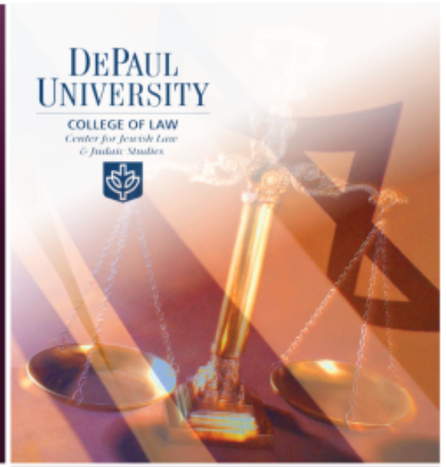
THE DECALOGUE TABLETS SPRING 2022

Defining Antisemitism and Why It Matters: An In-Depth Exploration

Virtual Symposium
Tuesday, April 26, 2022
12:00 p.m. – 3:30 p.m.

Register Here



Join us on our journey to define antisemitism. Why? Hate crimes against Jews have been on the rise over the past few years, and we believe that reaching an understanding of what antisemitism truly means is the first step in identifying ways to combat it.

The agenda for our 3.5-hour virtual symposium includes:

1. An **in-depth** exercise designed to
   - explore the debates about the most widely adopted definition of antisemitism along with several alternatives;
   - evaluate the criticisms of the proposed definitions; and
   - consider the practical impact of having a definition and its uses.
2. **Breakout sessions** where attendees participate in discussions moderated by members of the DePaul College of Law Center for Jewish Law & Judaic Studies Advisory Board and provide input and feedback while examining the importance of defining antisemitism.
3. A closing **keynote address**, "The Importance of Defining Antisemitism," by **Bret L. Stephens** of *The New York Times*.

DePaul College of Law is an accredited MCLE provider, and attorneys licensed in the State of Illinois may receive CLE credit for attending this program. The application is currently pending approval.

Featured Speakers

- **Steven H. Resnicoff**, Professor and Faculty Director, DePaul College of Law, Center for Jewish Law & Judaic Studies
- **Rabbi Andrew Baker**, Director of International Jewish Affairs, AJC
- **Marc D. Bassewitz**, Chief Compliance Officer and General Counsel, Vivaldi Capital Management LLC
- **Carly F. Gammill**, Director, Center for Combating Antisemitism, StandWithUs
- **Rabbi Dr. Mark Goldfeder, Esq.**, Director, National Jewish Advocacy Center
- **David H. Levitt**, Partner, Hinshaw & Culbertson LLP and Chair, JLJS Advisory Board
- **Kenneth L. Marcus**, Esq., Founder and Chairman, The Louis D. Brandeis Center

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THE DECALOGUE SOCIETY OF LAWYERS
JUSTICE, JUSTICE SHALL YOU PURSUE

TABLETS
Spring 2022

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President's Column

by Mara S. Ruff

Leading with Integrity

Integrity is not only a value we hold high at the Decalogue Society of Lawyers but, I believe, one of the most vital characteristics we possess as attorneys. It is at the very core of our being, a value we choose to nurture or ignore. Building character around integrity means being authentic, living a life of honesty and truth, and never compromising. It means choosing your thoughts and actions based on values rather than personal agenda. And, integrity is not something you show to others, but it is how you behave behind someone's back.

The dictionary defines integrity in three parts: 1) the quality of being honest and the firm adherence to a code of strong moral principles or incorruptibility; 2) an unimpaired condition or soundness; and 3) the quality or state of being complete or unimpaired or completeness. Integrity is not built through one defining moment in time, but rather a series of several moments throughout time, small decisions, demonstrating consistency, increasingly strengthening character, and building reputation. This means choosing to build someone up rather than tear someone down. This means choosing to tell the truth even if there are consequences. This means choosing to help others rather than just helping yourself. Integrity makes you a more secure, confident, humble, and self-aware individual.

Integrity is the secret ingredient for a sound, incorruptible, and complete leader. Leading with integrity organically builds trust and respect amongst your peers. Leaders that demonstrate characteristics of high integrity are often thought of as gracious, hardworking, helpful, honest, dependable, supportive, patient, and accountable. As members of Decalogue, we have a choice to follow-through on promises, refrain from gossip, and admit when we are wrong. As lawyers, reputation is everything. We are accountable to our professional code of conduct to lead with integrity by example. Actions always speak louder than words. As lawyers, we are expected to show up on time, tell the truth, be fair, and follow through on our word.

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From the Judge's Side of the Bench: Zoom Court is Here to Stay

by Judge Abbey Fishman Romanek

On March 17, 2022, the Illinois Supreme Court issued a press release recognizing the numerous benefits remote court hearings have brought to self-represented litigants, attorneys, and other participants, including increased court attendance and participation. In short, remote court proceedings have resulted in an increased access to justice. Thus, such proceedings are here to stay. The Illinois Supreme Court Task Force continues its study to ensure each court has the needed technology required for such proceedings.

Despite the numerous benefits to remote proceedings, it is useful to understand some of the hindrances full time remote proceedings cause. Such an understanding illuminates the manner in which this court suggests moving forward until such time as the Illinois Supreme Court Task Force provides further recommendations.

The Pros

Remote proceedings have allowed for increased access to justice in a number of ways. Self represented litigants can use a cell phone or computer to call in to court from work or home at an appointed time. This saves both time and money by remaining in the workplace or caring for their children without losing a day from work or by paying for childcare. In addition, remote proceedings save the time and cost of transportation and parking.

For attorneys and litigants represented by attorneys, the cost savings are also evident. Attorneys are able to remain in their offices and access numerous courtrooms at virtually the same time. Attorneys who practice in collar counties and suburban districts save drastically on transportation costs and time. This results in lower costs and fees to litigants. Attorneys have even been able to appear in different virtual courthouses at the same time, resulting in saving their clients fees and costs.

As a judge in the Daley Center in Chicago, it is clear that attorneys with suburban practices enjoy the benefit of not having to appear in person in court for short status hearings. If not for remote proceedings, they would have had to drive through traffic and pay for parking, only to obtain a new court date and turn around for the long drive back to their office, all at the expense of their client.

The Cons

The morning status call at the Daley Center requiring all parties or attorneys to appear in person often resulted in more than just obtaining status dates from the court to return on a particular issue. Many attorneys traveled from courtroom to courtroom within a given morning. During those "travels" they would inevitably "run into" counsel with whom they have other pending cases. Upon seeing each other, lawyers can spend a few moments discussing issues and schedules in a congenial manner. They tend to remind each other of outstanding issues in cases, prompting scheduled telephone calls, impromptu agreements, or scheduling of meetings. During the pandemic, this court observed that opposing attorneys failed to contact each other in any meaningful way between status dates. It is usually only the mere imminence of the next court date that forced anyone to even think about getting anything done. For example, if written discovery was outstanding, nothing would happen between court dates. Perhaps an attorney would inform me that one attorney "emailed" the other regarding outstanding discovery. If that email went unanswered for any of a multitude of reasons, that would be the end of the contact. No one ever followed up on the email with either a second email, a telephone call, or a motion. This court constantly reintroduced attorneys to the use of the "old school" telephone, explaining how well telephonic communication works despite the invention of electronic communication. This significant lack of meaningful contact between attorneys has resulted in extending the time within which cases are now resolved.

Timely receipt and return of signed orders has been a challenge, as has timely receipt of written motions, responses, and replies. Court Coordinators are inundated with emails on a daily basis. Most (mine) have done an excellent job of keeping judges up to date with motions and briefs; nevertheless, things do get lost or missed.

In addition, attorneys don't always send orders in a timely manner and therefore the orders don't get entered as required. Finally, orders that are contested take extra time to review and get entered and are always entered late.

The *most* challenging aspect of remote hearings is the ability to conduct a meaningful settlement conference. It is this judge's experience that litigants participating in a remote pretrial do not feel the same exigency or gravitas felt when held in person. The result is that they hear the recommendations of the judge and though they may seem to agree, they do not immediately sign and enter an order. Thus, the litigant leaves the meeting, has time to reconsider the recommendations, and changes their mind, resulting in the need for more trials.

Remote bench trials have worked surprisingly well during the pandemic. They do, however, take more time than in person trials. One possible reason is that working continuously in front of a screen for a number of hours is extremely taxing on all participants. Exchange and review of documents during a trial can be done through screen sharing, but that causes other challenges when attorneys are not in the same room reviewing the same actual document before putting it up on the screen. Refreshing recollection with a document not in evidence is a further challenge, requiring the court to walk away from the screen so the court is not improperly exposed to the documents. Also, there are often connectivity issues resulting in problems with audio, video, or excessive outside noise. So, while they work in the extreme circumstance of a pandemic, remote trials can never take the place of in person trials.

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Judge's Side of the Bench *(cont'd)*

Moving Forward

Starting May 2, 2022, barring further Covid 19 variants, this judge plans to return to court in the Daley Center on the 30th floor in person full time. However, keeping in mind the health of litigants and attorneys, the health concerns of crowded elevators and courtrooms, and the benefits of remote access to justice, this courtroom will continue to hold status hearings remotely. In the event that one or both parties prefer to appear in person, this court will accommodate them. I will discuss suggested rules and guidelines below to assist in the efficiency of these hearings.

All settlement conferences will be held in person only. All parties will be required to appear in court in person. In this manner, when the parties reach an agreement with the assistance of the court, they will sign and enter it immediately. These conferences will begin at 11:00 a.m. This will allow everyone involved time to get to the Daley Center after rush hour traffic has subsided, and give attorneys time to handle some remote status hearings before appearing. In addition, the elevators, hallways, and courtrooms should not be crowded.

Trials will be held in person at 2:00 p.m. Again, the elevators, hallways, and courtroom should be clear. The plexiglass in the courtroom will remain in place and appropriate spacing guidelines will be followed, including, if necessary, the placement of a lectern for the examination of witnesses. The purpose of the plexiglass, spacing, and lectern should alleviate the need to wear a mask if one is asking or answering questions. Experts or out of town witnesses may, by agreement, appear remotely. All counsel will still be required to appear in person and provide an appropriate remote connection and screen for the courtroom, at least until such time as the court is technologically updated.

Zoom (Remote) Hearing Etiquette

For attorneys:

- Contact opposing counsel by *telephone* before your status. This is not the time to air grievances, argue, or otherwise discuss issues in your case. This is a status on discovery, pretrial, or trial readiness or a short report.
- Where possible, list the case name with your name.
- Be on time.
- Advise opposing counsel or the court if you will be late or are stuck in another courtroom.
- Do not speak until your case is called.
- *Unmute* when it is your turn to speak.
- Make sure it is quiet where you are. Outside noise is extremely distracting.
- *Do not* talk over another attorney or litigant. The court cannot hear you.
- Listening is a skill.
- Have your calendar readily available. You have appeared before the court to get a new date.
- *Do not* "pop in" to ask the court a question or check on a court order. Email the court with these questions or concerns with a copy to opposing counsel.

