulfill our traditional duty of Tikkun Olam, to "repair the world." By participating together, Decalogue can show our value to our community when we were most needed.

If every member who can handle one or two cases a year (10 to 20 hours per case) agrees to do so, we can clear up the JUF backlog in a matter of months. Some members cannot take JCLS cases due to irreconcilable conflicts of interest. But we are not all judges and prosecutors.

JCLS provides legal assistance in civil cases and simple criminal misdemeanors, not cases that generate fees. Attorneys interested in volunteering can email our office at decaloguesociety@gmail.com

# Michael Traison Honored by America - Israel Chamber of Commerce

At the America-Israel Chamber of Commerce Chicago (AICC) Award & Celebration Dinner, held on October 17, 2012, Steve Lavin and Decalogue member Michael Traison were honored awardees.

Michael Traison is a partner in the international law firm Miller Canfield, and serves as Senior Vice President of AICC. He is an active member of many organizations in Illinois, Michigan, New York, Canada, Poland and Israel.

Decalogue has especially benefitted from his work with the International Association of Jewish Lawyers and Jurists. IAJLJ has been integral in bringing Israeli luminaries such as Supreme Court Justice Salim Joubran and visiting professors from Bar-Ilan University to the U.S. When they come to Chicago, Decalogue's partnership with Traison and IAJLJ always results in exceptional Chicago events – many of which are hosted at our local law schools.

Mike received AICC's Martin N. Sandler Distinguished Achievement Award in recognition of his achievements advancing the Chamber's mission of fostering business links between the U.S. and Israel.

Steve Lavin is President of Lavin & Waldon, P.C. and the Immediate Past Chairman and Current Member of the Bank Leumi USA Board. He received AICC's Chicago's Business Leadership Award in recognition of his work building business between the U.S. and Israel.

Keynote speaker, Mayor Donald Plusquellic of Akron, Ohio, spoke on the subject: "Akron and Israel-Creating a Vital Midwest." In working to revitalize Akron's economy, Mayor Plusquellic marketed his city internationally, creating cooperative economic and technology agreements in high tech sectors around the world. After leading a delegation to Israel, he signed a deal to invest $1.5 million in public and private funds in Israel's high tech Targetech incubator. He also signed an agreement with Israel's national water company, Mekerot, to establish the company's first U.S. location in Akron, where it will work with local companies to develop new technologies.

The Decalogue Tablets is published quarterly
by the
**Decalogue Society of Lawyers**
39 South LaSalle, Suite 410, Chicago IL 60603
312-263-6493
**www.decaloguesociety.org**



**Decalogue Reception**
**Honoring the Judiciary**

Thursday, November 29, 2012
5:00-7:00pm

Metro Klub at Crowne Plaza
733 W Madison, Chicago

$70 Decalogue Members
$90 Non-Members
$18 Students

$1000 Benefactor
$500 Sponsor
$250 Patron
$100 Donor
*Sponsors will be acknowledged at the event and in the next issue of the Tablets*

**Reservations are required:**
**www.decaloguesociety.org**

# Civil Unions in Illinois

*by Alan E. Sohn*

Illinois' Civil Union Law became effective on June 1, 2011. The effect of the law, known as the "Illinois Religious Freedom Protection and Civil Union Act (PA 96-1513, 750 ILCS 75/1 et seq.), is to create a status analogous to marriage under Illinois law to persons who elect to enter into a civil union, without regard to gender. The intent of the law is to confer to two persons of either the same or opposite gender all the rights, interests, benefits and burdens available to spouses without, or short of, marriage itself. A civil union entered into in Illinois must now be respected in most states of the U.S.; however, persons who enter into a civil union do not have the same status as married persons under federal laws, such as the right to file jointly for income tax purposes or to have the benefit of the marital deduction for estate tax purposes. Therefore, while important inheritance rights and spousal rights under state law will now be identical, partners in a civil union must still take special care to have their estate planning documents and existing ownership of assets take into consideration the disparate treatment under state and federal law.

