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FALL 2024

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President's Column

by Joel B. Bruckman

It is with immense pride and gratitude that I begin my term as Decalogue's 90th president. I am deeply honored to serve our Society and all its members in this role.

For nine decades, the Decalogue Society has been a pillar of strength and unity within the legal profession, advocating tirelessly for justice, equality, and the rights of all. As a Jewish bar association, our journey has been shaped by a commitment to uphold principles that resonate deeply with our community's values. From our humble beginnings to this milestone moment, we have built a legacy of resilience and excellence.

Personally, my connection to Decalogue runs deep. As the grandson of a Holocaust survivor, I carry with me a profound sense of duty to honor those who came before us and ensure their stories are never forgotten. Growing up in Skokie, immersed in the vibrant Jewish community, I learned early on the importance of solidarity and collective action. Today, my family and I reside in Highland Park, another community rich in Jewish heritage and spirit.

Locally and abroad this last year has been challenging. First, in regard to the increase of antisemitism around the world, which was on the rise well before October 7. Next, the tragic events of October 7 and the terrorist attack by Hamas in Israel which led to the death of nearly 1,200 individuals, mostly civilians, including innocent men, women, and children. Somehow those barbaric acts have since been met with moral equivalency regarding conflict in the Middle East. At times, it has felt like the Twilight Zone as Israel's right to defend herself in attempts to rescue hostages taken into captivity eleven months ago is met with false accusations of genocide. Meanwhile, we continue to see exponential growth in the number of attacks in the court of public opinion on the only Jewish state, and proud Zionists, like me. For those who want an end to this war, demand that Hamas return every single hostage—it's pretty simple. The loss of civilian lives in both Israel and Gaza needs to end, but let us be clear, the ball is firmly in the court of Hamas who refuses to release the hostages while hiding behind civilian shields in schools, hospitals and residential areas, as well as its underground tunnels.

It is against this background that I am particularly proud of the work that Decalogue has done through both its Committee Against Antisemitism, and being a founding member of a local task force of law enforcement agencies at the federal, state, and local levels, and Jewish community organizations, to combat antisemitism. I do not want to live in a world of hate and intolerance, nor do I want my children growing up in a world that focuses on persecuting others for their difference instead of celebrating diversity and finding commonality. This is very personal to me. I would not be here had my grandfather not been liberated from a real genocide. We owe it to our ancestors and to the future generations to do better.

Looking ahead, I envision a year of continued strength, compassion, purpose, and thoughtfulness. We will not stay silent amidst antisemitism and Jew hatred. But we are only a small population despite stereotypes and some common beliefs to the contrary. In reality, we truly need the help and support of all of our friends and colleagues. It is my firm belief that by continuing to foster strong relationships with other affinity bar associations, we can amplify our impact and better support our members. Together, we will continue to champion justice, advocate for equality, and empower our community to thrive. If you are with us in this mission, we need your support to be heard!

As we celebrate our achievements and look forward to the future, let us reaffirm our commitment to the principles that define us. Thank you all for your unwavering support and dedication.

I am also immensely proud of all the work done by our outgoing Board of Managers. Thank you to Judge Megan Goldish, my dearest friend and mentor, for all your guidance, wisdom, and steadfast support. I am fired up thinking of the capabilities of our incoming board and officers. Thank you for your service and for tenaciously working with me to make this Society as strong as ever. I look forward to serving with you and achieving remarkable success. Here is to the next chapter of Decalogue's remarkable journey!

L'Chayim - To Life!

From the Judge's Side of the Bench: Turn on Your Video!

by Judge James A. Shapiro and Thomas DeMouy

Few things are more annoying to a judge than when he or she can't see the litigant or lawyer being addressed. I once heard a judge describe it on Zoom as the equivalent of "hiding under the benches in court."

During the height of the pandemic, some judges also were not turning on their video. Without naming names, my former presiding judge once had to remind everyone in the division to turn on their videos. To a self-represented litigant, much less a lawyer, it must feel like addressing the Great Oz in "The Wizard of Oz": "Pay no attention to that person behind the curtain!" Likewise, disengaged video feels like, "pay no attention to that judge on the blank screen." It was inexcusable and unacceptable.

As the leaders of a hearing, judges have always had the obligation to set and exceed the standards of proper decorum in court. This maxim applies as much in the virtual courtrooms of Zoom as it does in traditional courts. Judges wear robes, a more neutral garment than lawyers' suits, to set a standard of dignity in the courtroom.

Furthermore, every party in court should address judges as "Your Honor" to further establish that the judge is the highest authority in the room and to remind judges of the sacred obligation they hold. This title represents the sustained commitment to due process and fairness that citizens and voters expect of their esteemed judges.

The world, the United States, and Illinois are still in the first phase of a virtual transformation that has enveloped many aspects of life–not the least of which is our court system. Zoom court is now a reality that is here to stay. Judges are the standard bearers in establishing proper decorum in virtual court, just as they are in traditional court. Turning on one's Zoom camera is just as simple as slipping on a robe or saying "Your Honor." Yet this straightforward component of virtual court is more integral to a fair trial or hearing than proper attire or properly addressing the judge. Without a video feed, the judge cannot demonstrate they are paying attention to the adverse parties' arguments. A callous lawyer could assume that judges who fail to show themselves might as well be sleeping on the job. Considering everything that could happen behind a blank screen, a judge's resemblance to the Wizard of Oz may be wishful thinking.

It should be a given that judges use reliable microphones and a stable internet connection, yet some continue to have issues with this. Judges, in accordance with their role as leaders of court proceedings, should also have sufficient technological literacy to perform their duties and even help troubleshoot issues that less tech-savvy litigants are bound to encounter. Technological literacy by all parties is essential to a fair hearing, and judges should be committed to helping with this.

In addition to being a crucial component in the decorum of the virtual courtroom, video serves as one of the two components of communication that judges weigh–the other being oral communication. Body language, hand gestures, and facial expressions are core visual communication elements that judges and juries have long relied on to assess the credibility of attorneys and witnesses (it is, of course, impossible to assess any of these from a blank screen). It is more difficult for the court to guarantee litigants a fair proceeding, especially in comparison with in-person hearings, if the visual element of communication is entirely absent. Thus, judges should expect parties and lawyers to use video at all times in virtual court.

Furthermore, video can often aid with Zoom's unreliable audio and helps judges diagnose the parties' technical issues. A poor microphone or an unstable internet connection can create a communication barrier unknown in physical court proceedings. Although judges and court reporters can only marginally decipher oral communication through lip reading on the video feed, having this visual component can help them diagnose whether it is a microphone, internet, or technological literacy issue.

It is important not only for parties to complete the crucial step of turning on their video, but also to stay in an appropriate location during the proceedings and to minimize distractions. In my time as a judge, I have seen litigants call from moving cars, on a busy street, and even on the toilet. Such behavior is the equivalent of showing up to a physical court in underwear or loudly eating a large lunch at the counsel table. These examples show a blatant disregard for court decorum that insults the dignity of the court. Judges should refrain from hearing litigants who cannot find an appropriate background until the litigants in question rectify these problems. Likewise, judges should make note of significant distractions and admonish parties to correct them. In principle, judges should not tolerate behaviors on Zoom they would not tolerate in a physical court. This follows the established position that courts should be free from behaviors that disrupt decorum.

In sum, turning on one's video conveys the crucial element of visual communication. Video preserves court decorum and furthers the interests of justice. If litigants have video capability on their devices, they should be both heard and seen. They should not do the Zoom equivalent of hiding under the benches in a physical courtroom because that is exactly what appearing without video is like. Additionally, lawyers and litigants should expect litigants to find a suitable background and minimize distractions as a matter of respect for the court. They should come out from under the benches by turning on their video and respect the Court on Zoom just as they would in-person.

Hon. James A. Shapiro is judge in the Domestic Relations Division of the Circuit Court of Cook County, and a Past President of Decalogue. Thomas DeMouy is a second-year student at the University of Illinois College of Law.

Secured or Not: There's No Carte Blanche on Attorney's Fees

by Michelle McMahon, Michael H. Traison, and Kelly McNamee

A recent decision by a Colorado Bankruptcy Court reminds parties that Section 506(b) of the Bankruptcy Code (the "Code") is not a blank check for over secured lenders and their counsel to incur legal fees and charge them to the borrower-debtor. Focusing on the plain language of the statute, the court reviewed the lender's claim for legal fees incurred before and during the bankruptcy for reasonableness and disallowed more than half its claim for legal fees and expenses. In finding these fees unreasonable, the court noted that it was the responsibility of the law firm and the lender to exercise judgment to ensure that the legal fees were reasonably incurred.

Section 506(b) of the Code permits secured lenders to recover, in addition to the prepetition amount of the claim, "interest on such claim, and any *reasonable* fees, costs, or charges provided for under the agreement under which such claim arose" to the extent of the value of the collateral. 11 U.S.C. § 506(b) (emphasis added). *See also United States v. Ron Pair Enters.*, 489 U.S. 235, 241 (1989) ("Recovery of post-petition interest is unqualified. Recovery of fees, costs, and charges, however, is allowed only if they are reasonable and provided for in the agreement under which the claim arose."). (Michael Traison, one of the article's authors, second chaired this argument before the Supreme Court on October 31, 1988.)

In *In re Sirios*, No. 20-16709 (Bankr. D. Colo. Jan. 5, 2024), the court addressed the reasonableness of legal fees and expenses asserted by the lender in its proofs of claim. In total, the lender sought legal fees and expenses totaling more than $160,000. The court ultimately allowed only a little more than $70,000 in legal fees and expenses following a detailed analysis of the legal fees and expenses incurred.

At the outset, the court noted that there was no question that the secured lender was oversecured, that the borrower's agreement provided that the lender's reasonable expenses, including fees, would be paid by the borrower, and that Code section 506, permitted enforcement of that provision. *In re Sirios*, No. 20-16709, at 4-5 (Bankr. D. Colo. Jan. 5, 2024). The underlying question in this case was a matter of reasonableness. Addressing that, the court made three inquiries: (a) were the services rendered necessary, (b) was the time required appropriate, and (c) was there value gained from those services. While the court's analysis is based on the circumstances of that case, the court's opinion provides useful guidance to lenders and their counsel, as well as a debtor objecting to the claims of lenders.

First, section 506 does not provide a carte blanche to secured lenders to recover the expenses and fees associated with enforcement of their agreement with the borrower. They have a responsibility to monitor their costs and incur expenses in a reasonable manner. The court noted that the law firm had not prevented duplication or discounted to eliminate it and had "aggressively pursued matters that had a low likelihood of success and did not discount the fees incurred to reflect the ultimate lack of success and lack of benefit to either the bankruptcy estate or the Bank." *Id.* at 6. The court also criticized the lender for its failure to review these bills and suggested that the lender employ a level of oversight that it would in cases where it was paying the legal fees. *Id.*

Secondly, counsel for secured lenders should anticipate the possibility that a court will review fee statements and be clear in descriptions of work performed and avoid block billing. For bankruptcy practitioners, it is a best practice to treat time entries as if the work were being performed for a debtor or official committee of unsecured creditors, and for non-bankruptcy professionals to consult a bankruptcy colleague as to how to bill in a manner that is sufficiently detailed but avoids the need for redaction of matters that may be subject to attorney client privilege.

Thirdly, the opinion reminds us of the need to avoid duplication -- and where duplication is necessary, to apply some reduction formula that recognizes the duplication and allows for some compensation, but hopefully avoids the double charge assertion.

The question that now remains is: What will a court consider when reviewing whether the legal fees and expenses sought by a lender are reasonable and permissible under section 506(b) of the Code? Courts in the Second and Seventh Circuits have relied on specific factors to determine the reasonableness of fees under 506(b). These factors include:

1. The legal services must be authorized by the loan agreement.
2. They must be necessary to the promotion of the client's interests.
3. They must be permitted under applicable law, including the Bankruptcy Code.
4. They must be compatible with bankruptcy policy as derived from relevant provisions of the Bankruptcy Code and the judicial decisions which construe it.
5. The time spent must be appropriate to the complexity of the task.
6. The hourly rate must be appropriate under applicable standards.
7. The tasks must have been assigned to the fewest and least senior attorneys able to render the services in a competent and efficient manner.
8. The fee should be adjusted to reflect duplicative services rendered by attorneys representing other parties with a common interest in the case.
9. The fee should be adjusted to reflect the court's observation of the nature of the case and the manner of its administration.

In re Canal Asphalt, Inc., No. 15-23094 (RDD), 2017 Bankr. LEXIS 1289 *19 (Bankr. S.D.N.Y. May 10, 2017) (citing *In re Wonder Corp. of Am.*, 72 B.R. 580, 589 (Bankr. D. Conn. 1987), *aff'd,* 82 B.R. 186 (D. Conn. 1988)); *see also In re Mid-State Fertilizer Co.*, 83 B.R. 555 (Bankr. S.D. Ill. 1988).

(continued on page 7)

Attorney's Fees (cont'd)

Finally, professional rules of ethics may provide guidance as well. In *Sirios*, the judge referred to the Colorado Rules of Professional Conduct, explaining that after the court has determined a reasonable attorney fee amount, the court "may adjust the amount based on the factors outlined in Rule 1.5 of the Colorado Rules of Professional Conduct . . . ." *In re Sirios*, No. 20-16709, at 6 (Bankr. D. Colo. Jan. 5, 2024).

These standards can be used as valuable guidance for attorneys when entering time and preparing bills for secured lender clients whose borrowers are in bankruptcy or where bankruptcy may be likely.

Michelle McMahon and Michael H. Traison are partners in the bankruptcy and creditors' rights department at Cullen and Dykman. Kelly McNamee is an associate at Cullen and Dykman in Uniondale, New York. Please note this is a general overview of developments in the law and does not constitute legal advice. If you have any questions regarding the provisions discussed above, or any other aspect of bankruptcy law, please contact Michael H. Traison (mtraison@cullenllp.com) at 312-860-4230 or Michelle McMahon (mmcmahon@cullenllp.com) at 212-510-2296.

Want to write for the Tablets?

Decalogue members are encouraged to submit articles on topical legal and Jewish issues.

Contact the Editor with your article idea
rschwartz@robinsonschwartz.com

Different Deadlines For Filing Civil Case Notice of Appeal From Illinois State, Federal District, and United States Bankruptcy Courts

by Alon Stein

A final judgment gets entered against your client in a civil case that you are handling. When is the notice of appeal due? It depends.

Illinois State Court
If the final judgment was entered against your client in Illinois state court, the deadline is thirty (30) days from the date of the final judgment, or, if a timely post-trial motion directed against the judgment is filed, then within 30 days after the entry of the order disposing of the last pending post-judgment motion, or 30 days after a decision on a motion to reconsider. Specifically, Illinois Supreme Court Rule 303 provides, in part:

> The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions. A judgment or order is not final and appealable while a Rule 137 claim remains pending unless the court enters a finding pursuant to Rule 304(a). A notice of appeal filed after the court announces a decision, but before the entry of the judgment or order, is treated as filed on the date of and after the entry of the judgment or order. The notice of appeal may be filed by any party or by any attorney representing the party appealing, regardless of whether that attorney has filed an appearance in the circuit court case being appealed.

For interlocutory appeals as of right under Rule 307, interlocutory appeals, the deadline for filing a notice of interlocutory appeal is 30 days, but it should be noted that to appeal a temporary restraining order (or a denial of a TRO), you must file your notice of appeal within 2 days after the date of the TRO order or denial. See Supreme Court Rule 307(d).

In short, in civil cases pending in Illinois state courts, 30 days is the deadline for appealing, unless it is the appeal of a temporary restraining order.