For your clients:*

- Practice using Zoom with them before they appear.
- Dress appropriately.
- Be on time.
- Be prepared with pen and paper.
- Do not eat, smoke, or chew gum while on Zoom.
- Do not engage in other activities while on Zoom.
- Be seated in a quiet room by yourself. No children, dogs, television, or radio.
- Do not walk around.
- Stay indoors where possible.
- Do not drive. Pull over.
- Do not say anything or raise your hand to speak unless the court specifically asks you to do so.
- Save your questions for your attorney.
- Only unmute when the court asks you to do so.
- Press "leave meeting" when your case is over.

*Thank you to attorney Peggy Raddatz for many of these suggestions.

The last two years have been a trying time for all of us. The swift time and manner with which everyone has managed to adapt is nothing less than remarkable. We should all be looking forward to being in person in court at least part time. We also look forward to the Illinois Supreme Court Task force recommendations.

President's Column *(cont'd)*

Integrity is the choice between what is convenient and what is right. As lawyers, we are constantly judged on our character. We make decisions every day that define who we are and what we believe in. At Decalogue, we all share the core value of integrity, the foundational leadership quality upon which our character is built. Let's continue to build character together, impacting those around us, leading by example.

I am proud to lead such an esteemed group of lawyers that I have the privilege of calling my colleagues and friends. It has been an honor to serve as your President.

Mara S. Ruff is President of the Decalogue Society of Lawyers and Vice President of Government Affairs for Sinai Health System.

The Unwritten, Unintended, Accidental Franchise Agreement

by Alon Stein

Countersuing For Breach of Franchise Agreement or Wrongful Termination of Franchise Agreement When There Is No Actual Formal Written Franchise Agreement

Your client tells you that its exclusive supplier has terminated its exclusive distribution agreement that it had with your client, without formal notice and without an opportunity to cure breaches, if any.

Since your client's entire business model was based solely on selling the exclusive supplier's products, your client's business was being effectively starved out of business when the contract was terminated.

To add insult to injury, the supplier has now also sued your client because it has not paid for the products that it purchased immediately before the termination.

Your client tells you that, throughout the course of the relationship, it felt as if it were a franchisee of the supplier, even though no formal franchise agreement was ever signed, because it was required to purchase marked-up products from the supplier and it was prohibited from selling any other products in its showroom other than the supplier's products.

In addition, the client was required to display promotional materials and logos of the supplier in its showroom and the supplier promoted your client to the public on Facebook, Twitter and Instagram as being one of its "branches" or one if its "offices."

Can your client counter sue for breach of/wrongful termination of a franchise agreement if there was no actual written executed franchise agreement?

The short answer is that, in Illinois, a written franchise agreement is not required for a franchise relationship to be formed. Therefore, unless such an unintended or accidental franchise relationship is properly terminated, the franchisor/supplier can be held liable for wrongful termination of a franchise relationship. Indeed, pursuant to 815 ILCS 705/19 of the Franchise Disclosure Act (the "Franchise Act"), a franchise relationship usually cannot be terminated without providing notice of "good cause" and at least 30 days to cure any defaults.

Specifically, 815 ILCS 705/19 provides as follows:

> "Sec. 19. Termination of a Franchise.
>
> (a) It shall be a violation of this Act for a franchisor to terminate a franchise of a franchised business located in this State prior to the expiration of its term except for "good cause" as provided in subsection (b) or (c) of this Section.
>
> (b) "Good cause" shall include, but not be limited to, the failure of the franchisee to comply with any lawful provisions of the franchise or other agreement and to cure such default after being given notice thereof and a reasonable opportunity to cure such default, which in no event need be more than 30 days.
>
> (c) "Good cause" shall include, but without the requirement of notice and an opportunity to cure, situations in which the franchisee:
>
> (1) makes an assignment for the benefit of creditors or a similar disposition of the assets of the franchise business;
>
> (2) voluntarily abandons the franchise business;
>
> (3) is convicted of a felony or other crime which substantially impairs the good will associated with the franchisor's trademark, service mark, trade name or commercial symbol; or
>
> (4) repeatedly fails to comply with the lawful provisions of the franchise or other agreement."

It is important to note that the fact that there is no document entitled "franchise agreement" is not dispositive of anything. Distribution agreements can be deemed to be accidental franchises despite the title of the document. *See To-Am Equip. v. Mitsubishi,* 152 F.3d 658, 661-62 (7th Cir. 1998); *Brenkman v. Belmont Mktg., Inc.,* 87 Ill. App. 3d 1060, 1063 (Ill. App. Ct. 1980).

Pursuant to 815 ILCS 705/3, a franchise is a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which the franchisee markets, sells and/or distributes the franchisor's products under a marketing plan/system prescribed and/or suggested by the supplier that was substantially associated with the supplier's trademark and where the distributor granted the right to engage in such business is required to pay to the franchisor or an affiliate of the franchisor, directly or indirectly, a franchise fee of $500 or greater.

Thus, to prevail, the client will need to show that there was (A) a marketing plan associated with the supplier's trademark and (B) the payment of a marketing fee of $500 or greater.

A. Marketing Plan Associated with Supplier's Trademark.

A relationship could be deemed a franchise when a distributor markets, sells and/or distributes products under a marketing plan/system prescribed and/or suggested by the supplier that is substantially associated with the supplier's trademark.

What is a "marketing plan"? The statute 805 ILCS 705/3(18) provides an answer:

> "Marketing plan or system" means a plan or system relating to some aspect of the conduct of a party to a contract in conducting business, including but not limited to
> (a) specification of price, or special pricing systems or discount plans,
> (b) use of particular sales or display equipment or merchandising devices,

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Franchise Agreement *(cont'd)*

> (c) use of specific sales techniques,
> (d) use of advertising or promotional materials or cooperation in advertising efforts; provided that an agreement is not a marketing plan or system solely because a manufacturer or distributor of goods reserves the right to occasionally require sale at a special reduced price which is advertised on the container or packaging material in which the product is regularly sold, if the reduced price is absorbed by the manufacturer or distributor."

Adherence to a marketing plan is defined as "advice given to the purchaser on how to sell the franchisor's product or service." See 14 Ill. Adm. Code § 200.102(a). Also, under Illinois law, the marketing plan need not be required, but merely suggested. 815 ILCS 705/3(1)(a).

In the example described in the beginning of this article, the distributor would have the argument that the supplier had promoted it as being one of its branches or offices and that it was required during the relationship to have promotional materials with the supplier's logo at its showroom. The distributor's argument in essence would be that if it walks like a duck and it quacks like a duck, it's a duck. The supplier's response would most likely be that it did not exercise sufficient control over the client to be deemed a franchise and that the client was free to market on its own at all times.

B. Franchise Fee of $500 or More.

Oftentimes, the supplier will argue that there was no franchise fee because no direct franchise fee was ever charged. However, the franchise fee requirement can be indirect and be present regardless of the designation given to or the form of the fee. *To-Am Equip. v. Mitsubishi*, 152 F.3d 658, 661-62 (7th Cir. 1998); 14 Ill. Adm. Code 200.105.

In *To-Am Equip. v. Mitsubishi*, the Seventh Circuit stated the policy behind the broad and liberal interpretation of what is considered to be a "franchise fee":

> "The sum of $500, all that has to be paid over the entire life of a franchise, is less than small change for most businesses of any size. Furthermore, the regulations explicitly allow this small amount to be paid either in a lump sum or in installments, to be "definite or indefinite" in amount, and to be "partly or wholly contingent" on different, possibly quite unpredictable, variables. In short, the Illinois legislature and the designated Administrator, the Attorney General, could not have been more clear. They wanted to protect a wide class of dealers, distributors, and other "franchisees" from specified acts, such as terminations of their distributorships (franchises) for anything less than "good cause." They might have done so because it is hard to quantify the level of a franchisee's investment in the products or services of the franchisor, and easy for the franchisor to reap the benefits of those investments without full compensation if it can terminate the relationship essentially at will. Or they might have done so based on an empirical assumption (that may or may not be correct--we express no view on the point) that franchisees tend to be weak and in need of a legislative boost in bargaining power. Or the legislature and the Attorney General might have been engaged in wealth distribution, not considering the indirect impact on Illinois citizens. (The Act describes its purpose as being to furnish prospective franchisees with information, and to protect franchisees and franchisors by providing a better understanding of the business and legal relationship between franchisees and franchisors. 815 ILCS 705/2(2). . . . Illinois, like many other states, has made it clear that parties cannot opt out of the coverage of the Act for Illinois franchisees. 815 ILCS 705/41."

Thus, whether or not there was a franchise fee is broadly construed. In addition, courts typically reject the subjective intent of the parties as determinative of whether a franchise relationship is created. *Brenkman v. Belmont Mktg., Inc.*, 87 Ill. App. 3d 1060, 1063 (Ill. App. Ct. 1980) ("None of the criteria set forth in the statute make the subjective intent of the parties a determinative factor in identifying a franchise relation.").

Oftentimes, being required to purchase products from the supplier at marked up prices will count toward the $500 franchise fee requirements. Whether or not a mark-up for which the distributor purchased from the supplier will be considered part of a franchise fee or will instead be considered a bona fide wholesale or retail price is an issue of fact for the jury. *Live Cryo, LLC v. CryoUSA Import & Sales, LLC,* 2017 U.S. Dist. LEXIS 149850 at *17 (E.D. Mich. Sept. 15, 2017); *Blanton v. Mobil Oil Corp.,* 721 F.2d 1207, 1211 (9th Cir. 1983).

Finally, in line with the liberal interpretation as to what counts toward the $500 franchise fee, the regulations interpreting the Franchise Act provide that training programs required by the supplier may be counted toward the payment of a franchise fee. 14 Ill. Adm. Code 200.106 (a)(c).

In conclusion, it is important to be aware that claims can be brought for the breach/wrongful termination of franchise relationships even when there is no written franchise agreement, if certain factors are present. The potential for such a claim should be considered any time that a termination of a distribution agreement is being litigated when the supplier has multiple exclusive distributors.

Alon Stein is Founder of Stein Law Offices of Illinois and Wisconsin, and President of the Israeli-American Bar Association.

A Fair Payout–or a Disaster Waiting to Happen

by Michael H. Traison, Bozena M. Diaz, Jocelyn E. Lupetin, and Amanda A. Tersigni

In 2020 alone, approximately 7,300 companies filed for Chapter 11 bankruptcy according to the U.S. Government Accountability Office. Of those corporate debtors, 42 were found to have awarded pre-bankruptcy retention bonuses to a total of 223 executives, with the bonuses totaling approximately $165 million. These pre-bankruptcy bonuses were given to executives anywhere from five months to two days before the filing. Virtually none of the bonuses paid were approved by a court. Although these pre-bankruptcy bonuses seem like a minority among the 2020 Chapter 11 cases, they have been the topic of much recent discussion surrounding insolvent corporations. Not only do they raise questions about how many more executives may seek them if we face a more severe economic downturn, but they also raise significant concerns of corporate creditors who, as a result thereof, are often effectively forced to accept less than full payment on pre-petition debts owed to them. This article summarizes the current state of the law and potential code changes to combat perceived abuses.