**How does the Civil Union law affect civil union partners under the Illinois Income tax law? Here are a few of the consequences of the law:**

The Civil Union law did not change the Illinois income tax laws. Under the Illinois Income Tax Act, persons may file a joint return only if they can also file a joint federal income tax return. Married couples and partners to civil unions who file separate federal returns may not file joint Illinois returns. As only married couples may file joint federal returns, civil union partners may not file joint Illinois income tax returns. If the current court challenge to the federal Defense of Marriage Act is successful, this prohibition may disappear. The Obama Administration has withdrawn the Justice Department from defending the Act.

The Illinois Income Tax Act allows an exemption for every exemption allowed on the taxpayer's federal return. IRC Section 151 basically allows an exemption for every dependent. Under IRC Section 152, a member of the taxpayer's household who is sufficiently dependent on support from the taxpayer can generally qualify as a dependent. One exception is in IRC Section 152(f)(3) which provides that a person cannot be a member of a taxpayer's household if that person's relationship "is in violation of local law." Prior to the Civil Union Act, this provision would arguably have prevented same-sex partners from ever qualifying as dependents. Now they can qualify.

*Please join Alan Sohn on December 5, 2012 at 12:30 for his one hour presentation on the "Civil Union Law: Impact on Family and Tax Law" and related aspects of that statute, a CLE Program of the Decalogue Society of Lawyers Legal Education Series.*

**Registration is available on-line at http://www.decaloguesociety.org**

## Decalogue Society of Lawyers Judicial Evaluations for November 6, 2012 Election

Retention Candidates

Appellate Court
**James Fitzgerald Smith - YES - 201**

Circuit Court
**Cynthia Brim - NO - 232**
**James D. Egan - NO - 240**
**Joyce Murphy Gorman - NO - 274**
**Pamela Hill-Veal - NO - 282**
**Gloria Chevere - NO - 292**
YES for all others

Ratings for Contested Races

Illinois Supreme Court - Fitzgerald Vacancy
**Mary Jane Theis (D)**
Highly Recommended
**James Gerard Riley (R)**
Recommended

4th Subcircuit - Riley Vacancy
**Terry Gallagher (D)**
Recommended
**Harry J. Fournier (R)**
Recommended

4th Subcircuit – "A" Vacancy
**Edward M. Maloney (D)**
Recommended
**Christine Cook (R)**
Not Evaluated

12th Subcircuit – Rochford Vacancy
**Andrea M. Schleifer (D)**
Recommended
**James Paul Pieczonka (R)**
Not Recommended

# ‘Happy Hour’ Delights Law Students, Young Lawyers, and Young-at-Heart Lawyers

*by Gail Schnitzer Eisenberg*

Approximately thirty-five law students and lawyers joined the Decalogue Society for Happy Hour on October 4th at the aptly named Sidebar. The event attracted both experienced Decalogue members and those newly exploring all a Jewish bar association has to offer. It gave prospective members a glimpse into Decalogue’s networking benefits while highlighting this year’s focus on social action.

Joanna Benjamin, co-chairperson of Decalogue’s Social Action Committee, was on hand to discuss participation in the JUF Community Legal Services. Both she and Decalogue President Michael Strom raved about their personal experiences working with CLS – the clients who just need someone to listen, the small things that they did to make a big difference in their client’s lives.

CLS gives attorneys a chance to practice in a diverse range of legal areas such as bankruptcy, housing, family law, administrative law, wills, and consumer matters. But, as both Benjamin and Strom noted, one need not have extensive experience in these areas to volunteer. One benefit of volunteering one’s legal services through CLS is that Decalogue and CLS are planning CLE programs focusing on these reoccurring legal areas to best develop member skills to meet the needs of CLS’s clients. Moreover, all legal services provided through CLS are covered by the clinic’s malpractice insurance, and law student members can be assigned to work with you on legal research and writing.