United States District Court
In Federal court, pursuant to Rule 4 of the Federal Rules of Appellate Procedure, for appeals of final civil judgment as of right, the notice of appeal must be filed with the district clerk within thirty (30) days after entry from which the judgment or order is appealed.

If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion: (1) motion for judgment under Rule 50(b); (2) motion to amend or make additional factual findings under Rule 52(b); (3) motion for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58; (4) motion to alter or amend the judgment under Rule 59; (5) motion for a new trial under Rule 59; or (6) motion for relief under Rule 60 if the motion is filed within the time allowed for filing a motion under Rule 59. See Federal Rules of Appellate Procedure 4A.

In short, the period of time is 30 days to file an appeal from Federal court.

U.S. Bankruptcy Court
Let's say that you have a trial in the U.S. Bankruptcy Court (which is called an adversary proceeding), and a judgment is entered against your client, what is the deadline for filing a notice of appeal?

If your instinct says it is 30 days, don't trust your instinct; please look up the rule.

This is because in the United States Bankruptcy Court, the deadline for filing a Notice of appeal is **14 days!!**

Bankruptcy Rule 8002 (Time for Filing notice of appeal) provides, in part:

> (1) Fourteen-Day Period. Except as provided in subdivisions (b) and (c), a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed.

Under Bankruptcy Rule 8002, if a party in the bankruptcy court appeals any of the following motions and does so within the time allowed by these rules, then the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion: (1) motion to amend or make additional findings; (2) motion to alter or amend the judgment; or (3) a motion for a new trial.

In sum, when you appeal a final bankruptcy judgment, the appeal is made to the United States District Court. The deadline for filing the Notice of Appeal is 14 days. It is not 30 days.

In an ideal world, all notice of appeal deadlines would be 30 days. However, that is not the case.

Assuming that the deadline is always 30 days can be fatal to the case.

It is important to look up the deadline for filing the notice of appeal in all cases because a timely filed notice of appeal is what gives the reviewing court jurisdiction. He or she who knows the rules controls the game.

Alon Stein is an attorney and founder of Stein Law Offices in Northbrook, Illinois. This article is in memory of his father, Mayer Stein.

Interested But Disinterested: Conflicts in Bankruptcy

by Michael H. Traison and Kelly McNamee

Attorneys have a duty of loyalty to their clients to advocate for their interests. The word attorney was first used in the 15th century and is derived from the word attorn, meaning stepping into the position of another merriam-webster.com/dictionary/attorn.

It is well understood that attorneys must avoid conflicts of interests and that an attorney and her firm should not represent two clients who are adverse to each other. However, conflicts rules go further: attorneys themselves should not hold interests that could be adverse to their client.

Conflicts are addressed generally by the Model Rules of Professional Responsibility. Specifically, Rule 1.7 states:

> a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: the representation of one client will be directly adverse to another client; or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person, or by a personal interest of the lawyer.

In addition, in connection with bankruptcy matters, the United States Bankruptcy Code (the "Code") contains rules governing disinterestedness. Section 327 of the Code provides for the employment of professional persons in a bankruptcy case, including attorneys, and prohibits a professional from being employed if they are not disinterested. As defined in the Code, at 11 U.S.C. §101(14), a person is disinterested who:

> is not a creditor, an equity security holder, or an insider; (b) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and (c) does not have an interest materially adverse to the interest of the estate or any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any reason.

However, "adverse interest" is not defined in the Code. Courts have stated that adverse interests "exists when two or more entities possess or assert mutually exclusive claims to the same economic interest." *In re Granite Sheet Metal Works*, 159 B.R. 840, 845 (Bankr. S.D. Ill. 1993). In the Second Circuit, to determine whether an adverse interest exists, courts use an objective test involving a fact-specific inquiry. *In re Doug Gross Constr., Inc.*, 2024 Bankr. LEXIS 1406, *4 (Bankr. W.D.N.Y. 2024). This objective test "precludes 'any interest or relationship, however slight, that would even faintly color the independence and impartial attitudes required by the Code and Bankruptcy Rules.'" *Id.* (internal citations omitted).

Law firms seeking to represent debtors and creditors' committees under Chapter 11 are required to submit a statement of disinterestedness. In a large law firm, preparation of such a statement requires extensive due diligence to uncover any possible conflicts, including direct conflicts with the proposed client or holding an interest that would destroy their disinterested status. Such might include holding a claim for unpaid legal fees when representing the pre-bankruptcy debtor or having an attorney-client relationship with one of the debtor's secured creditors, even unrelated to the particular case.

Therefore, professionals seeking to be employed by the bankruptcy estate must make full and candid disclosures of all connections, both when applying for approval of their employment and on an on-going basis during the pendency of the case. As with conflicts, disinterestedness issues may be subtle with varying interpretations. Challenges to the interestedness status of a professional in a bankruptcy case often comes from the Office of the United States Trustee ("UST"), which is part of the U.S. Department of Justice. There have been a number of recent cases which illustrate the application of these concepts.

Most recently, in *In re Enviva Inc.*, No. 24-10453 (Bankr. E.D. Va. July 2, 2024), the Bankruptcy Court for the Eastern District of Virginia denied a motion for reconsideration and refused for a second time to allow a large firm to be a debtor's general counsel. Proposed general counsel presented, *inter alia*, what the UST called a "partial ethical wall" where the proposed general counsel would be able to concurrently represent the debtor along with a company that controlled 43% of the debtor's common stock and two of the thirteen seats on the debtor's board. The "partial ethical wall" established boundaries and limitations for attorneys that worked on matters relating to the debtor and for those who worked on matters for the shareholder company. Attorneys were placed on separate teams based on who they have billed time to since the petition date. For attorneys that have billed time on both the debtor and shareholder company, they were separated based on the amount of time they have billed to each matter.

The court found this to be insufficient. First, the court stated that the shareholder company accounted for 0.97% of proposed counsel's revenue for the first five months of 2024, which trends towards billings exceeding $9,000,000.00 for 2024. Second, the court noted that there were 13 attorneys who were identified as having billed time to both the debtor and the shareholder company post-petition. The court reasoned, therefore, that proposed general counsel's use of post-petition timekeeping does not reflect the pre-petition ties with the shareholder company. The court further explained that the use of post-petition timekeeping "does not inform the Court as to how extensive the overlap might have been during the run-up to the bankruptcy filing. . . ." *In re Enviva Inc.*, No. 24-10453 (Bankr. E.D. Va. July 2, 2024).

(*continued on page 11*)

Interested But Disinterested: Conflicts in Bankruptcy *(cont'd)*

In the Second Circuit, the U.S. Bankruptcy Court for the Western District of New York overruled the UST's objection to debtor's application to employ counsel in a case. *In re Doug Gross Constr., Inc.*, 2024 Bankr. LEXIS 1406 (Bankr. W.D.N.Y. 2024). In that case, proposed counsel had recently merged with another law firm. An attorney from the prior firm represented the debtor's principal in tax matters prior to the merger. When proposed counsel submitted its application to represent the debtor in the bankruptcy case, the UST objected, saying that the firm was not disinterested because proposed counsel currently represented the debtor's principal who was also a creditor of the debtor. The court rejected the UST's argument.

The court stated that proposed counsel was not currently representing the debtor's principal, or ever did, because the representation in question concluded prior to the merger. The court explained that, to determine whether proposed counsel was disinterested, courts only examine the present interests to see whether a party has an adverse interest. *Id.* at *4. Further, the court explained that to be a disinterested person under the Code, "the proposed professional personally must have a 'prohibited interest.'" *Id.* at *6. The court concluded that, "[w]hile it is not contested that [the debtor's principal] is a creditor of the Debtor and that [the prior firm] represented [the debtor's principal] personally for a prior tax matter, that engagement concluded before the two law firms merged and before [proposed counsel] undertook its representation of the Debtor. No actual conflict of interest exists as a result of [proposed counsel's] representation of the Debtor." *Id.*

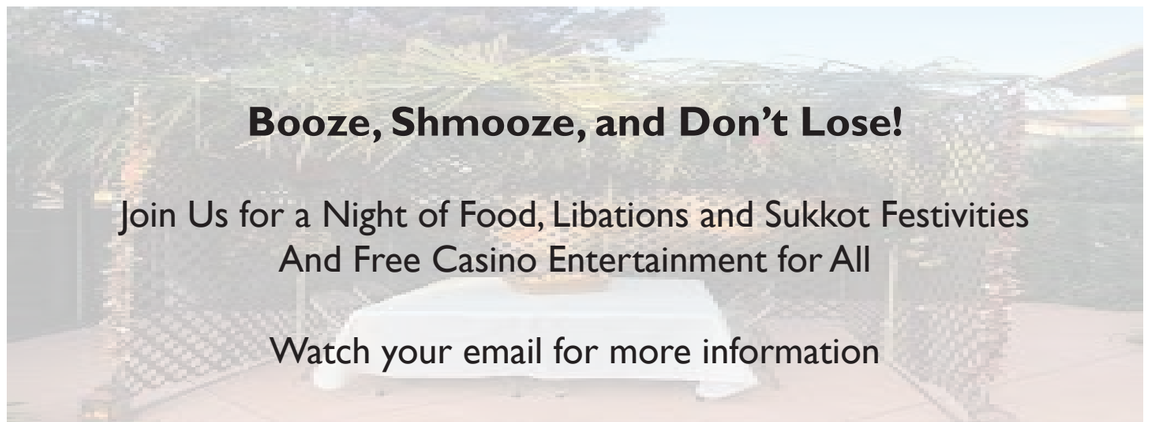
In *In re Ryan 1000, LLC*, 631 B.R. 722 (Bankr. E.D. Wis. 2021), the court denied the application by a debtor company to employ counsel for its Chapter 11 case because proposed counsel was already representing 50% of owners of the debtor company personally in their Chapter 13 cases. Among other things, the individual Chapter 13 debtors, as owners of the Chapter 11 debtor company, relied on income from the debtor company to fund their Chapter 13 plan. The debtor company was therefore a creditor of the debtors. The court found that representing the debtors personally in the Chapter 13 case would be an adverse interest to the Chapter 11 debtors' estate. Proposed counsel failed to disclose such concurrent representation.

The court explained that "[t]he burden of disclosure is placed on the applicant to produce the relevant facts, rather than relying on the bankruptcy judge or parties in interest to conduct an independent factual investigation to determine whether the applicant has a conflict." *Id.* at 734. The court reasoned that it did not believe that proposed counsel 'deliberately tried to evade the disclosure requirements…but his conduct demonstrates a lack of understanding of the applicable sections of the Code and Bankruptcy Rules, his obligations in this case, and the separate interests of the [individual debtors] and the debtor [company]." *Id.* at 737.

As these cases illustrate, courts will look to the specific facts of each case to determine whether conflicts exist and whether an attorney is a disinterested party. It is encouraged that, prior to submitting applications to the court for retention, attorneys should be mindful of their personal interests and also perform diligent inquiries as to whether there are any other potential conflicts that may destroy their disinterested status.

While the technical aspects may be parsed and argued, one never forgets that, as an attorney, we are advocates with a heavy fiduciary burden to act solely on behalf of our client.

Michael H. Traison is a partner in the bankruptcy and creditors' rights department at Cullen and Dykman. Kelly McNamee is an associate at Cullen and Dykman in Uniondale, New York. Please note this is a general overview of developments in the law and does not constitute legal advice. If you have any questions regarding the provisions discussed above, or any other aspect of bankruptcy law, please contact Michael H. Traison (mtraison@cullenllp.com) at 312.860.4230 or Kelly McNamee (kmcnamee@cullenllp.com) at 516.296.9166.



Jews, Lawyers, and Jewish Lawyers

by R' Nathan B. Hakimi

Lawyers and Jews have a lot in common.

They are both respected for their intellect, tenacity, and (perhaps begrudgingly) their outspoken opinions about what they perceive to be right or wrong even when these are inconvenient or unpopular.

Historically, Jews and lawyers have been the mutual subjects of certain derogatory attitudes and deprecating jokes. "Legalism" seems to connote a particular image often conjured in tandem with antisemitism. As we shall attempt to find out, exploration of this comparison may yield fruitful insights for both the legal profession, as well as for the Jewish tradition and the world.

The "lawyer" in America has enjoyed altogether quite an elevated status. Most of its presidents have been lawyers. WASP-y genteel folks who went to Yale and Princeton went on to become Manhattan or D.C. partners with mahogany desks. "White shoe" firms are so named for this. Great people have been lawyers: from Abraham Lincoln to Barack Obama. Literally every single member of the United States Supreme Court has been a lawyer (a few have even been Jews). Lawyers make a lot of money; they are highly important and very smart; they wear fancy clothing when they go to court to win big cases for their very important clients.

At the same time, our profession also evokes a certain not-as-savory reputation. Lawyers are "ambulance chasers," "shysters," "liars," "sharks"; speaking legalese, fine-print, technicality, sophistry, jury-entrancing rhetorical magicians. These lawyer stereotypes go back not only to America, but to Shakespeare (c. 1500s), ancient Roman history (c. 1st-4th century), and the Bible itself. Consider the following quotations:

> The first thing we do, let's kill all the lawyers. (Henry VI, II.iv.2).
>
> Woe to you, scribes and Pharisees, hypocrites! You are like unseen graves…Woe to you also, you lawyers! You load men with burdens difficult to carry, and do not lift one finger to help raise them. [ ] Woe to you, lawyers! You took away the key of knowledge, did not enter yourselves, and hindered those who wished to. (*Luke*, 11:44-46, 52).
>
> He [Yaakov] strategically barters for Eisav's birthright, gains Yitzchak's blessing by exploiting his blindness [and linguistic ambiguity], Yaakov comes out ahead, leveraging his quick-wittedness to turn the tables…His transformation mirrors an important thread throughout Jewish history: the determination to embody not only quick-wittedness and learnedness, but also moral courage and heroism. (R' Jonathan Sacks, *Covenant & Conversation: Family Edition, The Character of Yaakov, Vayetse* 5784; see also R' J. Sacks, *Not in God's Name: Confronting Religious Violence*, Knopf (2017)).

This brief tour of history, philosophy, and religion demonstrates the deep and complicated status of legalism and Judaism as veritable archetypes, both independently and in relationship. What lessons may be drawn from exploring a comparison between the "Jewish stereotype" and the "lawyer stereotype" – conceptually and/or practically?

One angle we could examine would be to draw inspiration from psychology, neuroscience, and cognitive science. As is now well-known, cognitive faculties such as problem-solving, creativity, and every manner of productive mentality are instantiated by a vast array of neural substrates. "Multiple intelligences" theory, originally developed by Howard Gardner, PhD, proposes that each individual mental capability or discrete combination thereof can be legitimately termed an "intelligence" (*e.g.*, spatial, linguistic, verbal, narrative, rational, proprioceptive, *etc.*). Every human possesses unique balances or mixtures of neural structures, giving rise to varying degrees or tendencies of ability and behavior. This gives us our unique combinations of talents, proclivities, characteristics, and so forth. According to this theory, we could postulate, and in fact it has been so researched and postulated, that law practice tends to require certain unique cognitive skills. See, *e.g.*, Martin, J., *Multiple Intelligences and the Practice of Law*, 2 Law Prac. 3, 3 (2001); Calhoun, E., *Thinking Like a Lawyer.* 34 J. Legal Ed. 3, 507–14 (1994); Angioletti, L. *et al., Judgment and Embodied Cognition of Lawyers*, 13 Front. Psych., Sec. Forensic and Legal Psych. 1664, 1078 (2022).