I. The Handing Out of Executive Bonuses, Both Before and During Bankruptcy

Corporations have long used hefty bonuses to reward and incentivize executives, a phenomenon that has been particularly controversial for decades in connection with prominent bankruptcy cases such as *In re Enron Corp.*, Bankr. S.D.N.Y. Case No. 01-16034 and, more recently, *In re CEC Entertainment, Inc.*, Bankr. S.D. Tex. 20-33163, *In re Rental Car Intermediate Holdings, LLC,* Bankr. D. Del. Case No. 20-11247, *In re Neiman Marcus Grp. LTD LLC,* Bankr. S.D. Tex. Case No. 20-32519, and *In re Whiting Petroleum Corp.*, S.D. Tex. Case No. 20-32021, to name a few.

Prior to the 2005 amendments to the Bankruptcy Code (the "Code"), many corporations considering bankruptcy issued bonuses to senior management executives to retain those individuals whose services were believed to be critical for the reorganization process. These benefits were often part of the corporation's Key Employee Retention Plan (KERP) and served as motivation for upper management to remain with the company throughout the bankruptcy. The bankruptcy courts would determine whether these "pay-to-stay" bonuses were appropriate and of "sound business judgment" on a case-by-case basis.

In recent years, it has become standard practice for many corporations to pay executive bonuses just weeks or even days before a Chapter 11 filing. This practice is predicated on the theory that bankruptcy laws will not apply until the corporation is actually in bankruptcy and is alleged to serve as a means to retain valuable executives to stay on board and help reorganize the company.

However, recent developments require a corporate debtor to satisfy several factors pursuant to the more restrictive confines of Section 503(c) of the Code before the bankruptcy court will approve the KERP payment(s), discussed in greater detail below. The court in *In re Borders Group, Inc,* 453 B.R. 459, 470 (Bankr. S.D.N.Y. 2011), stated that "[a]ttempts to characterize what are essentially prohibited retention programs as 'incentive' programs in order to bypass the requirements of section 503(c)(1) are looked upon with disfavor." Courts may scrutinize certain payment schemes set up by the debtor corporation which do not look like retention bonuses on their face, but "[i]f it walks like a duck (KERP) and quacks like a duck (KERP), it's a duck (KERP)," *In re Dana Corp.,* 351 B.R. 96, 102 n. 3 (Bankr. S.D.N.Y. 2006).

II. Section 503(c) of the Code

Section 503(c)(1) was enacted to create "a set of challenging standards" and "high hurdles" that failing corporations would need to overcome before retention bonuses could be paid. *In re Borders Grp., Inc.*, 453 B.R. at 470. Pursuant to Section 503(c)(1), a corporate debtor may not pay an executive a retention bonus unless: (i) the executive has a bona fide job offer from another business at the same or greater rate of compensation; (ii) the executive's services are essential to the survival of the corporation; and (iii) the retention bonus is not greater than ten times the amount of the average bonus payments given to non-management employees during the same calendar year or, if no such bonuses were given, no greater than 25 percent of the amount of any similar payment made to the executive during the calendar year preceding the year in which the payment is made. Effectively, Section 503(c)(1) limits the debtor corporation's ability to give insiders and executives certain awards and bonuses during the bankruptcy proceeding.

Notably, however, while Section 503(c)(1) may have alleviated certain abuse concerns occurring *throughout the course of the bankruptcy*, there is no similar restriction on a corporation issuing an executive bonus *in the days leading up to* the bankruptcy filing, which is the reason why these hefty bonuses continue to be paid by failing corporations.

One may wonder whether these executive bonuses "conveniently" paid out just prior to the company's bankruptcy filing should be analyzed under a framework like Section 503(c) of the Code. Alternatively, the question arises as to whether these corporations are simply benefitting from an end run around Section 503(c) and arguably making fraudulent transfers pre-petition.

III. Potential Solutions to Overcome Abuses Associated with Pre-Bankruptcy Executive Bonuses

To remedy these issues, the U.S. Government Accountability Office (GAO) recently recommended that Congress amend the Code to modify the "less-than-effective" version of Section 503(c) to restrict corporations from freely handing out bonuses pre-bankruptcy. As per the GAO's recommendation, the amendment should "clearly subject bonuses that debtors pay executives shortly before a bankruptcy filing to the bankruptcy court oversight and specify factors that courts should consider in order to approve such bonuses."

(Continued on next page)

A Fair Payout *(cont'd)*

The recommended amendment raises concerns that bankruptcy courts will find that the pre-bankruptcy executive retention bonus amounts to a fraudulent conveyance, a concept articulated in Section 548 of the Code. The term "fraudulent conveyance" is used to describe transfers by an insolvent debtor for which it did not receive something of reasonably equivalent value in return. However, Bankruptcy Judge Laurie Selber Silverstein in *Jalbert v. Flanagan* (*In re F-Squared Inv. Mgmt., LLC*), 600 B.R. 294 (Bankr. D. Del. 2019) reminded us of potential limitations in place when seeking to unwind transfers and recover assets under Section 548.

In *F-Squared Inv. Mgmt., LLC*, the Trustee of a liquidation trust sued four employees of the corporate debtor who were paid bonuses which were in accordance with engagement agreements and the employee handbook while the company was insolvent. The Trustee sought to recover the bonus payments as fraudulent conveyances for the benefit of the estate and creditors. The Trustee's argument in this regard was straightforward: when the debtor paid the bonuses to its employees, the debtor was insolvent, was not paying its creditors, and was not obligated to pay such bonuses.

The Trustee's position—that paying the discretionary bonuses while leaving some creditors unpaid was unfair and fraudulent—seems more than reasonable. However, Judge Silverstein adopted the debtor's argument that the bonus payments were not, per se, a fraud upon creditors, concluding that the payments could potentially add value to the debtor's business. The court went on to emphasize that even a slight chance that a benefit might be conferred upon the debtor is sufficient to show some value has been received.

As suggested by the GAO in its recommendation referred to above, pre-bankruptcy retention bonuses could be subjected to Section 548 of the Code. Although, theoretically and as noted by the GAO, this tool could be employed by creditors' committees or even a trustee as an attempt to recover pre-bankruptcy bonuses, the strength of such argument is unclear at this point. As stressed by Judge Silverstein in *F-Squared Inv. Mgmt., LLC,* a determination of whether value is received by a debtor is an inherently factual determination to be made on a case-by-case basis looking into the circumstances of the transaction at the time it occurred. The Third Circuit, for example, follows a two-part inquiry to determine whether a transaction was for a reasonable equivalent value. *See In re F-Squared Inv. Mgmt., LLC,* 600 B.R. at 304. First, the court must make "an express factual determination as to whether the debtor received any value at all." *Id.* If so, the court will then determine, under a totality of circumstances, whether the value was reasonably equivalent to what the debtor gave up. *Id.* "Any value" is subject to "*any benefit*" the debtor may receive, either directly or indirectly, tangible or intangible. *Id.* (emphasis in original). Even the showing that "*some value*" has been conferred is sufficient. *Id.* (emphasis in original). Courts throughout other circuits employ a similar, if not identical, two-step inquiry. *See e.g., M&M Elec. Supply Co., Inc. v. Blais (In re Blais)*, AP No. 18-1034-MAF, 2021 WL 4483099, at *15-16 (Bankr. D. N.H. Sept. 30, 2021); S*tone v. Morton Cmty. Bank (In re Int'l Supply Co.),* 631 B.R. 331, 339 (Bankr. C.D. Ill. 2021); *In re All Terrain, LLC,* 625 B.R. 462, 472 (Bankr. D. Idaho 2020); *Gold v. Chaaban (In re Chaaban)*, AP No. 19-04294, 2020 WL 1183290, at *3 (Bankr. E.D. Mich. Mar. 10, 2020); *Feltman v. Wells Fargo Bank, N.A. (In re TS Emp't, Inc.),* 597 B.R. 494, 526 (Bankr. S.D.N.Y. 2019).

In mid-October 2021, the "No Bonuses in Bankruptcy Act of 2021" ("Act") was introduced in the House. This Act incorporates concerns and recommendations addressed by the GAO. The amendments to the Code proposed by the Act would modify Section 503 to prevent the bankrupt company from giving bonuses to employees earning $250,000 or more. The Act also modifies Section 547, which relates to preferences, to allow the trustee to claw back certain bonuses made within the six-month period immediately preceding a corporate debtor's Chapter 11 filing if the bonus would not have been allowed under Sections 503(c) or (d) of the Code. At this stage, the Act has been referred to the House Judiciary Committee but its future is unknown.

IV. Conclusion

Pre-bankruptcy executive bonuses have been the focus of much discussion in the corporate arena, stirring outrage among many. Yet little has been done to curb the payouts. The aforesaid discussed potential changes to the Code through the passage of the Act would prevent the payment of many executive retention bonuses pre-bankruptcy, but whether the law will pass remains to be seen.

Corporations considering a Chapter 11 filing that are unaware of or chose to ignore the possibility of these changes run the risk of an adversary proceeding being commenced during their bankruptcy case to challenge the issuance of such bonuses, potentially resulting in such payments being clawed back as preferential payments or fraudulent conveyances. Staying abreast of developments in this area is important for corporate debtors, as well as their creditors.

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Condominium Law Panel

by Joel L. Chupack

On November 21, 2021, Decalogue held its annual joint program with Lincolnwood Jewish Congregation A.G. Beth Israel (LJC). Every year, we work with LJC to find a timely topic of interest to our members, and the annual program is always open to the public. This year, the topic was "Rehabilitating Condominium Law – What Matters Now."

On the morning of June 24, 2021, without warning and without an impact, a wing of the Champlain Towers South in Surfside, Florida crumbled to the ground. People throughout this country and worldwide watched the replays of the building crumbling in disbelief. Our eyes could not believe the speed of the collapse. Our stomachs could not withstand the death and tragedy that awaited the families. Our minds could not comprehend how this could have happened. Ninety-seven people lost their lives.

This tragedy particularly shocked those who live in mid-rise and high-rise buildings. Also, considering that in any given year about half of all home sales in Chicago are condominiums, there was significant interest in whether a Surfside-like tragedy could happen here. Condo boards looked anew at their property and infrastructure. They called architects and structural engineers to inspect their buildings. Insurance companies revised their underwriting policies.

For the program, Decalogue compiled the following panel to address the many questions raised by the Surfside tragedy: Peter Powers, R.A., president and principal of Klein & Hoffman, an architectural and structural engineering company; Nancy Ayers, senior vice president of Alliant/Mesirow and manager of its Residential Risk Management Practice; Matthew Goldberg, partner at Richman, Goldberg & Gorham, a law firm with a concentrated practice in condominium law; and Judge Leonard Murray, Supervising Judge of the Housing Division of the 1st Municipal District of the Cook County Circuit Court.