Joelle Shabat, chairperson of Decalogue’s Law Student Committee, welcomed new and continuing Jewish students to the greater Jewish legal community and shared information about exciting upcoming events for law students. For instance, the Committee will host a panel discussion on different career paths on November 8th at John Marshall Law School in Rooms 1200 A & B. The event will feature Decalogue members who will each speak to their varying legal careers be they in government or private practice, as solo practitioners or as members of large firms. The reception begins at 5:30 pm and panel discussion at 6:00 pm.

Michelle Steiman and Gail Schnitzer Eisenberg, co-chairpersons of Decalogue’s Young Lawyers Committee (along with David Lipschutz), spoke with numerous young and young-at-heart attorneys about how best to use Decalogue’s intergenerational roles to its members’ advantage.

One member arrived at Sidebar, peered about the crowded room, and mused that he was likely much older than the average Happy Hour participant present while often at other Decalogue events he felt much younger.

Decalogue members must not fear being a life-experience outlier at events, but should embrace it. Young attorneys can benefit from attending more of Decalogue’s illuminating CLE, holiday and judicial programs while more-experienced attorneys should relish the chance to share their hard-earned knowledge with those just starting out at more casual networking events like the Happy Hour. Only then can we ensure our knowledge is properly transmitted from generation to generation, *l’dor vdor*.

Such intergenerational exchanges are a priority for Decalogue’s Law Students and Young Lawyers Committees this year. Keep an eye open for more information about Decalogue’s mentoring program, jobs board, state court clerkship and CLS apprenticeship programs.

# Marriage in American Jurisprudence

*by Jonathan Lubin, republished from his Blog, Reasonable Inference*

I've been fascinated recently with the debate about gay marriage. It is a debate that we are gearing up to have here in Illinois; and the nation has been in the midst of it for some time. I will discuss my concerns with Illinois' treatment of this issue later. But first, I'd like to address the extent to which "gay marriage" is a right, and the extent to which our policy ought to change to recognize it. In determining whether marriage is a "right" – meaning something that is deserving of the State's protection – I believe that it is important to figure out the place it has held in public life historically.

Western society has had many predecessors, but the religion that has contributed the most to the growth of Western culture is undoubtedly Christianity. For that reason, Christian history is nearly synonymous with European history for much of the last 1500 years or so. This has changed only in the very modern era. Therefore, it may be worthwhile to look at the role that marriage has played traditionally in Christian society, and how that has developed, in order to determine the role it ought to play in our society.

Christianity supplanted ancient Roman culture, first and foremost. Marriage, for much of the Roman Empire, was a method of determining inheritance. In fact, the form of the marriage (there was more than one) determined whether a wife would inherit from her father, or from her husband (but not both). When Christianity supplanted Roman marriage, one of the first reforms thereto was to give marriage a religious sanction: marriage was to be a union sanctified by G-d, rather than merely for the sake of solemnizing a relationship for the purpose of libidinal pleasure and otherwise for legalistic purposes. While Christian marriages originally did not involve any special ceremony, a ceremony was nonetheless created specifically to underscore the divine solemnity of the institution. Marriage nonetheless remained a private matter – affecting inheritance rights, but having little to do with third parties like the church or state. In fact, secular governments had nothing to do with marriage whatsoever.

As the Church's organization grew and became codified, the Church's role in marriage grew as well. In the middle ages, the Church was given the role of recording marriages. The secular government had no role vis a vis marriage whatsoever. Rather, issues having to do with marriage that required court intervention were heard before ecclesiastical courts – that is, religious courts – not secular courts.

It wasn't until the Protestant Reformation that recording of marriage passed to the state. Martin Luther taught that marriage was a worldly thing, and therefore under the state's jurisdiction. John Calvin, through the "Marriage Ordinance of Geneva", also codified a marriage regime that required the state to record marriages alongside the church.

In England, marriage was overseen by the Church of England – but the head of the Church of England was the English crown, so it is difficult to distinguish between the church function and the state function in England immediately post-reformation. Despite the Church's involvement in most marriages, Rabbis were given jurisdiction over Jewish marriages. In other words, the state was not involved in marriages that were not officiated by the Church of England or otherwise sanctioned by the Church of England.