In our own practice, we may note that our work triggers a need for deployment of some cognitive habits more than others. (*e.g.*, persuasive, logical, verbal, adjudicative, investigative, anticipatory, evaluative, organizational, *etc.*). As many of us would testify, practicing law involves "putting on a hat" of a certain sort, which involves thinking differently from how we or laypersons are accustomed to thinking in regular contexts. See, Morris, R. J., *Not Thinking Like a Nonlawyer: Implications of 'Recogonization'* for Legal Education., 53 J. Leg. Ed. 2, 267-83 (2003).

However, newer strains of thought indicate that our lawyerly cognitive tendencies could withstand a bit of re-calibration. Many lawyers (and other professionals) in recent years have received training, sensitizing them to "EQ" – Emotional Intelligence (termed by Gardener as "Interpersonal Intelligence"). See, Kelton, C., *Clients Want Results, Lawyers Need Emotional Intelligence*, 63 Clev. St. L. Rev. 459 (2014-2015); Ashley, C., *Emotional Intelligence (EQ): Why Lawyers Need It to Succeed*, 34 ABA GPSolo 13 (2017). Some research likewise implores more integration of "intuitive thinking" within the law field. See, Calhoun, E., *supra*, pp. 510-512 ("Were intuition ceded its rightful place as an important component of thinking like a lawyer, as it is an important component of all human thought, a new dimension would be added to legal education.")

If our original principle comparing lawyer stereotypes and Jewish stereotypes is correct, then we necessarily must postulate a certain overlap with the above analysis in terms of relevance to what could be supposed as a "Jewish cognitive profile." Certainly, we are not here to pander to the very stereotypes employed by antisemites.

(continued on page 13)

Jews, Lawyers, and Jewish Lawyers *(cont'd)*

However, there may be validly-asserted – and not inherently uncomplimentary – associations that may be claimed to validate the concept, such as the following:

- Talmudic study, a millennia-old Jewish practice, necessitates a strenuous and intensive mode of mental reasoning, which is conceivably analogous to the thought patterns characteristic of legal analysis both as an activity and arguably, it contains substantive ideas or innovations that are found in the legal systems used today. See Pritikin, M., *The Value of Talmud Study to Modern Legal Education*. 21 Temp. Int'l & Comp. L.J. 351 (2007); Michael J.B., *The Hidden Influence of Jewish Law on the Common Law: One Lost Example*, 57 Emory L.J. 1403 (2008)

- The ancient Roman legal system which developed in the outgrowth of the post-Second Temple era (see the author's other article in this issue, "Jewish Court: What Does it Do?"), which explicitly incorporated hallmarks of "Judeo-Christian concepts into the law" in the 4th century, in turn became the progenitor of the civil and common law systems of Britain. Hence, Jewish legal principles may conceivably have rippled their way into the underlying structures and presumptions of modern legal rules themselves.

- In roughly the same time period as the Roman Empire's ascension, the central character of the New Testament is quoted, accusing "Pharisees and scribes" of being akin to "lawyers." Irrespective of their interpretation, these verses evidence the fact that even in the period of their origin, *i.e.* the approximate end of the Second Temple Era, there was a conscious association between legalism and Pharisaic (Rabbinical) Judaism. (One may further choose to recall Christianity's own principle that Jesus "spoke in riddles," a device overtly implicated by the imagery employed in *Luke, supra*; See also, *Matthew* 13:10.

- Jewish scripture and commentary reference the "clever mind" of no less a figure than Yaakov Avinu (Jacob the Patriarch), who employed subtle linguistic cleverness (using the Hebrew "Anochi" instead of the more conventional usage "Ani") to avoid directly answering his father Yitzchak (Isaac) by saying that "I am." *Genesis* 27:18-19 w/ commentary of *Rashi,*. Our national patriarch indeed, whose name was converted from Yaakov (Jacob) to Yisrael (Israel), hence giving rise literally to the name of our nationhood, is described by one of the greatest Jewish scholars of living memory, See Sacks, *supra*.

Lawyers – indeed all professionals or craftspeople – must guide their minds in the direction found most likely to achieve successful results within their field. This is a valid and quite obvious evolutionary-style strategy. However, the concomitant risk is one of myopia or single-mindedness, wherein opportunities for different pathways toward advantageous, successful, as well as ethical and euthymic practice, are lost while overlooking better-established ones.

Nowadays, the "EQ" movement (see above), and other movements for training in DEI, mental health, and so forth (literally mandatory categories of CLE credit in Illinois now), have begun shifting the dynamic in the above-indicated direction, already quite impactfully. Lawyers have been made aware of the pitfalls, *intra alia*, of getting stressed, argumentative, competitive, pedantic, semantic – or even addictive and abusive. They have also been extremely well-indoctrinated with the virtues of mindfulness, meditation, and so on, from those very sources.

Just as our tradition teaches us to embrace all aspects of life in the quest for wholeness and holisticness, the "Jewish solution" is to recall that all our human cognitive tendencies were formed a certain way for a reason. We can abuse those traits, drill them into a finer and finer point, and isolate them unto absolute obliviated perfection. Or, we can optimize them, integrate them, and balance them into becoming even better and more effective advocates or people, whatever our role in career or society. Labeling our internal tendencies (*i.e.* not labeling as "blaming," but rather "identifying" a.k.a. "putting a finger" on them with neutrality and accuracy) is one of the surest ways to re-orient the equilibrium of habits. Mere accurate identification has the seemingly inevitable and self-executing downstream result of achieving beneficial operative effect, as the root of the tendency comes into clarity leading to greater insight during forthcoming live situations. Research into multiple intelligences, the "right brain" v. "left brain," intuition, and so forth, are already changing the legal profession, other professional fields, and beyond. See Davis, P.C., Francois, A.B., *Thinking Like a Lawyer*, 81 N.D. L. Rev. 795 (2005) ("Our mission has been to bend the legal academy toward training for intellectual versatility"); Martin, J., *ibid.*

Suffice it to say, we refer back to what had been referenced herein amongst the observations connecting Jewishness and legalism. One of these mentioned outspoken insistence on truth, even when inconvenient, as being a trademark of both the lawyer profile and the Jewish profile, which seemingly engenders respect even as it irritates. This, as well as another fundamental quality touched upon by Rabbi Sacks, goes even deeper than cognitive, emotional, intuitive, or personality capacities. It cuts to a lawyer's – or a Jew's – nay, a human's ability, to show bravery and conviction, in the moment of confrontation with situations of intimidation, trepidation, or moral ambiguity. As the R' Sacks article quoted herein concludes: "Yaakov must become Yisrael. For it is not the quick-witted victor but the hero of moral courage who stands tall in the eyes of humanity and God." See R' Sacks, *Covenant and Conversation, ibid.*

We all can, and must, look to moral, personal, religious, and philosophical traditions that inspire us and hold us accountable to higher standards in our professional and personal lives.

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Director and Officer Liability: Some Things to Consider

by Michael H. Traison, Michael Kwiatkowski, and Kelly McNamee

The issue of personal liability of officers and directors of an enterprise is complex and replete with nuances. Any discussion of the topic requires one to make distinctions between the various types of enterprises, types of liability, and nature of any malfeasance or misfeasance.

In the bankruptcy context, one will also consider whether the enterprise was approaching or in a state of insolvency. And beyond all that is the question of piercing the corporate veil or alter ego theories which may eliminate any wall between the individual and the corporate entity.

In addition to those factual variants, one must also evaluate personal liability based upon state law, which may vary from state to state, as well as federal law.

The following is intended to be a broad overview rather than a dispositive discussion. A good point of departure would be consideration of the type of entity the officer or director serves.

If one conducts business, under an assumed name or their own, without creating an entity, one will be personally liable for any debts, trade or otherwise. Therefore, most business in America is conducted through an entity. Such entities may be corporations, limited liability companies, or partnerships. Corporations will provide the most protection from liability, but other factors, including tax considerations, may influence the choice of entity.

Generally speaking, the officers and directors of a corporation are not personally liable for the trade debts of a corporation. However, if the corporate integrity was violated so that it can be shown that there was a merger between the individuals and the corporate entity, called "piercing the corporate veil," individuals may be liable for the corporate debts, and the assets of the individual may be judicially determined to be part of the corporation's assets.

In the corporate setting, officers and directors may also be liable for their own misfeasance or misconduct. Generally, corporations will provide officer and director liability insurance, which can be used to pay the cost of defense or judgments entered.

Officers and directors of a corporation ordinarily have a duty owed to the corporation and its shareholders. Their actions will be evaluated as to whether they breached that duty. However, when a corporation is insolvent or approaching insolvency, there have been arguments raised that the fiduciary duties owed by officers and directors also run to the creditors of the corporation.

When a company is insolvent, fiduciary duties may be extended to the creditors of a corporation. Known as the "insolvency exception, . . . fiduciary duties held ordinarily for the benefit of shareholders should shift to creditors who 'now occupy the position of residual owners.'" *RSL COM Primecall, Inc. v. Beckoff* (*In re RSL COM Primecall, Inc.*), No. 01-11457, 2003 Bankr. LEXIS 1635, at *25 (Bankr. S.D.N.Y. 2003).

However, the Delaware Supreme Court has made it clear that officer and director fiduciary duties do not extend to creditors when an entity is still solvent and only within the "zone of insolvency." When analyzing the responsibilities of the officers and directors of a Delaware corporation, the court stated that "[w]hen a solvent corporation is navigating in the zone of insolvency, the focus for Delaware directors does not change: directors must continue to discharge their fiduciary duties to the corporation and its shareholders by exercising their business judgment in the best interest of the corporation for the benefit of its shareholder owners." *N. Am. Catholic Edu. Programming Fund, Inc. v. Gheewalla*, 930 A.2d 92, 101 (Del. 2007). Thus, there are no fiduciary duties owed to creditors when a corporation is in the zone of insolvency.

There are similar protections for entities formed as limited liability companies or partnerships under state law. In New York, "creditors are owed a fiduciary duty by officers and directors of a corporation only when the corporation is insolvent." *RSL Commc'ns. PLC v. Bildirici,* 649 F. Supp. 2d 184, 202 (S.D.N.Y. 2009). Further, New York is defined by the "trust fund doctrine," where "officers and directors of an insolvent corporation are said to hold the remaining corporate assets in trust for the benefit of its general creditors." *Id.*

Insolvency raises additional questions, as noted above. Moreover, in contradistinction to the European practice, there is no duty under American law for officers and directors to file for bankruptcy for their corporation. However, there is a duty to act with reasonable business judgment.

"The business judgment rule is a presumption that in making a business decision . . . the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Lowinger v. Oberhelman*, 924 F.3d 360, 366 (7th Cir. 2019).

Thus, officers and directors must make decisions based on what is best for the business and should not continue operating a business that only creates additional debt.

When considering litigation, and once a determination is made that there is a colorable cause of action, the next step is to determine whether a potential judgment is collectible. In most cases, there are insurance policies covering such breaches of duty and the damage caused thereby.

Michael H. Traison and Michael Kwiatkowski are partners in the bankruptcy and creditors' rights department at Cullen and Dykman. Kelly McNamee is an associate at Cullen and Dykman in Uniondale, New York. Please note that this is a general overview of developments in the law and does not constitute legal advice. If you have any questions regarding the provisions discussed above, or any other aspect of bankruptcy law, please contact Michael H. Traison (mtraison@cullenllp.com) at 312-860-4230, Michael Kwiatkowski (mkwiatkowski@cullenllp.com) at 516-357-3700 or Kelly McNamee (kmcnamee@cullenllp.com) at 516-296-9166.

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Jill's influence extends beyond traditional news analysis. She co-hosts two top-rated podcasts: #SistersinLaw and iGenPolitics, where she offers insights into governance, corruption, and cultural dynamics.

Beyond her two podcasts, Jill is a celebrated author, with her memoir, The Watergate Girl, optioned for a film adaptation by Katie Holmes/Noelle Productions. She continues to contribute op-eds to various esteemed publications, including NBC, the Chicago Tribune, Washington Post, Politico, MSNBC, and the Huffington Post.

Jill's influence extends to national and international television, radio, and podcasts, where she provides expert analysis and commentary. As a sought-after speaker, she shares her wealth of knowledge with audiences around the world

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"Jewish Court": What Does it Do?

by R' Nathan B. Hakimi

רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר, עַל שְׁלֹשָׁה דְבָרִים הָעוֹלָם עוֹמֵד, עַל הַדִּין וְעַל הָאֱמֶת וְעַל הַשָּׁלוֹם:

Rabban Shimon ben Gamliel says: "on three things the world stands: justice, truth, and peace."
(*Avot, 1:18*)

What is a "Religious Judiciary?"
Many know or have heard of Jewish "Beth Din" (a/k/a "*Beit Din*" or "*Beis Din*"). Yet, many attorneys, even in the Decalogue Society, likely possess only vague awareness of this institution and its relevance to our modern-day legal practice.

As will be discussed herein, the *Beit Din* of today is capable, pursuant to both halacha and American law, of adjudicating monetary disputes pursuant to Torah law principles, and its decisions can be rendered enforceable in a secular court, via the legal mechanisms of arbitration and collections.

The *Halachic* "Subject-Matter Jurisdiction" of Jewish Court
In addition to Talmud, the primary source material governing Jewish practice of civil adjudication is the authoritative "Code of Jewish Law" (*Shulchan Aruch*) by R. Yosef Caro (16th century CE). The fourth and final section of the *Shulchan Aruch* is known as *Choshen Mishpat*. This section is entirely concerned with civil process and adjudication, containing such topics as: loans (Ch. 63-73); wills (Ch. 277-282); claims (Ch. 75-82); testimony (Ch. 29-38); judges (Ch. 1-28); power of attorney (Ch. 121-127) and so forth.

A Torah scholar who masters the *Choshen Mishpat* section of the Code of Jewish Law is conferred, separate and apart from Rabbinic Ordination (*Yoreh Yoreh Smicha* – authority to instruct), a Judicial Ordination (*Yadin Yadin Smicha* – authority to judge). Each recipient would be called a "*Rav*" (Teacher) and/or a "*Dayan*" (Judge), respectively, per the historic custom.

Choshen Mishpat opens with the following words: "*B'zman hazeh, danim ha'dayanim…*" or "nowadays, our judges may judge…" The term "*b'zman hazeh*," literally "nowadays," has a technical reference, meaning: "in times of exile." Ever since the exile of the ancient Israelite kingdom, the destruction of the *Beit Hamikdash* [Temple], and the uprooting of the *Sanhedrin* [Great Court] in Jerusalem, the Law is that a *Beit Din* only possesses limited authority. Hence, "nowadays, [without a *Sanhedrin*], our judges may only judge [the following cases…]." Sh"A, Ch"M, Ch. 1, Par. 1.

Next, the *Shulchan Aruch* qualifies just which types of issues may be adjudicated by a Jewish Court, "nowadays," under limited authority. There are two criteria for scope: 1) issues concerning situations that are commonly prevalent (*matsui*) in the current environment; and, 2) issues giving rise solely to compensatory remedies (*chisaron kis*). *Id*.

Ritual matters and criminal punishments may thus not be heard by a *Beit Din* nowadays, which are not regularly common in the current social environment. Nor may "punitive" or "special" damages be awarded, beyond the strictly compensatory aspects. For example, Torah contemplates double-restitution (*tashlumei kefel*) in certain types of theft (Leviticus 5:32, Bava Kama 74b), and the 1/5th surcharge penalty (*keren v'chomesh*) in misappropriation of consecrated property. (Rambam, Terumot 10). Such damages create additional monetary remedies to the victim, but go beyond the literal compensation of the breach itself to become punitive or fulfill some other program of special incentives and disincentives. *Beis Din* can hear such cases, but may award only the compensatory items, not the extraordinary damages prescribed by Torah law. Sh"A, Ch"M, Ch. 1, Par. 2.