Due to the pandemic, the program was conducted virtually. Each panelist gave a short overview of how the Surfside tragedy has affected their practice and procedures. This was followed by an hour of questions and answers. The panelists made insightful observations as to how the tragedy will affect their discipline. Among the matters they raised were the following:

Architect Powers explained the difficulty of attributing the collapse of Champlain Towers South to a particular architectural or engineering flaw, noting the countless theories out there, including the most recent theory that soil removal from construction of a new building south of the tower compromised the land underneath the tower. He discussed the differences among a "maintenance plan," a "structural engineering report," and a "reserve study," and the need to plan and accumulate reserves for the repair and replacement of building systems and structural components.

Nancy Ayers emphasized the need for boards to understand what is, and what is not, covered under an association's casualty policy. It was surprising to hear that the insurer of Champlain Towers South paid out the $50 million policy in full even though "collapse" was an exclusion under the policy. The insurer determined that the cost of the litigation in defending lawsuits could have exceeded the policy limits. She warned that underwriting policies will change and that associations that do not have structural engineering reports and reserve studies may be uninsurable.

Matthew Goldberg alerted the audience to recent changes in Fannie Mae's requirements for underwriting loans on condo purchases. If a building has significant deferred maintenance or inadequate reserves, Fannie Mae will not underwrite the loan. This in turn will make it harder to sell and drive down prices. He warned that condo associations must be vigilant in periodically assessing the buildings' systems and components. This is easier said than done because, after all, the board is comprised of lay people, and there is a general attitude among condo owners to resist an increase in regular assessments or to levy a special assessment. He also discussed reserve requirements under the Condominium Property Act.

Judge Murray explained the operation of Housing Court, in general, and how it affects condominium buildings in particular. Before making findings and issuing rulings, Judge Murray, on occasion, has viewed properties with inspectors to better understand the severity and source of the code violation. If the violations are severe enough, the court could issue an order to vacate the property. Also, where there is no active board and violations exist which are dangerous or hazardous, the court can order that the building be de-converted from condominium status and sold.

In conclusion, there was a consensus amongst the panel that, although the Surfside tragedy occurred in Florida, it will affect the operations, financing, and insurance aspects of condominium ownership here in the Chicagoland area and across the nation.

The Hon. Joel Chupack is a Cook County Circuit Judge in the Chancery Division and a Decalogue Past President.

"Using Law to Fight Antisemitism" Seminar

by Alon Stein

On November 4, 2021, the Decalogue Society of Lawyers, together with the Decalogue Foundation, presented as part of the 2021 Jewish Legal Lecture Series a webinar moderated by Decalogue Foundation president Robert W. Matanky entitled "Using Law to Fight Antisemitism."

The event was co-sponsored by the American Association of Jewish Lawyers and Jurists and the DePaul University College of Law Center for Jewish Law & Judaic Studies.

The speakers at the event were: Steven H. Resnicoff, Professor of Law and Director of DePaul University College of Law Center for Jewish Law & Judaic Studies; Diane Klein, Visiting Professor, Southern University Law Center and Lecturer, Chapman University School of Law; and Robert A. Katz, Professor of Law and John H. Grimes Fellow, Indiana University McKinney School of Law.

Professor Resnicoff's presentation was entitled "Free Speech, At What Cost?" and focused on the regulation of speech. Professor Resnicoff discussed the view espoused by some of a need for "absolutist" or "near absolutist free speech," a view which does not consider any occasions and/or justifications that courts have applied over time to regulate speech. Professor Resnicoff argues that the absolutist approach also does not evaluate the significance of the harms that arise out of certain types of speech.

Professor Resnicoff contends that the absolutist approach to free speech has always been flawed. Technological changes to the way information is distributed and consumed today discredits the absolutist approach. He states that the absolutist approach to free speech has room for change but, because of the religious zeal for which the absolutist position has garnered, any suggestions for restrictions on speech are usually prevented due to claimed "slippery slope" concerns.

Professor Resnicoff then discussed the "marketplace of ideas" approach to free speech originally proposed by Supreme Court Justice Brandeis in a dissenting opinion. The marketplace of ideas approach provides that the best and only cure against the harm of negative speech is more speech. He noted that this approach is based on the assumption that there is an absolute commercial free market. However, there is no absolute commercial free market because the commercial market is regulated by consumer fraud laws, anti-trust laws, child labor, and other laws. He also noted that the marketplace of ideas approach has not gotten rid of antisemitism.

Professor Resnicoff gave examples of antisemitic speech that could be subject to regulation, such as threats made on college campuses, including intimidation and bullying, irrespective of the truth or falseness of the statements. Professor Resnicoff also stated that, nowadays, it has become extremely easy to spread false information and hate to specific groups. Because people filter out opposing viewpoints, the effect of harmful speech can become magnified. He also stated that any inciting to violence should be prohibited.

Professor Diane Klein next addressed the topic "Is Critical Race Theory Antisemitic?" Professor Klein concluded that, while the occasional person who might be associated with Critical Race Theory (CRT) and/or the Movement for Black Lives (sometimes known as "Black Lives Matter") might say something that is susceptible to an antisemitic interpretation (or that person might be antisemitic), both CRT and/or the Movement for Black Lives are not themselves antisemitic.

Professor Klein talked about how the Movement for Black Lives currently has a policy platform of ending the war on African American communities, an end of all jails and prisons, an end to the war on drugs, an end to the death penalty, an end to money bail, an end to the use of past criminal history, restructuring the tax code, and demilitarization of police and other policies, but it does not mention Jews or Israel. As late as 2016, the Movement for Black Lives' platform called for an end of the United States' aid to Israel and it described Israel as an apartheid state, but that part of the platform is now gone. From the perspective of the Movement for Black Lives, the process in which Europeans became Americans involved the destruction of existing indigenous peoples and their culture, which involved removal and resettlement, and African Americans were forced into labor for this project. Professor Klein notes that Jews did not play a role in this, but that Jews may have benefitted from the creation of the United States on these terms.

Professor Klein also discussed that CRT, which was developed in the 1980s, is a way of understanding race and racism in America. It asks "why?" It focuses on larger systems and structures in American life and it requires that we assess the continuing legacy of anti-Black racism in America today. It asks why things are not better. Professor Klein then discussed the concept of white privilege, which is the idea that all people who are white or appear to be white enjoy certain unearned advantages in American life that are not enjoyed by people who are not white, especially African Americans. There is a debate as to whether American Jews are or are not beneficiaries of white privilege in American life.

Professor Klein concluded by stating that CRT can help us understand the persistence of inequality in America and the types of interventions that might be able to change it. It can help us understand antisemitism better with the aim of combatting it more effectively. Not only is it not inherently antisemitic, it helps combat all forms of prejudice, including antisemitism.

Next, Robert A. Katz addressed the topic entitled "When is Diversity, Equity and Inclusion Training Discriminatory Under the Law?" He asked the question of what does it feel like, as a Jew, to be asked by your employer to participate in a diversity training program that could be perceived as hostile to Jews? He also asked to what extent could Title VII of the Civil Rights Act (which protects people from discrimination due to religion) be used to combat more subtle forms of antisemitism, beyond the most obvious cases of slurs in the workplace?

(Continued on page 13)

Before the Trials, Overcoming the Tribulations: Judicial Candidate Campaign Fundraising

by Ross D. Secler

Among the many challenges that candidates seeking elected office face, candidates most often bemoan one painstaking process above all else: raising the necessary campaign funds. And while many judicial candidates in Illinois may want to avoid thinking of themselves as "political," judicial candidates, before making it to the bench, must still go through many of the same rigorous tribulations as candidates running for any other office. The caveat, of course, is that judicial candidates (whether already serving as judges or not) are subject to strict ethical and campaign finance rules beyond the "regular" rules for other candidates which, among other things, could put the judicial candidate's law license on the line if not followed.

Most of the judicial campaign rules are intended to ensure that the judiciary remains without the appearance of impropriety and to uphold the integrity of the third co-equal branch of government. Whether the rules and laws specifically applicable only to judicial candidates help meet those goals is a matter of continuing debate. However, with the costs of running for office ever increasing, and as the petition filing periods of the upcoming primary and general election approach, it is incumbent upon judicial candidates to understand all the relevant regulations that affect their candidacies and campaigns to avoid becoming a "test" case for a given rule or law's enforcement.

"Regular" Campaign Finance Rules

For most non-federal candidates running for office in Illinois, pursuant to Article 9 of the Illinois Election Code, 10 ILCS 5/1-1, *et seq.*, the rules regarding campaign finances are relatively basic at their core. Over a 12-month period, once you raise or spend more than $5,000 in aggregate on behalf of your candidacy, you must establish a campaign "political committee." 10 ILCS 5/9-1.8, 9-3. Once a political committee is established, it must file quarterly reports of all expenditures and contributions. 10 ILCS 5/9-10(b). Single contributions of $1,000 or more must be reported either within two or five business days after receipt. 10 ILCS 5/9-10(c). Additionally, political committees are subject to various contribution limits depending on the type of committee, with contributions from oneself or immediate family exempted from those limits, and a possible "lifting" of limits once certain thresholds are met. See 10 ILCS 5/9-8.5.

Of course, there are some other nuances and specifics, but these are the basic rules that apply to all candidates and campaign political committees based on the overall policy in favor of requiring transparency in campaign finances. While judicial candidates are technically subject to all these requirements and must work within the State's "normal" campaign finance reporting structure, there are special caveats that only judicial candidates must observe.

Judicial Canons

One such difference is that a judicial candidate is barred from directly soliciting funds or serving as an officer of their own campaign's political committee. *See* Ill. Sup. Ct. R. 67(B)(2) (Canon 7). Additionally, a judicial candidate's committee may only solicit contributions from, or public support for, a given candidate no earlier than one year before an election, and no later than 90 days after the last election in which the candidate participated. *Id.*

Illinois Supreme Court Rule 67 generally addresses inappropriate political activity by judges and judicial candidates, allowing them to speak at gatherings on their own behalf while a candidate for election, distribute pamphlets and other promotional campaign literature supporting their candidacies, and appear in newspaper, television and other media advertisements supporting their candidacies, while restricting various activities demonstrating allegiance to any specific political party (even when running in partisan primaries).

Illinois judicial candidates' campaigns must raise significant amounts of campaign cash to be successful while the judicial candidate cannot have personal involvement in that process. This restriction has long been in place and similar restrictions have been upheld as legitimate measures to protect the integrity of the judiciary. *See Williams-Yulee v. Florida Bar,* 575 U.S. 433, 437-38 (2015).

But, as of November 15, 2021, Illinois law does not end there.