This particular involvement of religious orders changed under the Marriage Acts of 1836, which created a concept called civil marriage. Such change was necessary because under the prior regime, Catholic and other non-Anglican marriages had no official recognition whatsoever (only Jews and Quakers were given an exemption from the Church of England's total control of marriage). Thus, no court could take jurisdiction over matters like divorce, and the like, if the marriage was not sanctioned by the Church of England. If a man deserted his wife, the courts would do nothing about it if the couple was not properly married in the first place. Under the new law, marriages were considered to be contracts, and the terms were implied by common law (compare this to the implied warranty of habitability – the terms are agreed to even without the expressed consent). Germany moved to civil marriage officially in the late 1800s.

I bring all of this up to underscore an important point: that the notion of the state rather than the church sanctioning a marriage is incredibly new. The English notion of civil marriage – and English common law underlies most of American jurisprudence on any given subject – was a response to the fact that ecclesiastical marriage fundamentally discriminated against Catholics. Had the Church of England not specifically subsumed all of marriage under its own ambit in the wake of the Protestant reformations, the need for a special civil marriage likely would not have materialized.

Why this is important is that America – whether on a state by state basis or as a nation – must now determine what to do about the secular management of the fundamentally religious edifice of marriage. Our civilization has been very good at denying individuals the "right" to marry. Until 1967, laws prohibiting interracial marriage were technically in effect throughout the South. Illinois turned its second largest city into a ghost town in 1846 due, in part, to the nontraditional marriage practices of the Latter Day Saints who lived there but were forced to flee to the Salt Lake valley in the wake of persecution. The Utah constitution specifically outlaws plural marriage; this was a condition of Utah's admission as a state, and it's the only state that has monogamy literally written into its state constitution. Our predecessors denied Catholics the right to marry – probably out of spite. Now, in the face of all of this, homosexuals believe they should be allowed to marry, and the tide is turning in their favor.

What is different about the above examples, and what is the same? In the four examples: interracial marriage, plural marriage, Catholic marriage, and gay marriage, society at one point or another opposed the institution, and the institution was therefore forbidden. In the case of interracial marriage and Catholic marriage, society changed its mind. While it took a decision of the U. S. Supreme Court to turn the tables on laws prohibiting interracial marriage, that decision would likely not have been rendered appreciably before 1967 due to prevalent attitudes in this country prior to the 60s. In other words, the right to marry is hardly absolute. It is very much a product of the culture. If the culture sanctions your marriage, then your marriage will be called a "right," and will be subject to all of the government's protections. If the culture frowns upon your marriage, it will be either outlawed or simply deemed illegitimate.

Today, society looks poised to change its mind on the issue of gay marriage. But it is not ready to change its mind on the question of plural marriage. The nearly 10,000 members of the Fundamentalist Latter Day Saints, and the nearly 10,000 members of the Apostolic United Brethren, another fundamentalist Mormon offshoot, will have to wait for society to change its mind about their nontraditional practices before the "right" that cannot be denied to interracial couples and apparently to same-sex couples will be extended fully to them. If there is a right to privacy to engage in a marriage that no Western society has ever tolerated – gay marriage – why does that right not extend to an institution that was practiced by Abraham, Jacob, David and Solomon? To me, the answer is really very simple: society accepts gays more readily than it accepts fundamentalist Mormons. Perhaps that truth is uncomfortable. Or, perhaps, that truth is not uncomfortable at all. But that's the reason.

Put another way: what does"privacy" have to do with the "public" solemnization of marriage? To the extent that the public solemnization of marriage is a right, how do the very same people who believe so strongly in that "right" as it relates to gay couples simultaneously deny the "right" to marry to individuals who, due to their religious beliefs, engage in plural marriages? See Justice Scalia's dissent in Lawrence v. Texas which asks that very question. Note that no Supreme Court Justice has answered that question.