Hence, the Torah's own halachic standard, as evidenced by the authoritative Code of Jewish Law, places a self-imposed constraint on the scope of its ability to preside over civil disputes in the modern day and age. In the age without the *Beit Hamikdash* or the *Sanhedrin*, the Jewish law considers *Beit Din* to have enduring, but limited, authority.

As will next be shown, the institution of the *Beit Din* continues to play an ongoing role in the modern legal world to the extent possible, both involving itself actively in dispute resolution, and impacting the American legal landscape in the process.

Proceedings of the *Beit Din*
As a result of Jewishly-imposed limitations placed on Jewish judicial authority in the post-Temple world, a *Beit Din's* scope nowadays is effectively duplicative of that of the government's courts. A *Beit Din* may advise on ecclesiastical issues, as shall be shown, but more so, continues to operate and function in the arbitration of disputes falling within its mutual purview with the secular Court. The difference is that a *Beis Din* adjudicates in accordance with the unique judicial procedures and philosophies of the Torah.

We shall now see how a particular *Beis Din* located here in the Chicago area operates, and how its enforcement powers rely on and dovetail with that of the public courts.

(continued page 17)

"Jewish Court": What Does it Do? *(cont'd)*

Chicago possesses a quite prestigious example of the functioning Jewish court system, namely, the "Chicago Rabbinical Council (cRc)." The cRc performs multiple functions, some purely religious or "ecclesiastical," and in addition, maintains the operation of a Jewish religious court, a *Beit Din*.

To serve as *Beit Din*, the cRc maintains a pool of rabbis conferred with both "Rabbinic Ordination" and "Judicial Ordination." (*see*, Sec. B, *supra*). Each is versed both in Jewish and secular law, possesses superlative intellectual and moral character, and demonstrates excellent repute in their community leadership. Each case filed before the cRc for arbitration is heard by a panel of three Rabbinic Judges selected from the pool, to preside over proceedings and render findings. The current Chief Judge (Av Beit Din) – Rabbi Yona Reiss, Esq. – is a licensed New York attorney, certified mediator, "Big Law" alumnus, and Yale Law School graduate. He, along with the administrator, support staff, and other personnel, maintains the cRc *Beit Din* with utmost seriousness, confidentiality, and professionalism.

Upon initiation of cRc *Beit Din* proceedings, litigants agree to binding arbitration stipulations. Thus, the decision of the *Beit Din* can gain the enforceable effect of a judgment, which is collectible and enforceable in a secular court. Litigants may bring their own representation to proceedings, who must be licensed attorneys. The parties or their attorneys may or may not be Jewish, so long as there is consent to arbitrate before the cRc, it will hear any dispute between consenting parties and render a decision on grounds constituting a fair decision according to Jewish law.

The cRc will regularly devote an entire session to a multi-hour hearing. With little or no "discovery" *per se*, nor motion practice, this yields a streamlined process from pleadings to judgment. Per the Torah's philosophy, lawyers do not examine witnesses, nor is there a "jury" concept (as in most other jurisdictions outside of America). The panel of judges will conduct proceedings, where evidence and testimony are presented, arguments are entertained by the panel from counsels and parties, and questions may be asked of the witnesses by the judges directly from the bench. Following proceedings, the panel will apply a certain hybrid of Jewish and secular law under Torah "choice of law" principles, and will thereafter issue a written opinion and findings. (Author Correspondence w/ Chief Judge R' Reiss, Esq.)

Afterward, the finding and award may be ratified in Circuit Court to proceed in collections court if necessary, as an enforceable arbitration award pursuant to the Uniform Arbitration Act, 710 ILCS 5, et seq. The fact that a *Beis Din*, according to Jewish law itself, has no enforcement power in the ex-Temple era, coincides nicely with the extremely high cooperativity and willingness of the government court structure to provide a forum to render these decisions enforceable in accordance with local law and power.

Examples in Case Law of Interaction between *Beth Din* and Secular Courts
The cRc's, and other *Batei Din* in the country's religious arbitration decisions have not been issued in a vacuum. They have, in fact, been challenged and tested in the country's courts both as to their validity and their enforceability. A solid body of case law has developed from attempts to override, ratify, enforce, or challenge awards by the cRc and other *Batei Din*. The following are some examples:

Hydra Props., LLC v. Siebzener, 2013 Ill. App. (1st) 130773 (1st District reversed the circuit court's dismissal of a litigant's attempt to enforce cRc money award as a binding arbitration finding, applying the Ill. Uniform Arbitration Act, 710 ILCS 5, et seq.)

Bar-Meir v. Frauwirth, 2016 Ill. App. (4th) 160757 (plaintiff lost landlord-tenant action in cRc; attempted to refile in state court asserting the existence of "claims not arbitrated" to re-litigate the cRc arbitration decision; claims were dismissed; affirmed on appeal).

Zeiler v. Deitsch, 500 F.3d 157 (2d Cir. 2007) (upholding the corporate accounting awards of a New York *Beth Din* in a disputed partnership dissolution; 2nd Circ. Ct. App. overturned the E.D.N.Y.'s decision to vacate the Beth Din's accounting award).

Meshel v. Ohev Sholom Talmud Torah, 869 A.2d 343 (D.C. 2005) (upholding mandatory arbitration clause between parties requiring dispute resolution before the *Beth Din* of Washington D.C., holding such did not violate state establishment of religious tribunal).

Pauker v. Ohana, B229553 (Cal. Ct. App. 2011) (arbitration proceedings before Rabbinical Counsel of California did not violate Cal. Code of Civ. Pro. because the *Beth Din* restricted appellants from being represented by more than one attorney at the hearing).

Elmora Heb. Ctr., Inc. v. Fishman, 125 N.J. 404 (N.J. 1991) (holding that public court must defer ecclesiastical aspects of a Jewish religious employment claim to a *Beth Din*).

In re Marriage of Popack, 998 P.2d 464 (Colo. App. 2000) (arbitrations before *Beth Din* is enforceable pursuant to Colorado UAA, so long as not unconscionable or under duress).

These cases demonstrate that United States jurisdictions at both state and federal, trial and appellate levels, are consistently inclined to uphold the integrity of *Beth Din* proceedings. Looking more closely into these cases, one will find moreover, a tone of admiration and respect throughout the American case law regarding the institution of the *Beth Din*, its uniqueness, and its respect. The author could not have explained it any better than the Superior Court of the District of Columbia, which wrote in 2005:

(continued on page 18)

"Jewish Court": What Does it Do? *(cont'd)*

A *Beth Din*, interpreted literally as a "house of judgment" or "house of the law," is a panel of rabbis that sits without a jury and decides private disputes through the application of Jewish law, known as Halacha. Jewish law encompasses a broad range of subjects, from matters of religious doctrine and ritual to issues more commonly addressed in the civil courts, such as divorce and other family disputes, disagreements over corporate governance, and conflicts related to contracts and other commercial transactions. It does so because under Jewish law disputes between Jews are, to the extent possible, to be decided by other Jews through the mechanism of a *Beth Din*. A *Din Torah* is the judgment of a *Beth Din*.

Meshel, 869 A.2d at 348.

Proceedings in Beit Din are generally viewed as possessing high reliability and competence. Their decisions are repeatedly given deference when challenged or undermined. This is a testament not only to the rigorous work of the Batei Din in America to uphold the Shulchan Aruch's mandate to judge civil damages in the modern environment, but as to the harmony they have accomplished in the secular environment. This has been achieved both at the legal level of enforceability via the mechanisms of arbitration and collections, but at the very highest caliber of respect within the secular judiciary itself.

Conclusion

Today, there is effectively a one-to-one correspondence of the scope of issues handled by a Beth Din according to Halacha, with the scope of civil issues presenting themselves before the nation's courts. A modern Beth Din may conduct binding arbitration proceedings using a combination of procedural and substantive law from Torah, resulting in enforceable awards that are collectible in secular court. Attorneys of Decalogue in Illinois or elsewhere, in their everyday legal practice, may find themselves one day practicing in front of the cRc, recommending cRc arbitration to a client, or else encountering the case law and precedent concerning the awards made by cRc or another Beth Din.

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IDF Enlistment of Haredim

by Adv. A. Amos Fried

Immediately following the horrific events of October 7, 2023, Israel seemed to undergo a period of solidarity rarely experienced in its 75-year history. Virtually all segments of society expressed unreserved compassion for the victims of the single most deadly terrorist attack, indeed – enemy invasion, the country had ever known. Social cohesion, mutual assistance, and general comradery was the order of the day. Along with intense mourning, bewilderment, and wrath, the pervasive atmosphere in Israel was one of unity, commonality, and a shared, if cruel, fate.

Above all, the immediate and selfless willingness of army reservists reporting for service within hours after the attack, well prior to receiving any emergency recruitment orders, was a shining moment in the history of the Israel Defense Forces (IDF). The numbers were staggering and unprecedented: within hours, some 100,000 people appeared at military bases across the country, ready to be outfitted and enter battle, joined by more than another 150,000 within the next two days. Despite the 7th of October falling on both Shabbat and a religious holiday, armed civilians instinctively made their way directly to the townships bordering the Gaza Strip, to engage in the fighting and attempt rescuing the besieged victims. Heroic first responders did what they could, often at the cost of their own lives, to stave off the invasion from reaching larger population centers, such as Beer Sheva, Tel Aviv, or even Jerusalem, as Hamas war plans later revealed. Stories abounded of reservists traveling abroad making every effort possible to return to Israel and enlist in the ensuing retaliation. The entire country was enrolled in the fight; barely a Jewish family was without at least one member enlisted in the war effort, whether in Gaza, the northern border, or the home front. Indeed, we were all sharing the same fate, the same worries for our loved ones, and the same determination to contribute what was required to overcome the enemy.

All of us, that is, except for the vast majority of Haredim – the so-called "ultra-Orthodox" community that, in both policy and practice, refuses to enlist in the army. The figures are by no means definitive, but it is reported that there are currently upwards of 66,000 able-bodied Haredi men of regular duty age who could serve in the IDF, in addition to multitudes of a much greater magnitude eligible to serve in the reserves.

From its formation, the IDF has instituted compulsory service for both men and women, usually from 18 years of age until eventual release from reserve duty upon attaining the age of 50 or thereabout. As a result of this latest conflict, the "Iron Swords" war, a regular tour of duty has been reinstated to 36 months for males (women soldiers serve 24 months). The officers' corps require signing on for several additional years. Reserve duty can run for a month or more annually, albeit in this current war, it is not uncommon for reservists to have served for six months straight and then be called up again following a short respite.

Back in 1948, upon the founding of the State of Israel, the first prime minister, David Ben-Gurion, afforded a concession to a handful of Haredi yeshiva students, exempting them from any army service whatsoever in consideration for their intense and continuous Torah study. At the time, only some 400 yeshiva students qualified as "*Toratam Omanutam*," the Torah is their livelihood, and were thus allowed to continue serving Israel as rabbis, scholars, and keepers of the faith, unburdened by disruptive, rigorous, and life-threatening army service. Never mind tens of thousands of non-Haredi rabbis, scholars, and keepers of the faith not only serve in the military, but excel in combat brigades, including some of the IDF's most elite units. This segment of the population has historically been allowed a "Get Out of the Army Pass" for free.

To be sure, there are additional sectors of Israel's citizenry relieved from army service, such as Israeli Arabs (approximately 20% of the population), as well as a growing number of non-religious draft-aged men and women who apply for exemptions, whether under the guise of psychological impairment, as conscientious objectors, or simply appearing too problematic and defiant for the IDF to bother with them. What's different about the Haredim is that as a community that essentially shares the same fate, risks, and threats as the rest of Israel's Jewish population, they find no compunction to explain away their refusal to take part in the country's physical survival, guarding it against the murderous intent of its most ruthless enemies. For years, this anomalous state of affairs has stirred intense rancor, animosity, and derision toward the Haredi community *en masse* (even though there are individuals who do serve in the military in a variety of capacities). Several correctives have been proposed to encourage, cajole, or coerce these "delinquents," as they are often referred to (or worse) by the general public, but to little or no discernible effect. Recent figures attest to less than 1% of eligible Haredim voluntarily enlisting.

After decades of deferring to the judgment of the Ministry of Defense and the IDF, it wasn't until 1998 that Israel's Supreme Court (HCJ 3267/97 *Rubinstein et al v. Minister of Defense, et al.*) finally decided to intervene and declare that a blanket exemption for an entire segment of the population is egregiously discriminatory and therefore "unconstitutional" (leave aside that to this day,

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IDF Enlistment of Haredim *(cont'd)*

Israel has no Constitution, an issue we've discussed in this space numerous times in the past). Faced with no alternative, Israel's Knesset began a long and arduous process of codifying by statute an exemption (technically a recurring deferment) for those qualifying under the category of "*Toratam Omanutam*." Hence, in 1999, a committee was established with the avowed purpose of increasing Haredi enrollment in the IDF while also expanding the number entering the workforce. Whereas a Haredi youth would only be able to defer his army service as long as he studied full-time in yeshiva, the effect was that growing numbers of this community remained entirely unemployed until their 30s when the deferment was no longer necessary. No wonder this festering conundrum has become one of the most contentious within Israeli society: as if it weren't enough for the Haredim to refuse to participate in the protection of the State of Israel, they were becoming an enormous strain on its economy, supported largely by the government's largesse.

With the best of intentions, the committee produced legislation commonly referred to as the "Tal Law," after the committee's head, retired Supreme Court Justice Tzvi Tal, yet with the less endearing official title, "Deferment of Service for Yeshiva Students Whose Occupation is the Study of Torah Law, 5762-2002." The proposed arrangement aimed at allowing Haredim to study only until the age of 22 and then enlist for a much-abbreviated period of military (or civic) service after which they would be allowed to work as productive members of society. An array of petitions was immediately submitted before the Supreme Court demanding the statute be disqualified on the grounds that such an accommodation amounts to blatant discrimination and unlawful favoritism. What effectively defeated the Tal Law however, was not so much the Court's eventual 2012 ruling declaring the law discriminatory (ten years following its enactment), but rather the abject refusal on the part of the Haredi community to take advantage of this desperate attempt at a viable compromise.

Consequently, the government assembled another committee, originally designed to introduce legislation severely curtailing the number to 1,800 of Haredi yeshiva students eligible for the yearly deferment, while the rest would be subject to both civil sanctions and criminal liability. Over time however, the draconian terms of the bill were watered down to the extent that, while publicly decrying these measures as an egregious attack on Torah study, Haredi leaders, in secret, realized this was the best deal they were going to get. But even then, practically nothing has served to bring about any appreciable increase in Haredi conscription.

Things became ever more strained and untenable. Time and again, the Israeli Supreme Court declared the numerous attempts to accommodate the Haredim as unconscionable affronts to the principle of equality under the law, yet repeatedly granted the government extensions to devise acceptable provisions for the enlistment of Haredi yeshiva students. The result was an unsustainable tension that eventually led to an almost total breakdown of Israel's political system. Within the span of less than four years, beginning in 2018, Israel held a series of five elections – in no small part due to the factious controversy over Haredi recruitment into the IDF. Only at the end of 2022, a relatively stable coalition was formed together with the Haredi political parties who had obtained 18 of the Knesset's 120 seats. The price for their participation, however, was steep, and the entire endeavor to draft eligible Haredi men into the army essentially came to a complete halt. It seemed that the judiciary's persistent efforts to enforce equality throughout the land would once again be stymied by the guiles of politicians.