Public Act 102-0668

Last November, Public Act 102-0668 became law and, among other things, made significant changes to judicial campaigns' ability to fundraise. In response to the amount of money spent on the 2020 Supreme Court of Illinois retention election, the relevant portion of the new law attempted to address the issue of so-called "dark money" and out-of-state donors.

The applicable part of the new law prohibits any political committee established to support a candidate for Supreme Court, Appellate Court, or Circuit Court from accepting contributions from **a***ny out-of-state person* or from *any group not required by law to disclose its identity of its contributors* (except for contributions that are not required to be itemized). *See* 10 ILCS 5/9-8.5(b-5). The key here is that *any* "out-of-state person" is prohibited from contributing directly to a judicial campaign committee; it does not matter if, for example, the person is a direct family member of the candidate. Curiously, the new law states that contributions are prohibited from an "out-of-state person, as defined in this Article," but there is no definition of an "out-of-state person" in Article 9 of the Illinois Election Code. Cf. 10 ILCS 5/9-1.6 (defining "person" as a natural person, trust, partnership, committee, association, corporation, or any other organization or group of persons).

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Campaign Fundraising *(cont'd)*

The other key element of the new law prohibits judicial candidate campaign committees from accepting contributions from, for example, non-profit 501(c)(4) organizations that are not required to disclose their individual donors.

The new law also prohibits any contributions being made in another person's name, accepting reimbursements from another person for a contribution made in his or her own name, making anonymous contributions, and predicating contributions on future employment or certain other benefits – but these actions are all generally illegal or improper in any event.

Given the breadth of the new law's application, the new law, while well-intentioned, has caused significant headache and hardship with judicial candidates' campaigns being barred from tapping the potential contributions from the candidate's out-of-state family and friends who, ironically, would probably be the *least* likely to ever have a matter appear before the candidate after assuming the bench. There are other concerns with the constitutionality of these restrictions, but which candidate wants to be the test case?

Conclusion

The sanctity of the judiciary may never be completely insulated from the influence of partisan interests, and there are many other ways that a judicial candidate can run afoul of legal and ethical boundaries. Still, elections have long been established as the most universally fair means for determining public representatives and officials, and campaigning is a necessary function of the electoral process. This is especially true for judicial candidates whose elections often appear at the end of a long ballot. The challenge arises when attempting to maintain a neutral playing field for all candidates. Illinois voters have witnessed some of the effect of having large donors and "dark money" sources funding campaigns, potentially leaving voters misinformed and judicial candidates in an ethical minefield. Though the new legislation may aim to curb that influence, the fact remains that judges and judicial candidates are under enormous pressure to promote their name and message to the public so as to win an election while, at the same time, being required to ensure that they are prepared to enter office ready to fairly administer justice. With so much potentially on the line, and with so many changing requirements, any judicial candidate must become very aware of the laws and regulations (and moreover the practical, ethical concerns) surrounding judicial elections prior to joining the race.

Ross D. Secler focuses his practice representing municipalities, school districts, and townships in addition to his wide array of experience in election and political law, counseling clients through the strategic, legal, and regulatory frameworks governing political campaigns, organizations, and candidates. Ross advises candidates, political committees, local election officials, and election authorities in their different capacities as they proceed through the electoral process, including litigation before the Circuit, Appellate, and Supreme Court. Ross then serves as counsel to local governments and the elected officials so they can best serve in their official roles.

Antisemitism Seminar *(cont'd)*

Professor Katz's talk discussed a recent EEOC complaint filed by two Jewish mental health clinicians at Stanford who alleged that their employers fostered a hostile work environment by placing them into a program to learn about white privilege, specifically for white employees. The program used a loaded term, "white supremacy," to describe the system that maintains and perpetuates white privilege, and it asserted that those who benefited from white privilege are complicit in white supremacy. The Plaintiffs, who were Ashkenazi Jews, objected to being placed into the white group, called the "White Accountability Group," on the grounds that as Jews they did not feel an affinity to the white identity, that placing them in this group erased their Jewish identity, and that by placing them in this group, the program endorsed the narrative that Jews were connected to white supremacy.

Professor Katz stated that the most troublesome part of this complaint was connecting the Jews to white supremacy, which most Jews identify with neo-Nazis, especially if it persists after the problem with which such a connection has been pointed out. Professor Katz also stated that, regardless of whether this complaint will prevail, it was worth filing the complaint with the EEOC because it could lead to positive change.

Finally, it was announced that Professors Klein and Katz are co-authoring a casebook about Jews, antisemitism, and the law, and there was a conference called "Law Versus Antisemitism" held at Indiana University School of Law on March 13-14, 2022. They are also designing a course to go with their casebook as to how to use the law to combat antisemitism.

Overall, it was an interesting evening with these very engaging speakers and it got a lot of the participants thinking about some very important questions and issues that are relevant today.

Alon Stein is Founder of Stein Law Offices of Illinois and Wisconsin, and President of the Israeli-American Bar Association.

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
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Mishpat Ivri – Code of Jewish Law (Part II)

by Adv. A. Amos Fried

In the previous installment, we reviewed the origins of "*Mishpat Ivri*" (lit. "Hebrew Law"), referring to it as a kind of Jewish secular legal code, addressing matters of civil, criminal, administrative, and even constitutional law. Founded upon Jewish legal sources from antiquity onwards and much like the modern revival of the Hebrew language, Hebrew Law was adopted by early Zionists to formulate an indigenous legal system to govern the nascent Jewish State. Thus, but a few years after Israel's founding, Supreme Court Justice Shimon Agranat (originally from Louisville, Kentucky and eventually appointed Chief Justice) emphatically declared that "the Jewish nation has treasured Hebrew Law, throughout all eras and diasporas, as its special property - a fundamental part of its iron-clad assets. Indeed, Hebrew Law served in the past as the national law of the Jews, and even today bears a national character with respect to Jews wherever they are." C.A. 191/51 *Skornik v. Skornik.*

Over the years, various efforts were undertaken to instill Hebrew Law as an essential component of the decision making process throughout Israel's judicial branch. Foremost among these was the establishment of an independent Hebrew Law Department within Israel's Ministry of Justice, whose declared purpose remains to this day as codifying Torah Law, surveying ongoing legislation in the light of "original Hebrew Law," preparing systematic proposals based on the "foundations of the tradition," and more. Above all, this Hebrew Law Department is entrusted with the application of Israel's Foundations of Law Statute of 1980.

As discussed previously, when courts encounter a *lacuna* in the law, the Foundations of Law Statute instructs that such instances shall be decided according to "*the principles of freedom, justice, equity and peace of Israel's heritage.*" Eventually, this directive was amended so as to mention specifically "*Mishpat Ivri,*" i.e. when faced with legal questions where no answer is found in the statutes, caselaw or by analogy, the courts shall rule "*in the light of the principles of freedom, justice, equity and peace of the Hebrew Law and Israel's heritage.*"

What kind of role does Hebrew Law play in practice? Here are some interesting examples:

1) In H.C.J. 1892/14 *The Association for Civil Rights in Israel et al. v. Minister of Public Security et al.*, Israel's Supreme Court (in its capacity as the High Court of Justice), heard a petition concerning alleged overcrowding in Israeli prisons. In rendering the majority opinion in favor of the petitioners, Deputy Chief Justice Elyakim Rubinstein took the liberty of addressing at length the topic of treatment of prisoners "in the Jewish heritage" in general and under Hebrew Law in particular. Noting that prison per se was not considered as a legitimate punishment under the Torah, nor for the most part in the eyes of the Talmudic sages, it nevertheless has been accepted as "a necessary evil" and thus is subject to the precepts of the Halacha (Jewish religious law), including the duty to safeguard prisoners' dignity and provide for their elementary needs. "But most importantly for the present case, it seeks to protect the dignity of the vulnerable prisoner who requires rehabilitation. Hebrew Law would certainly support easing the conditions of prisoners to the extent that it does not undermine the purposes of punishment."

2) In H.C.J. 5016/96 *Horev et al. v. Minister of Transportation et al.,* Israel's Minister of Transportation was called to task for ordering the closure of a major thoroughfare traversing within a number of Jerusalem's Haredi (ultra-orthodox) neighborhoods on Sabbaths and Jewish holidays during hours of prayer. Secular residents of the area claimed an infringement of their right to freedom of movement. The High Court of Justice roundly negated the Minister's decree, ruling that he did not sufficiently take into consideration the interests of the local secular population. Indeed, the 6-1 majority held that, with all due respect to the sanctity of the Shabbat, freedom of movement is a basic right which under these circumstances cannot be denied.

The sole dissenting opinion, however, issued by Justice Zvi Tal argued that while freedom of movement is indeed amongst the most important of liberties, it is nevertheless relative and not absolute. "The Shabbat, on the other hand, in the eyes of the "People who sanctify the Seventh" [an allusion to Jewish liturgy] is an almost absolute value, and it is overruled only for the sake of saving lives, or even the prospect of saving lives."

Interestingly enough, one of the judges from the majority, Justice Mishel Cheshin, also relied on Hebrew Law to *reach the opposite conclusion altogether.* In his opinion, the relevant correlation is to a discussion in the Talmud regarding a public passageway that crosses through a privately owned field. Should the field's owner attempt to close off the corridor and provide for the public an alternate route, he not only is denied such a closure, he also forfeits his rights to the additional pathway he hoped would substitute for the former. So, too, the Transportation Minister is prohibited from restricting access to a public road, *a fortiori* when even the alternative route already belongs to the public!

3) How does Hebrew Law address admissibility of unlawfully obtained evidence? We've cited in the past a case decided by Israel's Supreme Court regarding the cellphones of two of former Prime Minister Binyamin Netanyahu's top advisors, suspected of harassing a state's witness in the bribery cases being brought against their employer. V.C.M. 1758/20 *Erlich et al. v. State of Israel.* The police extracted information from the two aides' cell phones without a court order, which was only issued after the fact.

In his decision affirming the lower court's injunction to allow the disputed evidence, Supreme Court Justice Noam Solberg referred to the Halachic principle of "a Mitzvah achieved by way of a transgression – is not a Mitzvah," which means that the performance of a commandment is disqualified if it entails the violation of another commandment. The classic example discussed in the Talmud is a person who steals a lulav in order to perform the ritual of the four species on Succot.

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Mishpat Ivri (cont'd)

Nevertheless, Justice Solberg found that, under the circumstances, it was possible that the presiding judge would have consented to issue the search warrant in the first place on the basis of evidence the police alleged to have in their possession previously.

In a dissenting opinion, Deputy Chief Justice Hanan Meltzer relies specifically on the Foundations of the Law Statute in order to invoke another Talmudic principle whereby "when a person can achieve a result by permitted means, he will not prefer a prohibited way." All the more so does this apply to state authorities, and the fact that the police in this case chose an illegal path should be held against them. Hence, Justice Meltzer recommended disqualifying the evidence both to protect the defendants' rights and "to educate and deter" law enforcement agencies from breaching the relevant laws and regulations.