The problem with this debate is that it is really a wholly different debate that we are pretending not to have, but that really underlies the entire issue: Does our culture accept gay marriage as opposed to concluding that gay marriage is an inalienable right - newly discovered, as it were - that transcends culture? North Carolina and Illinois have both answered this question, in a way – though they disagree with one another. Dismiss from your minds the questions about what is a "right" and what isn't. The question is whether we as a society accept gay marriage, not whether it is a right. If we accept it, we will find a way to call it a right; if not, we will find a way to avoid giving it that appellation.

Jewish law certainly does not accept gay marriage. Christianity, the dominant religion in the United States, similarly does not.

But when did we start using laws to legislate morality? There are some people who would tell you that America has always legislated morality. But, as Prof. Hugh Nibley, an LDS apologist (and one of my favorite professors of Near Eastern studies outside of my Alma Mater) remarked: "In the eyes of absolutism, our Constitution is hopelessly soft on sinners. Here, heresy, held for centuries to be the quintessence of subversion and the worst of all crimes, does not fall under human jurisdiction at all; people with wrong ideas are expressly allowed to talk about them and even hold meetings; Congress may never declare one religion more desirable than another (Article VI and Amendment I), or one person more noble than another (Article I, Section 10). God alone knows who is really virtuous and who is not." He considers this attitude to be the ultimate recognition of the Christian church's original philosophy: "God is not easy on sinners; he says he cannot look upon sin with the least degree of allowance, but reminds men that 'I the Lord will forgive whom I will forgive, but of you it is required to forgive all men.'" (Doctrines and Covenants 64:10). (All of these comments come from his lecture entitled "The Ancient Law of Liberty," which can be found at

http://maxwellinstitute.byu.edu/publications/books/?bookid=54&chapid=506).

Governments used to have nothing to do with who could and could not marry. It is time for a return to that posture. As long as government is in the marriage business, government will decide what is and is not a proper marriage. A follower of Judaism or a follower of Christianity cannot, with the wave of a wand, turn something that receives our traditions' condemnation into something that ought to be protected. But, why should I get to determine who gets married, and who does not get married? Frankly, I shouldn't be given that kind of discretion, and neither should a state legislature be given that kind of discretion.

By the same token, a state legislature should not be permitted to create a concept called gay marriage, or even a "civil union," and impose it on the rest of society. The reason is clear: here in Illinois, one of the largest state contractors of foster care services was essentially chased out of the industry due to its religious objections to civil unions. They were told that if they did not adapt to "united" couples, they would be held liable for violations of the law. What a sad day it was for children in foster care, and for religious liberty in Illinois, when the Illinois legislature passed, and Gov. Quinn signed, a law forcing Catholic Charities to recognize same-sex unions, in violation of their religious beliefs.

What government giveth, the government can taketh away. By making such an about-face on this issue – which has much more to do with a cultural preference than with any historically recognized right – the legislature has chosen to enfranchise homosexuals but to simultaneously disenfranchise Catholics, and foster children.

*(continued on page 8)*

## Marriage *(continued from page 7)*

If government was out of the marriage game, legislatures wouldn't have to pick between foster kids and homosexuals. Instead, government would merely uphold private contracts entered into by private parties, and properly police their dissolution. The law would not make a moral statement about the validity of one practice over another – in true recognition of the First Amendment's purpose.

Governments need not make moral statements for or against gay marriage, or any other kind of marriage. Rather, they need only to police the equitable distribution of property in the case of a dissolution, and to otherwise protect and defend the rights of individuals under the law. Who can and cannot marry would, once again, be a question answered by Rabbis, Priests, Ministers, and whoever else serves in some kind of ecclesiastical function. These are figures who are supremely qualified to answer questions of conscience – in stark contrast to the least qualified body to answer questions of conscience: the government.

All views and opinions stated herein are of the author, and his blog, Reasonable Inference, can be viewed at http://reasonableinference.blogspot.com/.