But then, war broke out, and it soon became clear that the *status quo ante* could no longer hold. Clear, that is, to all those actively involved in carrying the burden of protecting the country from its deadly adversaries. For the vast majority of Haredim and their leaders, however, following a brief interlude of national cohesion, it was back to "business as usual." Despite the existential threats Israel faced on numerous fronts, there was no sudden great awakening within the Haredi community, nor even recognition of the critical imperative to contribute manpower to the IDF. The Haredi service to the Jewish People was without exception to learn Torah, and thereby bring salvation to Israel from the hands of its enemies. As the beloved Talmudic adage affirms, "*Torah magena u'metzala*" – the Torah protects and saves, and nothing shall be allowed to interfere in the fulfillment of that holy mission. Thus, Israel's official Sephardic Chief Rabbi, Yitzchak Yosef, no less, vehemently proclaimed that "if they force us to go to the army, we'll all move abroad," a pronouncement that reportedly had Hezbollah leader, Hasan Nasrallah, beaming with joy. We can only thank Heaven that Joshua, King David, Rabbi Akiva, and the Maccabees saw things somewhat differently.

Conversely, it is oftentimes heard the IDF is not actually interested in recruiting Haredi soldiers, with all the necessary adjustments and burdens that would impose, including total separation from women, strictest levels of kashrut observance, a general lack of physical fitness and engagement with Haredi rabbis. One recently released item revealed that following the attack on October 7th, over 4,000 eligible Haredim voluntarily reported to the IDF's main recruitment center for immediate enlistment. Barely 500 were actually inducted.

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IDF Enlistment of Haredim *(cont'd)*

It was at this point that Israel's Supreme Court felt compelled to take a definitive stand. No more extensions. No more accommodations. No more exceptions. In early June 2024, a panel of nine Justices, sitting as the High Court of Justice, heard arguments in HCJ 6198/23 *The Movement for Quality Government in Israel et al. v. Minister of Defense et al.*, a series of petitions aimed at ending the blanket Haredi exemption from the draft. Shortly thereafter, the Court issued its ruling declaring that the absence of any legislative arrangement making it possible to distinguish between yeshiva students and others designated for military service "leads us to the inevitable conclusion that none of the officials in the executive branch is given the authority to order an all-encompassing avoidance of enlisting yeshiva students. As per the aforementioned, the State must act to recruit them, in accordance with the provisions of the law." The Court further went on to note that:

> the difficulty in this state of affairs is exacerbated in light of the ongoing war in which the State of Israel finds itself, thereby affecting the military's need for the manpower required to fulfill its vital tasks. Moreover, the ever-expanding scope of Haredi exemptions creates severe discrimination between those who are required to serve, and those whose recruitment procedures are not pursued… In the midst of this strenuous war, the burden of inequality is more acute than ever – and demands the advancement of a sustainable solution to this issue.

In addition to ordering the immediate initial conscription of 3,000 yeshiva students, the court prohibited any further government funding to yeshivas on behalf of students not enlisting in the military as required by law.

As of this writing, a tense standoff prevails. The Supreme Court's ruling remains largely unenforced. The Haredi community, as a whole, remains steadfast in its refusal to enlist. In the middle stand the IDF and the politicians who seem unable to produce any concrete solution to the situation. Endless schemes have been proposed, discussed, and scrutinized, extending from mass incarceration of recalcitrant Haredi draft-dodgers, to the establishment of special Haredi brigades, providing them with virtually everything required to facilitate serious military service while keeping to an absolute minimum potential clashes with their stringent way of life.

The challenge of drafting the Haredim into the IDF has endured as one of the most intractable enigmas facing the State of Israel since its inception. Typical of the way the country approaches practically every other major crisis here, the struggle is framed in terms of the legal versus the political. But time has shown us that neither of these methods can succeed, since we are dealing with matters of much greater depth and significance. After 2,000 years of exile, the ideal of redemption for the Jewish people has become muddled and obscured. When will it arrive? By what means? And what will it look like? These are questions of paramount importance that Israelis contend with day-in and day-out, whether they're aware of it or not. Everyone here believes he or she is on the right track, nay – the only track, to usher in the Redemption; each according to their own understanding, inclination and aspirations. And yet the answers still elude us. May we merit not only to witness, but also whole-heartedly accept, Providence's ruling on the matter.

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Register by noon Friday, September 27

Ground Truth: The Disconnect, Context and Challenges of Israel's War against Hamas

by LTC Geoffrey S. Corn, USA (ret.)

"You may fly over a land forever; you may bomb it, atomize it, and wipe it clean of life – but if you desire to defend it, protect it, and keep it for civilization, you must do this on the ground, the way the Roman Legions did – by putting your soldiers in the mud."
– T. R. Fehrenbach

I had the privilege recently of participating in a study visit to Israel sponsored by the Jewish Institute of National Security for America. Along with a group of retired U.S. flag officers, the trip afforded the opportunity to gain additional insight into the strategic and military operational aspects of the current conflict, to include extensive briefings from commanders of units recently rotated out of the fight. I came away with the conclusion that there is a serious disconnect between the realities of this conflict and external public perceptions. Here's a look at what I consider the most acute areas of this disconnect.

What exactly does self-defense justify

Israel's campaign against Hamas is, in international law terms, an exercise of national self-defense. Like all other nations, Israel has an inherent right to use military force based on this legal justification (although there are some scholars who continue to believe that self-defense arises only in response to an armed attack from another state, an interpretation that is increasingly considered impermissibly restrictive). But what exactly does self-defense justify in terms of the scope and duration of military action?

The most common criticism of the IDF campaign is that it is too aggressive, producing too many casualties and too much physical destruction in Gaza. The ever-growing chorus of demands for an immediate and unconditional cease fire is the most obvious manifestation of this criticism. Those who embrace this view fail, however, to explain how it aligns with the inherent right of self-defense, or perhaps embrace some flawed conception of self-defense as some type of tit for tat equation requiring a proportionality of harm between the aggressor and the defender.

These understandings miss the point. Self-defense for a nation is analogous to self-defense for an individual: it legally justifies measures that would otherwise be unlawful when acting in response to an actual or imminent unlawful attack. But there is an important limitation on those measures: they must be reasonably necessary to reduce the threat and restore the status quo ante of safety and security. Indeed, self-defense is derived from the general legal justification of necessity, which means simply that if a measure is necessary it is justified; if it is not then it exceeds justification and remains illegal. This is another way of saying that the response must be proportional to the threat.

This is why tit for tat self-defense is so highly misleading: it is the threat that dictates the permissible scope of self-defense, not the suffering inflicted by the unlawful aggression that triggers the right. It is logical for a state to assess the scope of an imminent or ongoing threat by considering not only the opponent's capability to inflict harm, but its motivation and intent. To this end, it is important to remember that the express goal of Hamas is to annihilate Israel and kill as many Jews as possible, and that the only reason they didn't succeed in killing more on Oct 7 and the following days is because Israeli security forces were able to repel the invasion. Translated into military terms, this really leads to a very simple question: what scope of military action is necessary to secure the safety of the Israeli population from the Hamas (and Palestinian Islamic Jihad) threat emanating from Gaza?

That question cannot be answered by simply comparing casualty numbers. Even assuming some validity to the numbers provided by the Hamas controlled health ministry in Gaza (numbers which from inception have conflated civilian and enemy deaths), the mere fact that more civilians have been killed in Gaza than were killed in Israel on October 7th or since does not indicate an excessive or disproportionate response. Instead, the more logical question is focused on whether it is reasonable to assess a necessity to destroy Hamas as a fighting force capable of projecting violence against Israel. And in this regard, it is highly significant that in prior conflict flare ups, Israel attempted more limited military self-defense actions. October 7th proved that these limited responses failed to secure Israel from the Hamas threat and render reasonable the conclusion that nothing short of a full-scale campaign to destroy this enemy's military capability was necessary. Indeed, it is likely that historians will question whether Israel exercised unnecessary restraint up to this point, thereby exposing their population to constant rocket attacks, cross-border assault tunnel incursions and other attacks over the 16 year period in which Hamas has controlled Gaza.

From all we observed, this is exactly how the strategic justification of self-defense was translated into military operational objectives. The IDF was given a classic combined arms maneuver mission: close with and destroy the military capability of Hamas and PIJ. That mission was further translated to identifying, attacking, and defeating key aspects of this capability: command and control; logistics; weapons manufacturing capacity; military infrastructure; and action to render individual Hamas units combat ineffective. The IDF is close to achieving these key objectives. Then and only then will the government be able to offer its people a genuine sense of security along that dangerous border.

This is not COIN

Most military observers have recognized from the outset that IDF operations against Hamas are quite different in scale and intensity than a counter-insurgency operation. After this past week I have no doubt. Hamas may engage in some insurgent tactics, but to characterize it as an insurgent threat is simply erroneous. Hamas forces are arrayed in battalion and brigade organizations, with accordant command and control, area of operations, and logistics structures. This dictated IDF tactics which involved what might best be understood as classic combined arms maneuver: IDF forces "closed with and destroyed" enemy combat capabilities.

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It is therefore misleading to refer to this as a fight between the IDF and a terrorist group. The Hamas terrorist designation is appropriate and important for issues related to sanctions, criminal responsibility, and restrictions on providing support for terrorism. And Hamas forces certainly employed and continue to employ terrorist tactics (most notably on October 7th and with the continued holding of hostages and use of human shields). But what the IDF is confronting in Gaza is an armed military group (albeit a non-state group) organized, equipped, commanded, supplied, and prepared like a conventional military force. Furthermore, unlike a typical insurgent group, Hamas has controlled territory and population, with all the advantages that affords their forces: freedom of maneuver, collecting taxes for funding military activities, time and freedom to massive underground construction, control over sites such as hospitals and other specially protected buildings. All this has enabled Hamas to spend years diligently preparing Gaza as a veritable fortress to deter IDF ground combat action against it. That force divided Gaza into brigade and battalion areas of responsibility and was capable of rapidly shifting forces from one area to another to avoid IDF action or reinforce weak points. While the destruction of the 6 (out of 24) remaining battalions will almost certainly lead Hamas remnants to devolve into insurgent-type operations, from inception this was not a counter-insurgency operation.

This fight is multi-level, not just sub-terranean

I visited the Gaza border in 2015. The IDF took me and others into one of the Hamas infiltration tunnels that came as such a surprise in the 2014 conflict. What we entered was a highly sophisticated work of sub-terranean engineering. What I could not have imagined was that by 2023 this would be the tip of a proverbial iceberg.

It is now well documented how extensive the Hamas tunnel network was when this campaign began. The IDF estimates something akin to 500 miles of interconnected and multi-level subways, housing everything from server farms to jail cells for hostages to missile manufacturing plants. Many of the most vital segments of the system were deliberately constructed under highly sensitive facilities, such as UNRWA headquarters, hospitals, and mosques. Booby trapped, equipped with high-tech surveillance capabilities, separated by blast doors, this was no mere Hamas subway; this was an interconnected underground fortress.

It is truly remarkable how effective IDF maneuver forces have been in dealing with this asset. Contrary to my initial assumption, the IDF has not relied on aerial attacks to destroy tunnels. Instead, high-tech surveillance enabled discovery and mapping of the system, which was followed by courageous raids by special forces units or extensive demolition efforts by combat engineers.

But the fortress Hamas constructed in Gazan urban areas was not only sub-terranean. What the IDF discovered were interconnected battle positions established in residential and commercial buildings throughout the battle space. Hamas had not only facilitated maneuver through these buildings by underground movement; it had connected them above ground to enable operatives to move from one building to another with relative impunity. Furthermore, the IDF discovered massive amounts of pre-positioned arms and ammunition in these buildings, enabling Hamas operatives to feign civilian status as they maneuver on surface roads between buildings and then once inside civilian structures armed themselves for combat against nearby IDF forces.

From both a tactical and legal perspective this revelation of how Hamas constructed what was in effect an interconnected multi-level fortress within densely populated areas is significant. Tactically, it explains much of the structural destruction inflicted by IDF forces in Gaza. As any maneuver commander knows, there are few tasks more dangerous than clearing buildings, especially when they are multi-level. Because of the density of such positions and concerns over friendly attrition clearing would inflict, it seems that early in the campaign IDF commanders relied extensively on fire support to neutralize these battle positions. Booby traps and mines placed by Hamas inside or adjacent to these structures contributed to the destruction, as did the collapse of structures made unstable by the massive excavations for tunnels underneath. However, it was also interesting to learn that as the campaign progressed and the IDFs understanding of enemy tactics increased, commanders assumed greater risk by engaging in close combat clearing operations in lieu of stand-off attacks on buildings. This, as was shared with us, explains why the building destruction in Gaza City was more extensive than in Khan Yunis.

From a legal perspective, the manner in which Hamas fortified so many buildings and pre-positioned weapons and ammunition is important for assessing both the status of these buildings as valid military objectives and the allocation of military value in relation to proportionality assessments. A military objective includes what would otherwise be a civilian structure when the "nature, location, purpose or use [of the object] make[s] an effective contribution to military action and [its] total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage." Use refers to the way the object is being used at the time of the attack. In contrast, purpose refers to reasonably assessed future use of the object. Thus, as a matter of international humanitarian law, it was not necessary that IDF forces identify Hamas fighters in these buildings to justify attack; a reasonable assessment the building had been prepared as a battle position for enemy use would result in its qualification as a military objective and loss of civilian protection.

The proportionality assessment related to such attacks is more complicated. The first question is whether preparing a building as a battle position results in the entire building losing protected status or just the parts so used. If it is the former, there is no requirement to consider the destructive impact of an attack, only the impact of proximately located buildings that are not military objectives. If the latter, then the anticipated military advantage of attacking the building must be weighed against the anticipated destruction of the rest of the building considered civilian. But even here, the attack would be prohibited only if that anticipated "collateral damage" was assessed as excessive when compared to the military advantage.

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Considering how intelligence quicky established the way in which these interconnected buildings were routinely prepared as battle positions, and considering that most of the physical damage inflicted occurred after most civilians had been evacuated from the immediate battle area, it is difficult to say that collateral damage anticipated from attacks on these structures should have been assessed as excessive, even if one assumes that parts of a single building are considered civilian in nature.

This issue will, I anticipate, become a more central focus of IDF criticism as combat operations subside and civilians return to areas of significant physical devastation. The images of civilians facing the reality of that destruction will paint a story of genuine sadness, and it will likely take years to rebuild those communities. But it is important not to make unfounded assumptions as to why this destruction was inflicted, for example by accusations of a strategy of collective punishment. It is also important to be cautious when allocating responsibility for building destruction, and to recognize that in some situations destruction was the direct result of Hamas booby-trapping civilian structures, mining alleyways in between such structures, firing directly on civilian structures in order to harm or hinder IDF ground forces, and otherwise causing their collapse by undermining structural elements of buildings by having tunneled extensively underneath.

The reality is that Hamas prepared urban areas in Gaza as a massive multi-level battle position, almost certainly because their leaders believed the IDF would not endure the casualties – both to IDF personnel and to the legitimacy of the campaign as the result of international reaction to the human and physical suffering urban combat would necessitate – associated with close combat in such an environment. Hamas clearly miscalculated: IDF tactical excellence resulted in friendly casualty rates that were (thankfully) remarkably low, and Israeli national unity and determination to destroy the Hamas military threat negated the restrictive effect of international pressure. The consequences in both loss of life and physical destruction are indeed tragic, but from what I learned I think it is far too speculative to assert they were the result of conduct of operations in violation of international law.