4) In a decision from September 2021, Israel's Supreme Court ruled on the question of whether or not it is possible to award compensation for "impairment of fetal autonomy." L.C.A 1081/21 *Plonit et al. v. Clalit Health Services et al.* The petitioner was wrongly diagnosed with a serious prenatal defect, leading her parents to attempt aborting her as a fetus. In fact, "Plonit" (the Israeli equivalent to "Jane Doe") was born prematurely and, as a result, suffered from severe disabilities. Only afterwards was it revealed that the original diagnosis was significantly incorrect, to the extent that the parents would not have attempted the abortion in the first place. Did Plonit, while still only a fetus, have an independent cause of action for medical negligence on account of the mistaken diagnosis? Underlying that question was the fundamental issue of the rights of a fetus; put otherwise – is a fetus a legal entity eligible for compensation?

Supreme Court Justice David Mintz examined the matter in light of Hebrew Law and found that the answer is not sufficiently free of doubt. Under the *Halacha*, there exists a distinction between when the embryo is ingrained with a soul (immediately) and at what point an abortion becomes prohibited, or in more legal terms – when exactly an unborn merits protection under the Torah (about which there remain several disputes). Referring to various Talmudic texts, Justice Mintz quotes Rabbinic opinions ranging from the moment of conception, to only after 40 days of pregnancy, and finally, up until actual delivery. (To be sure, the *Halacha* treats the complex issue of abortion with utmost gravity, condoning it only in particular circumstances.) Accordingly, a valid cause of action on behalf of the embryo in this case could not be founded upon Hebrew Law.

What do these instances of referencing Hebrew Law have in common? Well, most notably Justices Rubinstein, Tal, Solberg and Mintz mentioned above, are all identified as "religious," i.e. yarmulke-wearing, Torah-observant Jews. It would not be unreasonable to propose therefore that this fact might explain their propensity to allude to Hebrew Law when the opportunity presents itself. More telling, however, is that most of the opinions discussed above analyzed the pertinence of Hebrew Law as an additional support to conclusions the judges evidently had already reached. Almost, it would seem, as a sort of ornamentation adorning the mainstay of their decisions. The exceptions appear at the extremes – Justice Solberg ruled against the Hebrew Law's prohibition of admitting tainted evidence, whereas Justice Tal relied solely on the sanctity of the Shabbat to deprive citizens access to a public thoroughfare.

In the next and final installment on this topic, I hope to discuss the fundamental and contentious issue of what status the modern Israeli court system obtains under Hebrew Law and the variety of alternative venues available to parties preferring to adjudicate their disputes in strict accordance with the *Halacha.*

Adv. A. Amos Fried, a native of Chicago, is a licensed member of both the Israel and New York State Bar Associations and has been practicing law in Jerusalem for over 29 years. He specializes in civil litigation, criminal representation and commercial law. His private law firm is located at 5 Ramban St. in Rehavia, Jerusalem, and he can be reached at 011-972-544-931359, or aafried@aafriedlaw.com.

Guardianship in Illinois, #FreeBritney, and Jewish Values

by Charles P. Golbert

The #FreeBritney movement has focused national attention on guardianship. While guardianship affords protections for vulnerable people, it is also an intrusion upon an individual's autonomy and has the potential for abuse.

This article will summarize guardianship in Illinois, including existing protections to safeguard the rights of the individual. The article will then suggest areas where guardianship practice and policy can be improved to prevent abuses. In doing so, the article will discuss the disturbing recent infusion of a profit motive into guardianship with the proliferation of for-profit guardianship corporations. Finally, the article will examine key Jewish values that are reflected in the provision of high quality, compassionate guardianship services.

Our Office

The Office of the Cook County Public Guardian serves as guardian for some 700 adults with cognitive disabilities. We serve as the guardian of last resort, meaning that the people under our guardianship have no appropriate family members or others to act as their guardian. They have either outlived all of their family or their family members are abusive, neglectful, financially exploitative, uninvolved, or otherwise inappropriate or unable to act as their guardian.

Most of the people we serve are older and have age-related dementia, such as Alzheimer's disease, although we also serve some younger people with developmental delays, brain injuries, and mental health diagnoses. The people under our guardianship come from all walks of life and from every corner of Cook County. As part of our guardianship services, we manage more than $100 million in diverse estate assets including assets in other states and countries.

Our office also represents more than 7,000 children in abuse and neglect cases in the Juvenile Division of the Circuit Court, and 700 children in some of the most acrimonious custody and parentage disputes in the Domestic Relations Division. With an interdisciplinary staff of 220 professionals, we are one of the largest guardianship and child advocacy offices in the country.

What is Guardianship?

A guardian is a person or entity appointed by the court to make decisions on behalf of an individual with a cognitive disability and to ensure that all of their needs are met. The guardian of an individual's person is responsible for ensuring that the person is living in a safe and appropriate placement, in the least restrictive setting, and is receiving all appropriate medical and clinical care and services. This includes, among other things, all appropriate support, care, comfort, health, education, maintenance, and professional services. *See generally* 755 ILCS 5/11a-17.

The guardian of a person's estate is responsible for legal and financial decisions such as paying a person's bills, managing and investing their money, entering into contracts, and maintaining their home and other possessions. See generally 755 ILCS 5/11a-18. The guardian is required to assist the individual in the development of maximum self-reliance and independence. 755 ILCS 5/11a-17(a).

Protections

Delegating such broad and consequential decisional authority is a considerable deprivation of a person's autonomy and civil rights. Therefore, in Illinois, substantial due process protections are afforded both before a guardian can be appointed and in the execution of the guardian's responsibilities.

First, the petition for guardianship must include a medical report that details the respondent's alleged cognitive disability and consequent need for a guardian. 755 ILCS 5/11a-9(a) and (b). The court may appoint independent experts to assess the need for guardianship. 755 ILCS 5/11a-9(b-5). The court must appoint an independent guardian *ad litem* for the respondent. 755 ILCS 5/11a-10(a). The guardian *ad litem* must meet with the respondent and is authorized to review medical records and speak with appropriate professionals. *Id.* The guardian *ad litem* must file a report with the court about the appropriateness of guardianship and testify at the hearing. *Id.*

The respondent is served with a summons that includes a detailed statement of the respondent's rights. 755 ILCS 5/11a-10(c). The respondent has the right to counsel and the court will appoint an attorney if the individual does not have one. 755 ILCS 5/11a-10(b); 755 ILCS 5/11a-11(a). The respondent has the right to be present, and the hearing may be held at such a location that is convenient to the individual, such as the facility where he or she lives. 755 ILCS 5/11a-11(a); 755 ILCS 5/11a-10(d). The respondent has the right to present evidence, to confront and cross-examine witnesses, and to ask the court to appoint an independent expert. 755 ILCS 5/11a-11(a); 755 ILCS 5/11a-9(b-5). The respondent also has the right to demand a jury trial. 755 ILCS 5/11a-11(a).

The burden of proof to demonstrate that guardianship is necessary is clear and convincing evidence. 755 ILCS 5/11a-3(a). The court is required to make various written findings of fact in support of a decision to appoint a guardian. 755 ILCS 5/11a-12(b) and (c). The court may appoint a guardian only as is necessary to promote the well-being of the respondent and to protect the respondent from neglect, exploitation, or abuse. 755 ILCS 5/11a-3(b).

The court must appoint a limited guardian unless the court finds that a limited guardian will not afford sufficient protection. 755 ILCS 5/11a-12(b) and (c); 755 ILCS 5/11a-3(b). The idea is to delegate to the guardian only those limited authorities necessary to protect the respondent.

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Guardianship in Illinois *(cont'd)*

Once a guardian is appointed, the court supervises the guardianship. Certain actions require specific court approval, such as placement in a nursing home or other residential facility, 755 ILCS 5/11a-14.1, and the sale of real estate. 755 ILCS 5/20-3 through 5/20-12.

The guardian must file a detailed annual report. 755 ILCS 5/11a-17(b). While the report is discretionary with the court, in Cook County it is routinely ordered to be filed at least annually. In estate cases, the guardian must be bonded for at least one and a half times the value of the estate, 755 ILCS 5/11a-12-2 and 12-5(a), and file detailed verified annual accountings. 755 ILCS 5/24-11. In making decisions, the guardian must exercise substituted judgment – determining what the individual under guardianship would want – whenever possible unless the outcome would result in substantial harm. 755 ILCS 5/11a-17(e).

Community Placement and Financial Exploitation Recovery

Our office is a national and even international model for excellence in guardianship services. Guardians, advocates, and academics from all over the country have come to Chicago to study our innovative programs in order to replicate them in their jurisdictions. We have also hosted delegations from different parts of China, Taiwan, Singapore, and Brazil who have come to study best practices in guardianship. Our lawyers are in high demand as speakers at national conferences about cutting edge practices in guardianship. Our lawyers have also served on the boards of directors and in key leadership positions in organizations such as the National Guardianship Association, the National Academy of Elder Law Attorneys, and the Uniform Law Commission's drafting committee that authored the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA).

Our office is particularly well known for its leadership in regard to community placement. Our office has an innovative community placement program that is successful in maintaining about one third of the people under our guardianship in their own homes. We have a home care department dedicated to this mission. This department recruits, trains, and supervises independent contract workers who help care for people at home. Over the years we have litigated three class action lawsuits against various Illinois agencies to secure funds to finance such care, money that would otherwise be used to pay for much more expensive nursing home care. In appropriate cases, we use special needs trusts and reverse mortgages to pay for home care. In clinically suitable cases, we have even put people together as roommates so that they can share expenses while remaining in the community. For more information about our innovative home care program, see Charles Golbert, *Justice for Children, Adults with Disabilities and the Elderly: Reflections from 15 Years as an Attorney with the Office of the Public Guardian of Cook County, Illinois*, 1 DePaul J. for Soc. Justice 51, 79-81. (2016)

Another area where we are a leader is financial exploitation recovery litigation. Unfortunately, financial exploitation of older adults and people with disabilities is an exploding problem in our society. Nearly half of our new intake cases come to us with issues of abuse or financial exploitation. Exploiters have included family members, neighbors, financial advisors, police officers, business associates, landlords, tenants, "friends," professional scammers and, most unfortunately, even lawyers.

To combat this problem, we have a unit of senior lawyers who focus their practice on complex litigation to recover stolen assets. The unit has been extremely successful, recovering more than $60 million over the past decade. We are then able to use the recovered money to care for the individual. We believe that ours is the largest financial recovery practice of its kind in the country in terms of the number of cases litigated and amounts recovered. For more information about the prevalence of financial exploitation in our society and our office's financial exploitation recovery practice, including case studies, see Charles Golbert, *Combating Elder Financial Abuse,* 40 Bifocal 4, p. 59 (Mar.-Apr. 2019); Charles Golbert, *Combating Financial Abuse of the Elderly: The Experience of the Cook County Public Guardian's Office, Illinois, U.S.*, in Ralph Ruebner et al. (eds.), "International and Comparative Law on the Rights of Older Persons" (Vandeplas 2015).