***Decalogue's Law Student Division Presents***

### A Look into the Life of a Lawyer: A Panel Discussion

Thursday, November 8, 2012
5:30-7:30pm

John Marshall Law School
304 S State St, Rooms 1200 A&B

*Hear from panelists on their careers as attorneys for the government, small, mid-size and large law firms*

Confirmed Panelists:
**Judge Deborah J. Gubin** - government attorney
**Deidre Baumann** - solo/small firm
**Judge Michael B. Hyman** - mid-size firm
**Helaine Wachs Heydemann** - large firm

5:30-6:00 Refreshments
6:00-7:00 Panel Discussion
7:00-7:30 Q&A

There is no cost to participate but registration is required
**www.decaloguesociety.org**

## Status of Illinois HB 5170: The Religious Freedom and Marriage Fairness Act

*by Sharon L. Eiseman*

This legislative session, the Illinois General Assembly may have an opportunity to vote on—and pass—HB 5170, known as The Religious Freedom and Marriage Fairness Act. Co-sponsored by 13th District Representative Greg Harris, the moving force behind the passage of the 2011 Civil Unions bill, along with various colleagues including Representatives Deborah Mell, Kelly Cassidy and Ann Williams, HB 5170 takes the next and most critical step toward full participation of all citizens in the institution of marriage by inviting same-sex couples into the marriage club. The bill is short and fairly straight forward, creating a right of marriage for same-sex persons. Like the Civil Unions statute, this bill exempts religious groups from a duty to officiate in marrying same-sex couples by its assertion that nothing in the Act requires them to "solemnize any marriage"; instead, any "religious denomination, Indian Nation or Tribe or Native Group is free to choose which marriages it will solemnize."

If or when HB 5170 passes, Illinois will join several other states, including Maine, New Hampshire, New York and Iowa in recognizing same-sex marriage as being co-equal to opposite-sex marriage with all of the "benefits, protections and responsibilities" associated with that institution. Whether this bill will come up for a vote in the November veto session or later, or not at all in the current legislative session, likely depends on whether its sponsors believe they can garner the required number of votes for its passage. While the bill is pending, it is anticipated that our major bar associations and possibly some specialty bar groups will take a position in favor of the bill and may have done so by the time this newsletter is distributed to our membership.

It is my personal hope that the Decalogue Board of Managers, for the DSL, will honor its long-standing mission to fight all forms of discrimination by voting in favor of HB 5170. As with the decision in 2010 to support the Civil Union Act, such a vote would affirm Decalogue's commitment to assure that same-sex couples have equal access to a right long conferred on couples of the opposite sex.

**Do You Want to Write for the *Tablets?***

Send your articles to decaloguesociety@gmail.com

no later than December 13 for the Winter issue
or March 21 for the Spring issue

# A Limited Counterpoint To Marriage in American Jurisprudence

*by Michael A. Strom*

In the spirit of full disclosure, I confess that I am a big fan of Jonathan Lubin's blogs and writings. As issues involving civil unions and same-sex marriage continue to generate controversy in the Illinois legislature and courts system, I recommended that Jonathan's recent blog piece be republished in The Tablets, along with a counterpoint on issues where our members are likely to disagree. Little did I suspect that I would write the counterpoint myself, but duty calls.

Issues involving same-sex marriage, contraception and abortion have become the most problematic areas where conflicting claims of religious liberty, individual rights and discrimination under color of law require careful analysis. With due respect for the analysis elegantly expressed by Jonathan Lubin, there are some areas in which claimed conflicts or infringements are created not by government interfering with religion, but rather by religious institutions performing functions that are either traditionally governmental or at minimum, not inherently religious functions. For that matter, insisting that marriage is solely a matter for religions and not government would unduly infringe (in our culture) upon the right to be free from religion, for those who do not share religious beliefs.

This was all so much easier in the shtetls of Eastern Europe. Where communities were self-contained and essentially independent of government functions beyond tax collectors and Army conscription, it wasn't so important to determine which rules were of religious or secular origin. In 21st Century America, we frequently have religious or charitable institutions exercising governmental functions, sometimes as contractors who can more efficiently deliver the services. When they do so, such services need to be provided in compliance with legal and constitutional limitations.