Civilian risk mitigation is integrated into all aspects of IDF operations

Perhaps the most acute legitimacy challenge Israel and its forces are facing is the narrative of excessive civilian casualties. Let me emphasize from the outset that I believe even one civilian death in war is tragic and that all forces engaged in hostilities bear a constant and imperative obligation to do all that is tactically and operationally feasible to mitigate the risk of such casualties. But it is a simple truism that war can and almost always is awful yet lawful at the same time. And it is also a truism that first reports from the battlefield are rarely accurate.

When conducting hostilities, international humanitarian law imposes obligations related to attack judgments, and not attack outcomes. This alone reveals the invalidity of pointing to casualty numbers as conclusive proof of illegal conduct in war. Commanders and other attack decision-makers at every level, even down to a soldier pulling a trigger, are required to make reasonable attack decisions. Sometimes those decisions result in harm to civilians that cannot be avoided without giving the enemy a windfall; sometimes they result in harm to civilians that was impossible to assess when the decision was made, and sometimes they are result in no harm to civilians even when the attack decision violates the law.

Furthermore, the legality of attack decisions must be judged attack-by-attack based on the circumstances at the time the decision was made. All of this indicates why citing to aggregate civilian casualty numbers as proof of illegal conduct in war is deeply flawed. First, those numbers aggregate the consequences of literally multiple individual attack decisions, and therefore say little about each of those decisions. Second, the raw numbers tell us nothing about the justification for each of those decisions.

But attack results are not irrelevant in assessing legality in the conduct of hostilities and can support rational inferences. Yet here is where the pervasive narrative related to the hostilities in Gaza are most distorted. Even when considering aggregate numbers, the broader context is an essential consideration. One thing is clear: this conflict has involved significant amounts of force employed by both sides to the fight, conducted in close combat conditions for a protracted time-period. It is simply naïve to assume such operations can be executed without inflicting civilian casualties. As one expert in urban warfare noted, there is simply no modern historical analogue to the nature of this fight.

Legal compliance really does matter

From the outset of this campaign, as with past military actions, the IDF and Israeli political leaders have emphasized the professionalism of the force and its commitment to complying with all international legal obligations. While there have been moments of bombast by some politicians, IDF leadership has been consistent in its asserted commitment to international humanitarian law. This comes as no surprise as it is consistent with the ethos of the institution.

The real test, of course, for how such assertions influence operations is the conduct of the force during hostilities. And nowhere is the challenge of ensuring military forces comply with the law greater than when fighting an enemy who systematically violates the law and seeks to exploit your own compliance with the law for tactical advantage. But while leading combat forces into hostilities against such an enemy – in this case Hamas and PIJ – is a tremendous challenge, it is in this situation where the strategic importance of compliance, or perhaps the adverse consequences of non-compliance, becomes magnified.

Everything I observed and heard indicated to me that the IDF is acutely aware of this imperative. The excellence of its legal corps, or Military Advocate General's Corps, is widely recognized among military legal peers throughout the world. And over the years that Corps has evolved to ensure maximum effectiveness of their advising efforts, most notably a shift from a centralized operation requiring field commanders to reach back for support, to an operations-oriented approach that embeds legal advisors in operational commands.

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Ultimately, it is how a force executes a combat mission that provides the primary indication of whether the rhetoric of compliance aligns with the reality. And for the IDF that evidence is solid. Every combat commander we heard from demonstrated both an understanding of the core legal principles applicable to their operations and the command responsibility to ensure subordinate forces embrace and respect the law. This has been manifested most notably in systemic efforts to implement civilian risk mitigation measures during the conduct of hostilities.

On this point, it important to note that the law's civilian risk mitigation obligation is not absolute but is instead qualified by feasibility considerations. In other words, commanders are expected to implement any measure that mitigates civilian risk when doing so is assessed as feasible. Feasible, in turn means first that the commander has the capability to implement the measure (for example, a commander cannot drop leaflets if she has no aircraft to deliver them), and more importantly that the measure will not compromise military advantage. This means a commander is not obligated to implement a civilian risk mitigation precaution when doing so will give the enemy some advantage (like advance warning of an attack against an enemy leader or command and control node that would enable the enemy to avoid the attack) and/or expose friendly forces to increased risk.

For the IDF, there are many examples of good-faith commitment to this precautions obligation: maximizing use of precision guided munitions (contrary to the media narrative, there has not been an extensive use of "dumb" bombs; 80% of air attacks have utilized precision guided munitions and when non-terminally guided rounds have been used they have normally not been used in densely populated areas); canceling attacks when the civilian risk situation is greater than initially anticipated; issuing pre-attack evacuation warnings; establishing evacuation corridors from areas of the most intense hostilities; using dismounted infantry to raid and clear buildings in lieu of stand-off fires; implementing civilian casualty thresholds that require elevation of attack decisions to higher command whenever anticipated civilian casualties exceed an established threshold; integrating legal advisors at tactical command posts; and of course training efforts.

As noted above, it is erroneous to treat combat effects as conclusive evidence on the question of IHL compliance. But the enemy belligerent to civilian casualty ratio is relevant to this question. And, ironically, the inference supported by this ratio is not one of undisciplined and indiscriminate use of force by IDF personnel – the narrative consistently pressed by invoking Hamas provided casualty statistics. Instead, this ratio suggests a high degree of IDF effectiveness and professionalism.

To date [February 29, 2024] Hamas claims that approximately 29,000 people have been killed in Gaza – numbers which form the basis of United Nations reporting with not independent verification. This number has never distinguished between Hamas military operatives and civilians, nor has it distinguished between those killed as a result of IDF action and those as a result of Hamas action (such as failed rocket launches, booby-trapped structures, tunnel collapses or fire against IDF ground forces). Even taking this number at face value, it is obviously impossible that every person killed in Gaza was a civilian. And, because the Palestinian Health Ministry provides not details other than asserted raw numbers, there is really no way to assess if some of these casualties were Hamas operatives and if so how many? Conservative IDF estimates indicate approximately 13,000 enemy belligerent operatives killed. It is impossible to assess at this time how those numbers relate to the Health Ministry statistics. But even assuming these deaths are in addition to Health Ministry numbers, and accepting those numbers as accurate, it indicates about a 1:2 enemy/civilian death ratio. And that ratio would decrease if some of the Health Ministry deaths were enemy operatives.

While in no way diminishing the tragedy of any civilian casualties, this ratio is truly remarkable and arguably unprecedented in the annals of combined arms operations in urban environments. What makes the number even more remarkable is that Hamas and PIJ consistently endeavor to exacerbate civilian risk by embedding their personnel and assts amongst civilians; actively preventing evacuation efforts by civilians; and routinely operating in civilian attire. That the IDF has been able to render combat ineffective 18 of 24 Hamas battalions with such a ratio is a testament to the execution of combat operations in a manner consistently aligned with IHL obligations.

It is also noteworthy that these effects have been achieved with very low IDF losses. Indeed, the consensus among our review group was that we all expected far greater IDF casualties considering the complexity of the operational environment and enemy capabilities and tactics. All of this suggests that this operation will not be studied as an example of overly zealous use of combat power and infliction of intolerable civilian casualties, but as an example of one of the most effective combined arms maneuver campaigns in an urban area in modern history.

In short, legal compliance is essential to military success at every level of command: tactical, operational, and strategic. But context matters, to include the nature of the enemy situation and the tactics they employ. When understood in the context of Gaza and the enemy the IDF is fighting, the story is not nearly as negative as routinely portrayed, something eloquently explained by Judge Sebitune in her dissenting opinion to the International Court of Justice's decision to accept jurisdiction over South Africa's allegation that Israel is violating the Genocide Convention as the result of its combat operations against Hamas:

As stated above, the tragic events of 7 October 2023 as well as the ensuing war in Gaza are symptoms of a more deeply engrained political controversy between the State of Israel and the people of Palestine. Having examined the evidence put forward by each of the Parties, I am not convinced that a prima facie showing of a genocidal intent, by way of indicators, has been made out against Israel.

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The war was not started by Israel but rather by Hamas who attacked Israel on 7 October 2023 thereby sparking off the military operation in Israel's defence and in a bid to rescue its hostages. I also must agree that any "genocidal intent" alleged by the Applicant is negated by (1) Israel's restricted and targeted attacks of legitimate military targets in Gaza; (2) its mitigation of civilian harm by warning them through leaflets, radio messages and telephone calls of impending attacks; and (3) its facilitation of humanitarian assistance. A careful examination of Israel's war policy and of the full statements of the responsible government officials further demonstrates the absence of a genocidal intent. Here I must hasten to add that Israel is expected to conduct its military operation in accordance with international humanitarian law but violations of IHL cannot be the subject of these proceedings which are purely pursuant to the Genocide Convention. Unfortunately, the scale of suffering and death experienced in Gaza is exacerbated not by genocidal intent, but rather by several factors, including the tactics of the Hamas organization itself which often entails its forces embedding amongst the civilian population and installations, rendering them vulnerable to legitimate military attack.

Looking at Gaza in isolation creates a distorted narrative

One of the most common flaws in the critique of the Israeli military campaign in Gaza is how too many observers view it in isolation from the broader security threats Israel now faces. That is certainly not how the nation, the government, nor the IDF view things. Instead, only by considering the interconnected threat posed by Hamas, Hezbollah, and a potential broader conflict with Iran can the scope and duration of the operation in Gaza really be understood. Israelis speak of an existential threat that manifested itself on October 7th, a characterization that leads many skeptics to point out that Hamas is simply incapable of destroying Israel. Perhaps in isolation that is true. But in the broader security context, how Israel reacted to that attack reverberates across the region.

Since October 7th, Israel has come under sustained attack in its north from non-state actors in Lebanon and in Syria, chief amongst them Hezbollah. Rockets, armed drones, anti-tank missiles and incursions have been directed against Israeli civilians and military targets, causing death, injury and destruction. More than 80,000 Israelis have evacuated their homes along the Northern border. What most people don't realize is that only a small percentage of that number were subjected to a mandatory evacuation; most left voluntarily out of genuine fear that they too would fall victim to the type of barbaric attacks that occurred along the border with Gaza. This fear is not exaggerated. Israel and its people know that Hezbollah is a far more capable enemy than Hamas, and that Hamas adopted its tactics for the invasion from the Hezbollah playbook. Israel has also come under attack from as far away as Yemen, with intercontinental ballistic missiles fired at population centers in Israel's south. Israel is, today, under attack from every direction.

Deterring this threat, and of equal importance retaining the military freedom of action to defeat it if deterrence fails, influenced the perception of the necessity for rapid and decisive action against Hamas. Indeed, we visited a storied IDF division that was among the first to engage in maneuver operations in Gaza that had just recently been relocated to the Northern region to refit and train for contingencies to defend that border.

Nor is the nature of the threat limited to enemy military capability. Israel knows it is engaged in a multi-faceted campaign of isolation and delegitimization. Cases before the International Court of Justice; likely investigations by the International Criminal Court; moves by states to cut off Israel's access to critical resources; a seemingly endless effort to enact a United Nations Security Council Resolution demanding an immediate and unconditional cease fire (with proponents almost certainly aware that Israel would likely violate such a resolution in order to complete the mission of destroying Hamas military capabilities and rescuing hostages) are all examples of the diplomatic and information battle Israel's enemies are stoking and exploiting. The momentum gained by those enemies in this front of the strategic campaign strongly suggest how unlikely it is that calm will return along Israel's borders any time soon.

And of course, looming in the background of all of this is Iran. Can the IDF afford to be bogged down in a slow grind in Gaza, poised to address the far more lethal threat of Hezbollah, and still be prepared for the risk of direct conflict in Iran? The assessment of that question can only be made by Israel. But ignoring these broader security dynamics distorts the nature of the threat now being addressed in Gaza.

Misconduct Magnification and the Strategic Corporal

One individual we met with lamented what he characterized as too many, "own goals" by Israel; too many mistakes in word and deed by Israeli officials and military personnel that undermine the credibility of their cause. What seems clear is that every mistake has been and will continue to be magnified in significance for several reasons. First, from inception this fight has been about moral clarity: on one side is a barbaric organization devoted to the total annihilation of a nation and its people whose operatives make no distinction between legitimate objects of violence and innocent civilians; on the other a nation built on Judaic and democratic values whose armed forces are deeply committed to respecting the humanity-based limits on wartime violence. Any "own goal" inconsistent with that moral clarity will inevitably be magnified. Second, those who reject this clarity will highlight and arguably exaggerate every one of these "own goals."

One need only consider the misleading and exaggerated evidentiary significance South Africa attributed to several problematic statements by Israeli government officials as a key pillar in its genocide accusation against Israel in the International Court of Justice. As Ugandan Judge Sebutinde noted in her dissenting opinion to the Court's decision to even accept jurisdiction over the accusation.

Regarding the statements of Israeli top officials and politicians that South Africa cited as containing genocidal rhetoric, a careful examination of those statements, read in their proper and full context, shows that South Africa has either placed the quotations out of context or simply misunderstood the statements of those officials.

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The vast majority of the statements referred to the destruction of Hamas and not the Palestinian people as such. Certain renegade statements by officials who are not charged with prosecuting Israel's military operations were subsequently highly criticized by the Israeli Government itself. More importantly, the official war policy of the Israeli Government, as presented to the Court, contains no indicators of a genocidal intent. In my assessment, there are also no indicators of incitement to commit genocide.

But the mere fact that her quite credible assessment of these statements in proper context failed to prevail among a majority of the Court's judges reinforces the immense dangers of such "own goals."

At the military operational level, reports of soldier misconduct during the operation have also been highlighted. These unacceptable incidents are in context few and far between, and reflect the simple reality that no military is perfect. In the chaos of war even the best disciplined and led armed forces experience incidents of soldier misconduct, a reality that most military lawyers appreciate. But in context such as this, even isolated incidents of minor misconduct can have a near immediate adverse strategic effect on the legitimacy of the effort. Or, as one U.S. general offered to our class of mid-level military lawyers back in 1996, 'a tactical decision by a corporal on a checkpoint this morning can have strategic consequences by this evening.' Hence the notion of the "strategic corporal." Indeed, while writing this commentary that impact was highlighted by this story in Israeli media that IDF soldiers have engaged in widespread looting in Gaza. Even if more isolated than alleged, the damage is done and that toothpaste cannot be put back in the tube.

This is why it is imperative that the IDF, and the Israeli government more broadly, be vigilant in ensuring that word and deed align, and that when misconduct does occur it is credibly addressed through appropriate disciplinary action. This is why initiatives such as this special investigative team are so essential to both ensuring good order and discipline within the force and for enhancing perceptions of legitimacy. Investigating and, where appropriate, prosecuting your own soldiers for battlefield misconduct is never a pleasant prospect; no one likes the idea of punishing men and women who answer the call to defend their nation against a lawless and brutal enemy. But as my brother Colonel (retired) Gary Corn noted in The Cipher Brief, preserving the moral high ground and ensuring that a military force is truly professional demands no less.

Tactical excellence cannot ensure strategic success

Perhaps the most troubling observation was the apparent disconnect between the excellence of IDF tactical execution and some semblance of a coherent plan that defined the strategic end state of the operation. The very recent announcement by Prime Minister Netanyahu providing broad outline for the Israeli government vision for what will happen in Gaza following the completion of the immediate mission to destroy Hamas military capability aligned with what we generally heard. But there seems to be a troubling failure to acknowledge that the millions of people in Gaza cannot be left to fend for themselves in an ungoverned space.