Guardianship Abuses and their Prevention

Because guardianship entails deprivation of decisional authority from people who are particularly vulnerable, abuse can occur despite the rights and protections summarized above. In addition to the Britney Spears case, a recent Amazon documentary, *The Guardians*, details widespread corruption within the guardianship system in Clark County, Nevada. Clark County includes Las Vegas and is one of the country's top retirement destinations. The corruption, malfeasance, and complicity allegedly involved guardians, attorneys, health care providers, and even a judge. A private for-profit guardian and three others, including an attorney she employed, were convicted of perjury, offering false instrument for filing or record, theft, exploitation, and racketeering. Some of the problems with injecting a profit motive into guardianship are discussed below.

Much needs to be done at the national level to prevent such abuses. While Illinois has a model guardianship statute with strong protections, many states have much weaker statutes. For example, some states do not require counsel for the respondent. Some states do not require an independent guardian *ad litem*. Some states have no training requirements or minimum qualifications for guardians. Some states do not provide for substituted decision making. Some states do not even require bonding.

In 2017, the Uniform Law Commission adopted the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA). Some of the Act's provisions are modeled after the protections in Illinois. Enactment of this Act in jurisdictions with weaker guardianship laws would be beneficial.

(continued page 18)

Guardianship in Illinois *(cont'd)*

There is scant research on guardianship, including what models of guardianship and statutory schemes work best. Remarkably, because guardianships usually exist at the county level, we don't even know how many people are under guardianship in the United States.

Collecting data at a national level and facilitating data sharing are some of the objectives of the federal Guardianship Accountability Act, introduced last year by Senators Susan Collins (R-ME) and Bob Casey (D-PA). The legislation also aims to promote best practices in guardianship, improve training for guardians and court officials, and expand the use of background checks through demonstration grants.

Guardianship varies greatly from state to state, and even from county to county. Given the unique vulnerabilities of the people served by guardianship, there is a need for uniformity and national oversight. The reforms mentioned above are a good starting place.

For-Profit Guardianship Corporations

I am deeply concerned about the recent infusion of a profit motive into guardianship with the proliferation of for-profit guardianship corporations for helpless people with no families. While, as discussed above, there is little data on guardianship and which models work best, there is ample data showing that our experiment with injecting a profit motive into nursing home care has been an abysmal failure. Abundant research shows that for-profit nursing homes have far inferior outcomes for their residents than not-for-profit facilities. Lee Friedman et al., *Association Between Types of Residence and Clinical Signs of Neglect in Older Adults,* 65 Gerontology 1, p. 30 (2019); David Grabowski et al., *Effect of Nursing Home Ownership on the Quality of Post-Acute Care: An Instrumental Variables Approach*, 32 J. of Health Economics 1, p. 12 (Jan. 2013); *Non-Profit vs. For-Profit Nursing Homes: Is There a Difference in Care?*, Center for Medicare Advocacy (Mar. 2012) (summarizing research).

Guardian decision-making motivated by profit, as opposed to what is best for the individual, appears to have played a significant role in the abuses in the Britney Spears case and in the abuses in Clark County discussed above. The recent upsurge of for-profit guardianship entities must be closely monitored, studied, and regulated.

Jewish Values Reflected in High-Quality, Compassionate Guardianship

Our office strives to provide the highest quality, compassionate guardianship services, in the least restrictive manner, for those we serve. Over the more than three decades I've had the privilege of working at the Public Guardian's Office, I've been constantly amazed by the concern and sensitivity that our office's outstanding interdisciplinary professionals bring to this mission.
Many values intrinsic to Judaism are manifested in the provision of high quality guardianship services. A few of these include:

- *Tikkun olam*, the obligation to work to heal and repair the world and make the world a better place.
- *Bikur cholim*, the responsibility to visit the sick and infirm and tend to their needs.
- *Kibud zekaynim*, the responsibility to respect and care for the aged.
- The obligation to afford special consideration to widows (*almanot*) and orphans (*yatomim*). In Jewish tradition, this is understood as applying to all vulnerable people.
- The responsibility to perform *mitzvot*, good deeds and acts of kindness, throughout the day.
- *Tzedakah*, the obligation to support charitable organizations. The root of the word *tzedakah*, charity, is *tzedek*, which means justice. The concepts of charity and justice are inextricably intertwined in Jewish tradition.
- The obligation to work to achieve justice. The Torah teaches, "*Tzedek, tzedek tirdof*"; "Justice, justice you shall pursue." Deut. 16:20. The word *tirdof*, to pursue, does not mean passively following the law. Justice is an ideal which we must actively work to achieve.
- *Chesed v'emet*, the obligation to make decisions guided by truth and compassion.
- The belief that all human beings are created in the image of God (*b'tzelem Elohim*) and are imbued with dignity (*kavod*). This is sometimes referred to as *kavod habriyot*, the dignity of the creation.

Conclusion

Providing guardianship services for vulnerable people is a privilege of the highest order. While challenging, it is immensely rewarding. In doing the work, I find inspiration in the dedication and tenacity of the talented people who work for our office, and in the Jewish teachings reflected in our mission.

Charles P. Golbert is the Cook County Public Guardian. The author thanks Howard S. Berk, President of the Illinois Disability Association, for his excellent suggestions that improved this article.

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To Sleep Perchance To…Enhance

by Joe Scally

You're feeling anxious, overwhelmed, stressed out. Your blood pressure is up, your weight is up, you don't look so healthy. You're forgetting things, it's hard to focus, everything seems to take more effort. You're irritable, fatigued, and achy. Do you need a medical exam, psychotherapy, medication? While we recognize that all of those are valuable and often necessary, there's something else you can do that could positively impact all the above listed problems: get more and better sleep.

Lawyers are notoriously sleep deprived. We stay up late or even pull all-nighters to get things done. Some wear functioning on little sleep as a badge of honor. Many lawyers ingest caffeine in various forms to work through fatigue. Alarmingly, some lawyers use more powerful stimulants in the mistaken belief that it will enhance their productivity. Most lawyers have, at some point, woken up in the middle of the night thinking about a client or a case.

While occasional late nights or 3 a.m. ruminations may be unavoidable given the demands of practice, when they become repetitive or habitual our bodies are severely impacted by lack of sleep. The biochemistry of sleep is intricate and fascinating; those details are for another article. A large body of research, based on growing knowledge about that biochemistry, confirms that sleep deprivation can cause all of the problems described above. The same research shows that adequate sleep can lead to improvement in or even elimination of those problems. Good sleep is great for our brains and our bodies. It helps us to learn, remember, work more efficiently, and perform better in a variety of ways. It makes us healthier. It even makes us look better.

Here are just a few of the things you can do to get more and better sleep:

1. **Turn off the lights.** Light emitted by artificial sources, including screens (e.g. computers, cell phones, television), in the hours before bedtime interferes with the body's ability to produce and use melatonin, an important hormone that is essential to the sleep process. Dim the lights in the hours before bedtime. Shut off devices with screens. Instead, read a book, meditate, or have a conversation.

2. **Keep it cool.** When it's bedtime, your core body temperature drops to initiate sleep. Keeping your bedroom temperature somewhere between 60 and 68 degrees supports better sleep. If your feet get cold, wear socks. Being too warm at night can lead to a heightened state of arousal that makes it hard to sleep.

3. **Keep the cork in the bottle.** Alcohol generally does help people fall asleep faster. It also disrupts REM sleep, making it harder for sleep to be rejuvenating. Alcohol may impact women's sleep even more than men's because women metabolize alcohol more quickly. If you are having some drinks, try to stop at least three hours before bedtime.

4. **Change to decaf.** Caffeine is a stimulant. Too much of it and your body is too charged up to get good sleep. This can lead to a cycle of feeling tired, taking more caffeine, feeling more tired, taking even more, and so on. Caffeine has a half life of 5 to 8 hours depending on a person's biology. To improve your sleep, try to stop ingesting any caffeine by 2 pm (earlier if you're especially sensitive to caffeine).

5. **Exercise (at the right time).** Exercise and sleep potentiate each other. When we sleep, our body repairs and restores itself, enhancing the benefits of exercise. Exercise can help us get better sleep. We won't go into detail in this article, but the timing of exercise and its impact on sleep is related to body temperature and hormones which regulate sleep. Exercise early in the day is ideal for the greatest sleep benefit. Even if your full workout is later in the day, doing some activity, for even a few minutes, early in the day can help you sleep. Exercise in the late afternoon or early evening also positively impacts sleep. Exercise in mid-afternoon is health-promoting for a lot of reasons but has fewer benefits for sleep. Working out too close to bedtime interferes with a restful sleep. Motivation to exercise drops when we're tired, leading to fewer and shorter workouts. So, sleep is necessary for exercise to be beneficial. Exercise at the right times and in the right amount aids sleep.

6. **Dress for success.** Wear loose-fitting, non- restrictive garments like boxer shorts, t-shirts, pajamas or nightgowns to bed. Or go naked. This helps your body regulate its temperature for sleep and keeps fluids, like those in the lymphatic system, flowing properly.

7. **Breathe, meditate, visualize, to quiet the chatter in your head.** It's amazing how many thoughts and worries pop into our minds as soon as we hit the pillow. Meditating just before bedtime, using breathing techniques like 4-7-8 breathing, progressive muscle relaxation, visualizing a peaceful place, and other techniques can help calm what is sometimes called the chatter in our monkey minds.

8. **Go to bed early to increase the power of your sleep.** My grandfather used to say: "Every hour of sleep before midnight is worth two after." Turns out he was onto something that sleep science has confirmed. The most rejuvenating sleep occurs between 10 p.m. and 2 a.m. This is based on the cycle of hormone secretions that form our wake-sleep cycle. You don't have to be overly precise about bedtime. The optimal time will vary with each person and where they are on the planet, but our bodies are set up to fall asleep within a few hours of the sunset. That's nature's prompt to do the things we discussed above and settle in for a rejuvenating sleep.
Better sleep improves our health and enhances our productivity. Take an inventory of your sleep habits to see if you're optimizing your opportunities for rejuvenating sleep.

Lawyers who are concerned about themselves or their peers can call the Lawyers' Assistance Program for information about well-being or help with substance use or mental health issues.

Joe Scally, MA, JD, is the Clinical Director at the Illinois Lawyers' Assistance Program (LAP). LAP provides free and confidential services to all Illinois judges, lawyers, and law students to address issues related to mental health, substance use, and compulsive behaviors like gambling.

Redistricting in Illinois

by Aviva Miriam Patt

Public attention to the redistricting battles of 2022 has focused on the national scene as Republicans and Democrats maneuver to take or maintain control of Congress. But there was and still is some drama surrounding local districts here in Illinois, and Decalogue has been a part of it.