Jonathan asserts that government should leave marriage to religious authorities: "Who can and cannot marry would, once again, be a question answered by Rabbis, Priests, Ministers, and whoever else serves in some kind of ecclesiastical function." As far as I can determine, government has not imposed mandates or restrictions on marriage infringing free exercise of religion. There is no contention that government requires synagogues, churches or mosques to perform same sex marriages, or to confer religious rights or privileges prohibited by faith. Every faith remains free to set its own rules about who can marry and on what terms. Some Jewish denominations refuse to perform, sanction or accept interfaith marriages. That is a religious matter best determined by rabbis. Obviously, governmental entities could not legally make the same distinctions.

Hospitals or facilities of public accommodations are not free to refuse providing medical treatment, food service, etc., in a manner that discriminates based on race, religion or gender. The fundamental issue is not changed by adding sexual orientation to that list. Constitutionally prohibited racial or sexual discrimination does not become constitutionally protected free exercise of religion if done by a religious order.

Jonathan contends that the legislature's recognition of same sex civil unions "… has chosen to enfranchise homosexuals but to simultaneously disenfranchise Catholics, and foster children. If government was out of the marriage game, legislatures wouldn't have to pick between foster kids and homosexuals." However, one difference between governmental and religious functions is the extent to which either may choose to be involved. Rabbis, priests, ministers and ecclesiastical authorities in America may choose to build hospitals. They're not obligated to do so. We recognize extrinsic of religion a civic/moral obligation to provide certain services to those who cannot otherwise afford to obtain them. No religious organization is required to provide doctors, police, fire or military personnel.

If the Catholic Church chooses to build, administer and staff a hospital, that does not make the medical facility a church or religious institution. If a different, thoroughly hypothetical religious order with fundamental tenets prohibiting facilities to be shared in an interracial fashion built a hospital, restriction of water fountains for use by "white people only" and "colored people only" would not be sustainable based upon free exercise of religion.

The fact that Catholic Charities has for many years provided placement for foster care or adoptions does not make this a religious function – arrangements for foster and adoptive parents are made in many regions solely by government, without objection that a local, state or national governmental entity is improperly performing a religious function. In short, if Catholic Charities believes that it cannot in good conscience continue contracting with government to provide foster or adoption services without discriminating against same sex adoptive parents, it is not because government chooses to be in the "marriage game;" it is because a religious institution choosing to help provide governmental services must do so in a nondiscriminatory fashion.

# Decalogue Society of Lawyers
# Chanukah Party

**Wednesday, December 12, 2012**
12:00-1:30pm
120 S Riverside Plaza, 21st Floor, Chicago

Enjoy latkes and a light lunch, traditional Chanukah music, games, comedy by Silverman & Lubin, and a live performance of the legendary Howlin' Wasserstrom and his troupe


**Silent Auction**
All proceeds from this year's auction will benefit the Decalogue Foundation.*
If you would like to contribute an item to the Silent Auction, please call Jerry Schur 847-913-3918 for a pick-up.


**This year we are participating in the ARK's gifting program. Please bring a gift suitable for a child for us to donate. We will also be accepting cash donations for the ARK.**

## Tickets: $18 ($10 for students)
## Order tickets online at www.decaloguesociety.org

*Decalogue is a 501(c)(6) organization. Contributions to Decalogue are not deductible for federal income tax purposes.*
** The Decalogue Foundation is a 501(c)(3) organization registered with the State of Illinois. The value of your donation to the Silent Auction is deductible as a charitable contribution for federal income tax purposes.*

Info: decaloguesociety@gmail.com or 312-263-6493

# Calendar of Meetings & Events

**Tuesday, November 6**
Election Day - See Page 4 for Decalogue's Judicial Evaluations

**Wednesday, November 7, 12:30-1:30pm**
CLE - The Drew Peterson Case
Speaker: Ralph Meczyk
29 S LaSalle Room 530
1 hour CLE credit - reservations required
www.decaloguesociety.org