One of the operational missions the military indicated it was responsible to achieve was the dismantling of Hamas administrative function. This is aligned with the state Israeli goal of preventing Hamas from resurrecting governance in Gaza. That seems logical. But what will follow? The IDF, like the Prime Minister, acknowledge the almost certain need to conduct limited security operations in Gaza for a long time to come to deal with remnants of Hamas and PIJ. The most common analogy was how the IDF deals with security threats in areas of the West Bank, ensuring freedom of action for these security operations. At the same time, the government appears adamant that the Palestinian Authority will not be offered the opportunity to fill the governance vacuum. From a political standpoint this seems driven by the perception that enabling PA control in Gaza will be perceived as a reward for what happened on October 7th. But it seems shortsighted to analogize the ongoing security strategy to the West Bank without acknowledging that one of the reasons the IDF has been relatively successful in that area is the effectiveness of security cooperation with the PA.

The recently stated plan will rely on local Palestinian officials with no Hamas or PA affiliation to assume administrative responsibilities. Who these individuals are and whether they will be cooperative with Israeli officials is yet to be seen. And whether this will provide a coherent governance substitute for what existed before October 7th is anyone's guess. What is obviously concerning is that a failure to follow up on the tactical success of destroying Hamas as a military entity might very quickly negate the benefit of that outcome. As U.S. forces have learned through the crucible of failure, the only real remedy for truly destroying a committed insurgency is good governance. Who will provide that is a crucial strategic question for Israel's government and the international community.

And then there is the immense challenge of simply providing for the basic needs for millions of Gazan civilians. The Prime Minister also announced Israel's determination to see an end to the role of the United Nations Relief Works Agency, the organization that was primarily responsible for keeping Gazan society afloat due to Hamas's neglect of its governance responsibilities. The disgust with UNRWA is understandable: UNRWA employees participated in the October 7th attack and may have hidden hostages. And while this appears to be a small percentage of the organization, as a general matter UNRWA (perhaps by necessity) has sustained Hamas by providing for so much of the daily needs of Gaza. And then there is the contribution to radicalization that has been endemic in the Gazan education system run by UNRWA.

Yet with all its flaws, there does not appear to be any other humanitarian organization capable of the scale and density of operations that match UNRWA at this time. With civilians currently facing an acute need for food, water, sanitation, shelter, and medical care; and with that need only likely to evolve into one that is more chronic, seeking the termination of the UNRWA mission before ensuring some alternative while disavowing any plan to place that burden on the shoulders of the IDF will create potentially avoidable risk of human suffering, increased radicalization, and ammunition for the pervasive delegitimization campaign against Israel.

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UNRWA officials acknowledged to us the obvious need for reform. While it would take significant political will to continue to tolerate UNWRAs role in Gaza, perhaps the devil Israel knows is better at this moment than the devil it does not.

More to follow

There are no doubt different perspectives of the issues raised in this post, and it is important to emphasize that this conflict is ongoing and evolving. Much is likely to change, and greater access to information will continue to influence the perspective of these and many other issues.

How the conflict and the post-conflict phase of operations will evolve is yet to be seen. But the brief opportunity to visit Israel highlighted, at least for me, many of the misconceptions about the situation and the immense challenges this ongoing conflict presents. Hopefully these observations contribute to a more informed understanding of the disconnects, misconceptions and challenges.

Prof. Geoffrey Corn is the George R. Killam, Jr. Chair of Criminal Law and Director of the Center for Military Law and Policy, Texas Tech University School of Law and a Distinguished Fellow with the Gemunder Center for Defense Strategy (part of the Jewish Institute for National Security in America). A retired U.S. Army Judge Advocate Officer, he served as the Army's senior law of war advisor.

This article was originally published in the Cipher Brief www.thecipherbrief.com and is reprinted by permission.

Professor Corn was one of the speakers at Decalogue's March 27 CLE "The Application of the Rule of Law in the War between Israel and Hamas" which can be viewed on our YouTube channel https://www.youtube.com/@DecalogueSociety

Book Review: *The Goddess of Warsaw*

by Hon. Michael S. Jordan

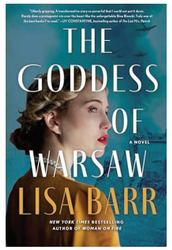
Lisa Barr. *The Goddess of Warsaw*: *A Novel*. New York: Harper Collins Publishers, 2024.

Lisa Barr, a journalist, television personality, and T*he New York Times* bestselling author of *Woman on Fire* and *The Unbreakables*, resides with her husband and three daughters in Chicagoland.

In The *Goddess of Warsaw*, Barr crafts a riveting account, masterfully comprised of a series of stories within an overarching story. The protagonist is a strong-willed Jewish woman who uses several names from childhood, even through her octogenarian years, in a lifelong, successful campaign as a powerful and effective force for good. Bombshell Hollywood actress Lena Browning, formerly Bina Blonski from Warsaw, Poland, takes on many roles in life to accomplish her goals and ensure her survival. Browning hones her skills as an artful actress in order to enable her to disguise her true emotions and achieve her successes. Barr introduces us to each character that inspires and motivates her by their traits, whether benevolent and empathic or sinister and hateful. The heroine learns, aggregates, and utilizes valuable information from each encounter with each person. Browning's acquired skills as an actress give her the means, methods, and modalities to accomplish her objectives while trusting no one.

The novel portrays how some good people act from a place of love and only wish to preserve a historical record of events during the Nazi era; by doing so, survivors in the world in the future could learn the full extent of the atrocities. Others, like Browning, act from their inner sense of empathy, compassion, and integrity seeking not only retribution but also vengeance to ensure more good people survive and more evil people die. For some, the battle ends at the conclusion of the war, but for others, like our protagonist, the battle continues for a lifetime since evil persists and must be diminished as much as possible.

The author presents a message about the current and continuing growth of antisemitism even after Hitler and his armies were resoundingly defeated. Authoritarians and hateful people exist today and will always exist; when ethical people do not step up and act, hate and both physical and emotional devastation will spread like metastasizing cancer. When we all act together without solely depending on others to effectuate proactive and positive change, authoritarians can be suppressed and the rule of law and democracy will likely prevail.



Lisa Barr's latest book has numerous surprise plot twists and turns with many events activating the reader's heartstrings and evoking strong emotions. One reading this book will only marvel at the courage, faith and trust that many people demonstrated in the fight against the Nazi threat. The characters all appear to have a connection with one another, just as all of us on Earth have a connection to one other; another's battle is part of our battle. Some of the narrative contains potentially explicit or graphic material; however, *The Goddess of Warsaw* is a must read especially in light of current events, many of which remind us of the potential dangers of complacency. Lisa Barr's narrative expertly creates a vivid, memorable, impactful, lasting image of events that are topical and relevant today. Barr activates our imagination and leaves the reader with a powerful, lasting impression that remains long after the novel concludes.

Michael S. Jordan, Mediation & Arbitration Services, Glenview, Illinois (847-724-3502), served as a judge in the Circuit Court of Cook County from 1974 to 1999 and then began a private mediation and arbitration practice from 1999 to the present. Jordan is the author of an autobiography, Becoming a Judge: An Inside Story, available from Amazon.com, which includes his role in the rise of John Paul Stevens to the United States Supreme Court.

Decalogue Back to School Happy Hour 2024

Thursday, September 19, 2024
5:00pm-7:30pm

Location: Near River West
(address provided upon RSVP)

Charge: Free to Attend

Watch your email for more information

Book Review: *How Precious the Ground on Which We Stand*

by Hon. Michael S. Jordan

Rabbi Sheldon Lewis. *How Precious the Ground on Which We Stand – Jewish Values that Could Save the Earth*. London: Hakadosh Press, 2024.

Sheldon Lewis is Rabbi Emeritus at synagogue Kol Emeth in Palo Alto, California, where he served for more than thirty years. Shelly and his twin brother, Dr. Sherwin Lewis, grew up on the south side of Chicago where I came to know and respect both twins who were destined to each help others in the world, one as a doctor and one as a Rabbi. Rabbi Lewis, while opposed to the war in Vietnam, set aside his exemption as a clergyman and enlisted in the military as a chaplain, placing himself at risk during that mass killing conflict, serving not only Jewish soldiers but other young American soldiers who needed spiritual guidance. Shortly after marrying his young bride, Lorri, he left the safety of the United States. He used his almost daily letters home to Lorri as the basis for his book: *Letters Home: A Jewish Chaplain's Vietnam Memoir*. He has written children's books as well.

Rabbi Lewis has utilized his knowledge of Jewish values and Jewish sources, including the Bible, to discuss his passionate views on fighting climate change and our obligation to protect the planet and its inhabitants. His focus is on the obligation of Jews, but the message is compelling for all persons regardless of their religious or spiritual beliefs.

Lewis cites recognized religious authorities through the centuries up to the present. He quotes Rabbi Joseph B. Soleveichik, an eminent 20th century theologian and scholar who urges the acceptance that we (humanity) may never really understand or comprehend the reasons we are expected to act in a certain manner because there are laws we must obey even when there is no clear rationale or intellectual understanding for our compliance. We must shepherd the land even when there are short term sacrifices to endure. If each generation clings to the immediate convenience, then we destroy our descendants' legacy and future ability to exist. In addition to citing religious authority, Rabbi Lewis cites environmental and scientific authorities.

This short book is a persuasive catalyst designed to light an inspirational fire and compel all of us to not only think of our collective responsibility to protect just the human inhabitants on our planet, but also to protect each and every species of plant and animal. More importantly, we need to protect the planet itself. Rabbi Lewis points out from many sources, especially the Five Books of Moses – the Bible – and how even before Moses brought the Law to the Israelites, as early as the days of Adam and Eve in the Garden of Eden, mankind was directed to shepherd and protect the planet or else face devastation. We have had a continuing obligation to not work the soil at least one day a week – the day of rest. We were not to work the land every seventh year or on the 50th jubilee year. The Earth must be allowed to rest as should the animals and even alien persons from abroad living with us. Our desecration of the rules and of the Earth would result in dire consequences including our own extinction.

In a nonjudgmental manner, Rabbi Lewis makes clear that the forest fires, floods, rains, draught, earthquakes, tornados, and hurricanes are all symptoms of the damage we have not only permitted, but caused. Rabbi Lewis reassures the reader that the Bible provides for re- creating and therefore, if we act immediately, we can still repair some of the damage. It will take all of us not merely thinking of acting or wishing others would act, but it will require all of us to actively involve ourselves in change. Intent is a start but it is not sufficient. Our action is essential! We have already lost thousands of species of animal and plant life. Yes, action is needed now before all remaining species are lost.

His book is a call to action. While Rabbi Lewis acknowledges he is in his ninth decade, it is not too late for him or his contemporaries to act to protect the future for our children and grandchildren and generations thereafter. Just as many ancient peoples acted to preserve the world for us, we must act meaningfully to safeguard the planet for our descendants.

There are many simple things each of us can do. Install officials who acknowledge climate change and who will act to protect the environment. We can plant trees and bushes as never before. We can avoid wasteful and excessive food preparation to avoid unused food being discarded and creating waste and toxic emissions. We can avoid plastics and materials that are not biodegradable. Rabbi Lewis does not give all of these suggestions, but with creativity, purposefulness, and intent, we can all find the ways and together save our Home - Earth.

Rabbi Lewis' book has already received critical acclaim. Professor Emeritus of Environmental Law at Santa Clara University, Santa Clara, California, Kenneth A. Manaster, states: "With deep personal concern and a scholar's strength, Rabbi Lewis connects enduring Jewish wisdom with our immediate, existential responsibility to save the Earth. This concise, gently eloquent synthesis of timeless teachings enriches our understanding as it forcefully calls us to action." Reading this book is insufficient; action is required!

While I urge a reading of this book, I even more strongly urge that each of us engage and act to protect our environment and our planet and begin acting now.

Michael S. Jordan, Mediation & Arbitration Services, Glenview, Illinois (847-724-3502), served as a judge in the Circuit Court of Cook County from 1974 to 1999 and then began a private mediation and arbitration practice from 1999 to the present. Jordan is the author of an autobiography, Becoming a Judge: An Inside Story, available from Amazon.com, which includes his role in the rise of John Paul Stevens to the United States Supreme Court.

Justice and Compassion

by Aviva Miriam Patt

On June 2, 2024, The Hinda Institute honored Decalogue's Executive Director at its annual spring event. The theme was "Justice and Compassion" and Aviva's remarks are reprinted here.

When I was 17 years old, I embarked on an ambitious project. I went to the Northtown Library, headed for the reference section, and pulled out the first volume of the 1970 Illinois Revised Statutes. My plan was to read through all of the statutes, make notes on everything the legislature had gotten wrong, and present my findings to a newly elected state representative whose campaign I had volunteered for. I sat down at a table with my pen and spiral notebook, turned to the first chapter and began reading. After about 3 or 4 pages it hit me that I didn't know anything about agriculture. So I flipped ahead to the second chapter and didn't even get through the first page. I didn't know anything about aviation either. It's always a shock when teenagers discover that they really don't know everything, but I wasn't discouraged. I flipped ahead to a chapter on a subject I did know and was very passionate about: criminal justice. I found lots of room for improvement there and began filling my notebook with proposed amendments.

I went to the library a few days a week for about a month before something else caught my interest. Although I never finished my project, I learned something important, something that surprised me: the law and justice are not the same thing.

The law is rigid. It doesn't consider human frailties or human error. Punishments can be severe—draconian, even. And the law lacks an essential component of justice: redemption. The ability for someone who has broken the law, recognizes their error, and is truly sorry, to have a path back to acceptance by the community.

Many years later, I learned about the Jewish Prisoners Assistance Foundation, the precursor to the Hinda Institute, and Rabbi Scheiman's work in the state prisons and county jail to ensure inmates had kosher food if they required it, and religious books and ritual items to observe Shabbat and the holy days. But there is so much more. Rabbi Scheiman brings them comfort. He talks to them. He listens to them. He lets them know that they are not forgotten, they are not unloved, that no matter what they have done they are still human beings, not society's refuse, and that there is a path to return to the community.

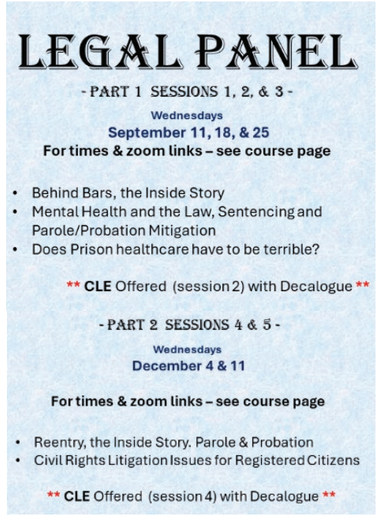
Compassion, forgiveness, redemption. These are the qualities that must be applied to the law to create justice. And they are very Jewish values. They are present throughout our history, and in the *Tanakh* since the beginning of human existence. They are a major theme of *Nevi'im* - the Prophets - both before and after the Babylonian exile. The narrative is of a people who have turned away from God and forsaken the commandments, adopting the customs and even religious practices of the surrounding nations. They suffer for it, recognize their error, and seek a path back to acceptance.

My favorite rendition of this theme is in the haftorah for *Shabbat Balak*, which is next month. After the recitation of the people's many sins—which include idol worship—the punishments they suffered as a result, and rebukes for abandoning God despite all that had been done for them, they beg to be told what they can do to make amends. "Shall I approach God with burnt offerings, with calves a year old? Would *Adonai* be pleased with thousands of rams, with myriads of streams of oil? Shall I give my first-born for my transgressions, the fruit of my body for the sins of my soul?"

These people are obviously desperate. They will do absolutely anything to have a path back to God's favor. And what was the answer? "It has been told you what is good, and what *Adonai* requires of you. Only to do justice, and to love kindness, and to walk humbly with your God."

Justice and Compassion. That is all we are required to do. And how hard is that? We don't need any special skills or talents, education or training. All we need to do is reach into our hearts and take out what is already there - what God put there to guide us on the path of a good life. *Devarim* tells us "*Tzedek, Tzedek, Tirdorf* – Justice, Justice shall you pursue." This is our task. This is our obligation. And when we pursue justice, we need to pursue it not just for ourselves, but for everyone, not just for now, but for all-time. Because the path to *Olam Ha-Bah* is the creation of justice in *Olam Achshav*.

For 15 years I have been privileged to pursue – and hopefully, create – justice with the Decalogue Society of Lawyers, and on behalf of Decalogue, I want to thank the Hinda Institute and everyone here for recognizing our efforts.



The Hinda Institute is offering a series of lectures, two of which are being cosponsored by Decalogue and offering CLE credit.

You can register for the September 18 and December 4 classes on the Decalogue website and the other classes through HINDA.

Register for Non-CLE Classes Here

2024-2025 CLE Calendar

Unless otherwise indicated, all classes are on Zoom and earn 1 hour of general MCLE credit for Decalogue members
Registration opens 4-8 weeks prior to the class at www.decalogueso ciety.org/cle-schedule

Wednesday, September 18, 5:00-6:45pm
Mental Health and the Law, Sentencing and Parole/Probation Mitigation
Speaker: Elizabeth Kelly
1.5 hours Mental Health credits for all attorneys
Co-sponsored with the HINDA Institute

Thursday, September 26, 12:15-1:45pm
Video CLE: My Cousin Vinny
Class leaders: Cliff Scott-Rudnick & Dick Adler
1 hour Professional Responsibility credit for Decalogue members

Thursday, October 10, 12:15-1:15pm
Corporate Transparency Act
Speaker: Theodore Banks, *Partner, Scharf Banks Marmor LLC*

Thursday, October 31, 12:15-1:15pm
EEOC
Speaker: Diane Smason, *Office of General Counsel, U.S. Equal Employment Opportunity Commission*

Wednesday, November 6, 12:15-1:15pm
Representing Victims/Survivors of Mass Terrorism and Weaponized Mass Rape in Civil Litigation
(2024 Womxn's Committee Lecture Series Part II)
Speaker: Gavriel Mairone, *Founder, MM-LAW LLC*

Thursday, November 14, 12:15-1:15pm
Sunset of the Estate Tax Exemption
Speakers: Jennifer F. Kuzminski and Angela M. Iaria, *Aronberg Goldgehn*

Tuesday, November 19, 12:15-1:15pm
Cyber Security
Speaker: Joel B. Bruckman, *Partner, Smith Gambrell, Russell*

Wednesday, December 4, 5:00-6:30pm
Parole and Probation
Speaker: Alan Mills, *Executive Director, Uptown People's Law Center*
1.5 hours MCLE credit for all attorneys
Co-sponsored with the HINDA Institute

Thursday, December 12, 12:15-1:15pm
Cellphone Evidence
Speaker: William Elward, *Senior Instructor, Loyola University School of Law*

Thursday, Janjuary 9, 12:15-1:15pm
How to Use AI
Speakers: Theodore Banks, *Partner, Scharf Banks Marmor LLC* and Clifford Scott-Rudnick

Sunday, January 19, 1:00-4:30pm
MLK Day CLE & Solidarity Awards
Video CLE and speakers TBA
Diversity & Inclusion credits

Thursday, January 30, 12:15-1:15pm
Business Divorce & Valuation
Speaker: John Sciacotta, A*ronberg Goldgehn*

Thursday, February 6, 12:00-1:30pm
Income Tax Update
Speaker: Cyndi Trostin, *Trostin, Kantor and Esposito, LLC*
1.5 hours MCLE credit

Thursday, March 6, 12:15-1:15pm
Civility
Speaker: Anna Villinski, *Deputy Director of the Illinois Supreme Court Commission on Professionalism*

Thursday, March 27, 12:15-1:15pm
Triangle Shirtwaist Factory Fire and Worker Safety Laws
(2025 Womxn's Committee Lecture Series Part I)
Speakers TBA

Thursday, April 24, 12:15-1:15pm
Assessing Effects of the SAFE-T Act
Speaker: Judge Mary Cay Marubio

Thursday, May 8, 12:15-1:15pm
Marketing Your Law Firm
(2025 Womxn's Committee Lecture Series Part II)
Speakers: Amanda Bekric, Emily Kurniawan, Faith Anderson, *DBC Brand LLC*

Thursday, May 15, 12:10-1:30pm
Hot Topics in Family Law
Speakers TBA

Thursday, May 29, 12:15-1:15pm
Professor Wendy L. Muchman Decalogue Society Professional Responsibility Lecture Series
1 Hour Professional Responsibility Credits

Classes to be scheduled in March, April, and May:
Cannabis Law Update
Social Security Disability Law
Hate Speech on Campus: Title VI *(Presented by the Decalogue Foundation)*
Religious Right to Abortion *(Presented by the Decalogue Foundation and cosponsored with the Decalogue Womxn's Committee)*

Chai-Lites

by Sharon L. Eiseman

For each Tablets issue, the Chai-Lites routinely features news about our busy members coming, going, celebrating, being recognized, speaking, writing, making new career moves, standing up for the oppressed, fighting anti-Semitism, volunteering to deliver holiday dinners to those in need, serving on the DSL Judicial Evaluation Committee, acquiring more new titles and awards than seems possible, giving birth to future lawyers, judges, and Decalogue members, mentoring law students, and running for office, for the bench.

Past President Hon. Mitchell B. Goldberg has been named the President of the Chicago Lincoln American Inn of Court for the organization's 2024-2025 Bar Year. The American Inn of Courts is an organization that brings lawyers, judges and other legal professionals together to work on inspiring the legal community to advance the rule of law by achieving the highest level of professionalism through example, education, and mentoring. In his spare time, Judge Goldberg serves as an Associate Judge for the Circuit Court of Cook County and currently presides in the Domestic Relations Division.

Governor J. B. Pritzker has appointed Decalogue **Past President Hon. Michael Strom (ret.)** to the Illinois Torture Inquiry and Relief Commission (TIRC), where he will serve as Chair. The TIRC was created by the Illinois General Assembly in 2009 to investigate claims of torture involving CPD Commander Jon Burge and officers under his command. In 2016, the statute was amended to apply to officers not connected to Jon Burge. The period for filing TIRC claims is limited by statute to those filed by August 10, 2019. No new claims can be filed, but numerous claims are pending investigation. For more information, see the TIRC website: https://tirc.illinois.gov

Two of **Past President Stephen Baime's** grandsons are continuing the lawyering careers tradition started by Steve's father. One is pursuing studies at Vanderbilt University Law School, and his brother is starting his legal career at one of Chicago's largest law firms. We congratulate these aspiring students of the law and wish them well in their new ventures and adventures.

Elka Blonder, JD, has joined the legal team at Cooper Trachtenberg Law Group. https://www.prnewswire.com/news-releases/cooper-trachtenberg-law-group-welcomes-new-attorney-to-legal-team-302131829.html

On May 22, 2024, Judge (ret.) **Nancy Katz** was appointed as President-Elect of the Board of Directors of her synagogue, the Jewish Reconstructionist Congregation in Evanston. Accordingly, she will assume the role of President for a two year term beginning in July 2025.

Daniel J. Goldberg was named to the highly regarded JUF "36 under36" https://www.juf.org/Mag/36Under36/bio36-2024.aspx?id=454611

Mark Karno is the International Treasurer of the Alpha Epsilon Pi Foundation, the world's largest Jewish college fraternity. He has held that position for the past year and will continue to do so for at least another year.

Michelle Katz's son, Shai Rosenblum, became a Bar Mitzvah June 8, 2024. Daughter Mira Rosenblum received the Rabbi Seymour J. Cohen Leadership Award from Anshe Emet Synagogue in June, graduated from Jones College Prep, and will be leaving soon for Indiana University. That's an example of what energetic young men and women can do!

Steven Ross participated as a Nonstandard Testing Proctor for the July 2024 Illinois Bar Exam. Maybe he will advise us when he graduates to the status of a Standard Testing Proctor!

David Lipschutz, well known by members of the DSL as an inspired and inspiring actor—and lawyer when he has some free time, was recently promoted to Senior Associate/Managing Attorney with Mauer & Madoff LLC. On the theatre side, David has several plays being produced around the country, and he will be performing in *A Shadow Bright & Burning with Black Button Eyes*, from August 23, 2024, to September 28, 2024. For information, David invites you to visit blackbuttoneyes.com. Maybe some day he will share his secret as to how he can pursue two different lives!

Mollie Goldfarb was recently published in Law360 https://www.law360.com/articles/1856330/equity-rights-offering-considerations-as-maturity-cliff-looms. The piece focuses on the timely issue of public companies' looming debt maturities and opportunistic transaction structures to address such financial issues, specifically equity rights offerings.

Hon. Gail Schnitzer Eisenberg worked with Representative Jennifer Gong Gershowitz and stake holders around the state to draft, negotiate, and pass HB 4351, which will allow Cook County litigants the option to serve documents through a special process server without court approval—just like the rest of the State—rather than first requiring the Sheriff's Office to try to serve the documents. The change will increase litigation efficiency and free up the Sheriff's Office to focus on its more central functions. Use the following link to learn about how the new process works. The material in the below link will provide guidance to its readers as to how this new system is intended to work. We wish everyone who ventures into this new process a vastly improved and smoother, faster experience with serving litigation documents on their relevant parties. Possibly, this could be a fine theme for a brief yet helpful CLE or article about the implementation and value of, and any problems with, the new process. So Gail, plan to 'clear your calendar' in case we need you as our star presenter!

https://www.chicagolawbulletin.com/cook-county-litigants-can-bypass-sheriff-s-office-for-service-under-new-bill-20240724?fbclid=IwY2xjawEfe01leHRuA2FlbQIxMAABHaqrv957obrFH6hcD5egAjTQY8d5Z5uLTSkO-K1iB5MDvzTWC_Ez4TuL1w_aem_SbcQx5af66qba25_ZEBbFQ

Chai-Lites *(cont'd)*

Paul Plotnick was featured in NSBA's Member Spotlight as he retires after 50 years practicing law. We will be expecting a full report about how he is coping with retirement after such a full and busy career.

Cooper Trachtenberg Law Group Founding Partners **Miriam Cooper** and **Helena L. Trachtenberg** have been recognized for their professional success in Family Law by *Best Lawyers® 2025*. Recognition by Best Lawyers® is based entirely on peer review and is awarded annually. Each award reflects the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same geographical area and legal practice area. Miriam Cooper has earned this accolade every year since 2020, and Helena Trachtenberg has earned it every year since 2022.

Past President Deidre Baumann was appointed to the Illinois State Bar Foundation Board and elected President of the Lawyers Club of Chicago,

2024-2025 On June 2, The Hinda Institute bestowed their Compassionate Donors of the Year Award on **Barry Sheppard** and Decalogue Board member **Adam Sheppard** for exemplifynig true devotion to paving the way for reform in our justice system. Decalogue Executive Director **Aviva Patt** was also honored at the event.

Last year, **Sharon Eiseman**, with Erskine Klyce, a former colleague serving as the Chief Engineer for the Illinois Department of Transportation (lovingly known as IDOT), presented to a group of 'Lifelong Learners" at a Senior Citizens Community Service Center in Skokie, a Program about how the Eminent Domain process works. The presentation covered the Law of Eminent Domain, including restrictions as to how it can legally be exercised, as well as several Projects resulting from various government takings of private property for public use which had recently been implemented and how they were working for the communities they were constructed to benefit. This subject was based upon the work Sharon had been engaged in for many years as the Land Acquisition Bureau Chief for the Office of the Illinois Attorney General. The Projects were displayed via an impressive Power Point created by Erskine, Sharon's Chief Engineer from the Illinois Department of Transportation. Most impressive is that he displayed major improvement Projects that had been completed in the very neighborhoods in which most of the audience members were living or had recently been living. Such revelations about the improvements that benefited their own communities helped considerably to quell the criticism that often arises when residents of a community hear about the 'taking' of private property that they or their neighbors own.

Since the program about Eminent Domain had been well received, the Senior Citizens Community Center has requested that Sharon return to present a program on Title IX: When and Why It Was Born, How It Has Been Utilized for the Benefit of Its 'Protected Classes', and What Its Future Might Be. Accordingly, on April 8, 2025, Sharon will be giving this presentation, and doing so with DSL Board Member **Adam Sheppard**, whose substantial experience as a defense attorney for Title IX Claims filed in Court will serve to give life to claims filed against employers, companies, etc. that are subject to Title IX Edicts So 'stay tuned' for our next CHAI-LITES issue in which we will offer a report of this Program, including how it was received by the audience.

Welcome New Members!

Alisa B. Arnoff
David S. Becker
Brian Caminer
Theodore Chino
Erin E. Cohn
Lindsay B. Coleman
Dora Cornelio
Lucas Coughlin
Rachel Dorris
Patrica M. Fallon
David J. Fish
Chelsea A. Friedman
Charlie Gandelman
Ari Gardner
Elizabeth A. Garlovsky
Eric Gershilevich
Bella R. Goldberg
Kenneth Gorenberg
Kenneth I. Granle
Jonathan A. Hattenbach
Matthew Hearst
Tamara R. Horton
Rebecca S. Kahn
Chaim Kalish
Nancy F. Karkowsky
Lori Levin
Jarod London
Ann Lousin
Mary Cay Marubio
David Mauer
Heather A. McPherson
Nicholas Kram Mendelsohn
Dennie Mogensen
Mary Morris
Tracy Katz Muhl
Donald S. Nathan
Dayna Perlut
Lisa R. Pitler
Koby Preston
Marcos Resendiz
Shai Rosenblum
Blake Roter
Jacob Rotolo
Hannah Saed
Richard L. Sandler
Anne Schmidt
David Schwartz
Patrick G. Serowka
Eric L. Singer
Lawrence Starkopf
Perla Tirado
Helena Trachtenberg

Thank You to Our Members Who Gave Above and Beyond

Life Members

Howard Ankin
Adam Bossov
Charles Golbert
David Lipschutz
David Olshansky

Firm Members

Coleman Law PC
Rubin & Machado Ltd.
TR Law Offices LLC

Sustaining Members

Maryam Ahmad
Kevin B. Apter
Theodore L. Banks
David S. Becker
Adam E. Bossov
Neil H. Cohen
Erin R. Cohn
Lindsay B. Coleman
Richard M Colombik
Stephen G. Daday
Morton Denlow
Deidre M. Dyer
Sharon Lynne Eiseman
Corri Fetman
Charles Perez Golbert
Barry Goldberg
Richard P. Goldenhersh
Megan E. Goldish
Howard Goldrich
Robert P Groszek
Pat Charles Heery
Kenneth A. Henry
Kenneth Hoffman
Patrick Dankwa John
Charles A. Krugel
David P. Leibowitz
David S. Lipschultz
Mary Alice Melchor
Mary L. Mikva
Donald S. Nathan
Krista S. Peterson
Jill Rose Quinn
Leslie J. Rosen
Edward M. Rubin
Stephanie Rubin
Mara S. Ruff
Andrea M. Schleifer
Jody L. Schneiderman
Jeffrey A. Schulkin
Mary Sevandal Cohen
Robert A. Shipley
Alan Sohn
Alon Stein
Renata D. Stiehl
Neal B. Strom
Michael Weil
Ariel Weissberg