**Thursday, November 8, 5:30-7:30pm**
Decalogue Law Student Division
A Look Into the Life of a Lawyer: A Panel Discussion
John Marshall Law School, 304 S State St
Reservations are required - See Page 8 for details

**Tuesday, November 13, 6:30pm**
JUF Trades, Industries & Professions
Networking Cocktail Hour
Sushi Samba, 504 N Wells
$30; Beer and wine will be served
www.juf.org or or 312-357-4836

**Wednesday, November 14, 12:30-1:30pm**
CLE - The Anatomy of a Wage and Hour Claim in Federal Court
Speaker: Jac Cotiguala
29 S LaSalle Room 530
1 hour CLE credit - reservations required
www.decaloguesociety.org

**Thursday, November 15, 5:00pm**
Women's Bar Association of Illinois
Women With Vision Awards
Hard Rock Hotel, 200 N Michigan
www.wbaillinois.org or 312-341-8530

**Saturday, November 17, 6:30-10:00pm**
Chicago Bar Foundation Fall Benefit
The Museum of Science & Industry
57th & Lakeshore Dr
Tickets: $85
http://www.chicagobarfoundation.org/

**Tuesday, November 27, 5:30-6:30pm**
Decalogue Social Action Committee Meeting
39 S LaSalle, Room 410

**Wednesday, November 28, 12:00-1:30pm**
Decalogue Board of Managers Meeting
29 S LaSalle, Room 530

**Thursday, November 29, 5:00-7:00pm**
Decalogue Reception in Honor of the Judiciary
Metro Klub at the Crowne Plaza
733 W Madison
See pages 1& 3 for more information

**Wednesday, December 5, 12:30-1:30pm**
CLE - Civil Union Law Impact on Family and Tax Laws
Speaker: Alan Sohn
29 S LaSalle Room 530
1 hour CLE credit - reservations required
www.decaloguesociety.org

**Thursday, December 6**
Asian-American Bar Associion Holiday Party
Star of Siam
http://www.aabachicago.org

**Saturday sunset December 8 - Sunday sunset December 16**
**CHANUKAH**

**Monday, December 10, 12:30-1:30pm**
CLE - Eminent Domain Law
Speaker: Barry Springer
29 S LaSalle Room 530
1 hour CLE credit - reservations required
www.decaloguesociety.org

**Wednesday, December 12, 11:30-1:00pm**
Decalogue Chanukah Party
120 S Riverside Plaza, 21st Floor
See Page 10 for more information

**Thursday, December 13, 12:00-1:00pm**
Study in the Loop with Rabbi Vernon Kurtz
39 S LaSalle, Suite 410
RSVP to Lennie Kay, 847-432-8900

**Friday, December 14**
Illinois Bar Foundation Fellows Awards Breakfast
Honoring Mark Hassakis & Justice Rita Garman
Sheraton Chicago Hotel & Towers
Tickets: $35
http://www.illinoisbarfoundation.org or 217-525-1760

**Wednesday, January 9, 12:30-1:30pm**
CLE - Alternatives to Probate for Transfers of Real Estate
Speaker: Ira Piltz
29 S LaSalle Room 530
1 hour CLE credit - reservations required
www.decaloguesociety.org

**Wednesday, January 23, 12:00-1:30pm**
CLE - Ethics Update and Hot Topics
Speaker: Wendy Muchman, ARDC Group Manager
John Marshall Law School, 304 S State St
1.5 hours Professional Responsiblity credit- reservations required
www.decaloguesociety.org

**Wednesday, January 30, 12:00-1:30pm**
Decalogue Board of Managers Meeting
29 S LaSalle, Room 530

## TABLETS CONTENTS



**Deadline for upcoming issues**
**Winter: December 13**
**Spring: March 21**




Decalogue Society of Lawyers
39 South LaSalle, Suite 410
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www.decaloguesociety.org