Our efforts began in the spring as the state legislature held hearings on redrawing the State Senate and House districts. Decalogue's objective was to create a Jewish-influence state representative district comprising the Jewish areas of West Rogers Park, Peterson Park, Skokie, and Lincolnwood. Agudath Israel was also advocating for such a district and we collaborated on defining its borders and how to present our arguments. Agudath Israel testified early in the hearings process, explaining the reasons why it was important for the Jewish community to have a district in which we could have substantial political influence. Decalogue participated in the next round of hearings in response to the tentative map drawn by the Democratic Redistricting Committee. Our testimony was critical of the proposed map and we asked the legislature to wait for the census numbers to be released before drawing a map. Despite the same request from nearly every organization that testified, the legislature passed a map in May based on data projections from the American Community Survey.

After the census data was released in August and the map was shown to have unconstitutional variances of population, the Redistricting Committee drew a new map and scheduled additional hearings with very short notice. The public testimony was overwhelmingly against the rushed process, together with the Committee's failure to meet any of the requests of any of the non-governmental bodies that had testified. Decalogue opposed the new map, which divided the Jewish community even more than did the first map. We asked for more hearings and more time for organizations to evaluate the impact of the proposed map on their communities. We also asked for them to be given the opportunity to present their own alternative maps. Once again, despite almost unanimous opposition from all the groups that testified, the new map was passed on a party-line vote in September.

While the Democratic leadership hailed the process as the most inclusive and transparent in history, the experience for Decalogue and other civic, community, and religious groups was quite the opposite. There were indeed more hearings throughout the state than in previous redistricting years and all were also on Zoom; the legislators listened politely and thanked everyone for their participation; but it was all theater–none of the requests to keep communities together were instituted and the map that was passed is the most gerrymandered in Illinois' history.

The Republicans filed the first lawsuit, challenging the entire mapping process, followed by MALDEF challenging a few specific districts in Cook County that they claimed deprived Latinos of equal representation. The Hispanic Lawyers Association and Puerto Rican Bar Association joined the MALDEF suit. NAACP later filed a challenge to districts in the Metro East area which had diluted the Black vote. Curiously, no one challenged the reduction of African American districts by half. The United Congress of Community and Religious Organizations drew a new map, including most of what Decalogue had asked for, and was prepared to submit it if the court threw out the Democrats' map and allowed a new map to be considered. Ultimately, the three-judge panel of the U.S. District Court ruled against all the challenges, finding that racial voting patterns are not evident in Illinois.

Decalogue was more hopeful that our efforts to strengthen the Jewish influence in the 9th Judicial Subcircuit would be successful. Unlike legislative redistricting, in which legislators focus on protecting their own re-election chances, there are no incumbent judges running in subcircuits since retention races are countywide. The 9th Subcircuit is far removed from Black and Latino areas that would be struggling to maintain or increase the number of districts for their communities, so our efforts would not conflict with their objectives. Decalogue had informal discussions with a Democratic political consultant who indicated that legislative leaders would be open to our request. So, we drew a map using our proposed legislative district as a base, and added northern Evanston and the lakeshore up to the county line, Glenview, and our main territorial objective, Northbrook. We submitted testimony explaining the history of antisemitism in the legal profession and the difficulty for Jews to be elected to the bench countywide. Agudath Israel testified in favor of including Peterson Park in the 9th Subcircuit. When the legislature voted to postpone redrawing the subcircuits for the 2022 election, we presumed there would be no further action this year. Rather, the legislature surprised everyone with a proposal to increase the number of subcircuits from 15 to 20. At hearings scheduled with short notice, I gave oral testimony outlining the exact boundaries of the Jewish community that we wanted to keep together. While the new map did put Peterson Park in the same subcircuit as West Rogers Park, Skokie and Lincolnwood were inexplicably assigned to another subcircuit, dividing our community and diminishing our political voice. The election this year will be based on the old map but, starting in 2024, it will be much more difficult to elect Jewish judges.

There is one battle still being waged and this one is more hopeful. Decalogue has asked the City Council not to divide the Jewish community in the 50th ward. We submitted both oral and written testimony of the history of Jews in Chicago, specifically West Rogers Park, as well as of the challenges Jews still face as a minority in Chicago. The Jewish community as we defined it is kept intact in both the Coalition and the Rules Committee maps, so whichever is adopted, whether by the City Council or in a voter referendum, we will still have a Jewish-influence ward in Chicago.

Aviva Miriam Patt is the Executive Director of The Decalogue Society of Lawyers and a redistricting reform activist since 1980.

Jewish Women International Releases Report on Domestic Violence in the Jewish Community

by Carrie Seleman

On April 26, 2021, Jewish Women International (JWI), "the leading Jewish organization working to empower women and girls," released a report titled "Domestic Violence in the Jewish Community: A Needs Assessment." The report is the result of a year-long assessment of every domestic violence program serving the Jewish community, with the goal of determining the needs of Jewish survivors and the advocates who serve them and driving new funding, advocacy and awareness to meet those needs. I greatly urge everyone to read the full report, or at least the executive summary. Below is a *very brief* highlight of some of the report's findings.

Key Findings

"The Jewish community is failing survivors and their children," Deborah Rosenbloom, JWI's Chief Program Officer told *The Times of Israel.* "Survivors value the Jewish community but often feel stigmatized by it."

Over 80% of participants in the assessment reported experiencing abuse in the forms of emotional/psychological, physical, financial, custody conflicts, isolation/ostracization, sexual violence, and get refusal - a form of domestic violence unique to the Jewish community. Barriers to escaping reported by over 70% of participants included lack of financial resources, child custody concerns, fear of leaving the relationship, family pressure to stay with their partner, desire to stay with their partner, embarrassment or guilt, and a lack of clergy support.

Being Jewish adds an extra layer of complications to the process of leaving an abusive relationship. Judaism values keeping the family together and maintaining *shalom bayit*, peace in the home. These values can be used to gaslight victims of domestic violence and pressure them to not leave the abusive relationship. There is also the issue of navigating the *beit din* for a *get*, a Jewish divorce. This is not the same process as a civil divorce; it is an additional hurdle and is actually an additional form of abuse if the husband refuses to give a *get*.

The most vital finding of the report to me, though, was that clergy lack the appropriate training and resources to identify, respond to, and educate their community about domestic violence. Clergy reported generally being the first professional that victims of domestic violence approach, and feeling unprepared to understand what their congregants are going through and to provide appropriate resources and support. Additionally, clergy reported wanting to move beyond just responding to domestic violence, wanting to engage in preventive interventions but not knowing what interventions to use.

Outcomes

In response to these findings, JWI has established the National Center on Domestic & Sexual Violence in the Jewish Community. This center is intended to be the hub for trauma-informed training, education, resources, peer support, research, policy development, and community collaboration. It houses the National Collaborative of Jewish Domestic Violence Programs, the Clergy Taskforce to End Domestic Abuse in the Jewish Community, and the Jewish Coordinated Community Response Team.

Additionally, in August 2021, JWI received a grant from the Senser Foundation to fund a partnership with the JCC Association of North America. Through this partnership, JWI will train preschool, after-school and camp staff to support children affected by domestic violence. The program began in November 2021 with a small pilot group of JCCs. By the end of the grant period in 2023, 100 of the 173 JCCs across North America will have participated in the training.

It is encouraging to see a coordinated effort to support Jewish domestic violence survivors and end domestic violence in the Jewish community. This Needs Assessment was a wake-up call to those in the Jewish community who either dismissed domestic violence as not being an issue for Jews or who thought that we were already doing enough. The National Center seems on track to fill the identified gaps in the support provided to the Jewish community.

Carrie Seleman is a member of the Decalogue Society of Lawyer's Board of Managers and the Editor-in-Chief of the Tablets. She works as an Assistant Public Guardian in the Juvenile Division of the Office of the Cook County Public Guardian.

An Island of Heroes

by Judge Megan Goldish and Maria Augustus

We must always take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented.
– Elie Wiesel, Nobel Peace Prize winner, author, Holocaust survivor, humanitarian

September, 1943: Maria's grandmother was barely ten years old. She lived on the Greek Island of Zakinthos, which was under the brutal occupation of the Nazis. The Nazis used to enter their homes and take their food or whatever items they wanted. The Nazis ordered the Zakinthians to turn over their valuables, their weapons, and, worst of all, the names of all the Jewish people on the Island. But the Zakinthians stayed united against the Nazis. They concealed their weapons and valuables. They hid their Jewish friends and neighbors in piles of hay, in barns, in boats, and in their homes—any place to keep them from being discovered. *Zakinthos is one of the only places in the world to protect its entire Jewish population during World War II.*

Maria's in-laws are also from Zakinthos. Her father-in-law and her grandmother remember that Zakinthians did not differentiate between Jewish and Christian Zakinthians. They lived together as friends and family. This *Yom HaShoah*, we should remember and be grateful for the courage of the people of Zakinthos, who did not stand idly by, but who stood up to evil.

For evil to flourish it only requires good men to do nothing.
– Simon Wiesenthal, Holocaust Survivor, Humanitarian

April 27, 2022, is Y*om Hashoah*, a day of commemoration of Jews and others murdered in the Holocaust. It is also a day to honor the heroes of the resistance. Nazis murdered six million Jews in the Holocaust, but that number would have been even higher had it not been for those who risked their own lives to save Jews. Often, people did not resist for fear of retribution or because Nazis provided incentives to those who affirmatively contributed to the annihilation of the Jews. This dynamic emphasizes the courage and heroism of those buried on the paths of the Garden of the Righteous Among Nations at Yad Vashem, Israel's memorial to the Holocaust.

Don't let the ugly in others kill the beauty in you.
– Unknown

The Garden of the Righteous honors the heroic non-Jews who risked their lives to save Jews during the Holocaust. It is the highest Israeli honor bestowed upon non-Jews, and the recipient also receives honorary citizenship. Two such heroic men are buried there: Loukas Karrer and Bishop Chrysostomos of the Greek island of Zakinthos.

Those who have courage and faith shall never perish in misery.
– Anne Frank

These men represent the unique bravery demonstrated by the people of Zakinthos—people who embody the spirit and heroism of those buried along the paths of the Garden of the Righteous.

Before the Holocaust, many Greek cities and islands housed thriving Jewish populations. After World War II, 90% of the Greek Jewish population had been eliminated by the Nazis and their collaborators. However, *100% of the Jewish population of Zakinthos survived.*

All men's souls are immortal, but the souls of the righteous are immortal and divine.
– Socrates, Greek philosopher of the 5th Century BCE

Zakinthos is known for its wonderful nightlife, beautiful scenery, and musical festivals. Something else that Zakinthos should be known for: that they stood up in the face of adversity, antisemitism, and laws making it criminal for them to help their Jewish friends and neighbors.

Good people do not need law to tell them to act responsibly, while bad people will find a way around the law.
– Plato, 5th century BCE Greek philosopher

In 1943, Nazis occupied Zakinthos. The Nazi commander stationed on Zakinthos, Paul Berenz, ordered the mayor, Louis Karrer, to provide the names of every Jewish resident of the island. It is believed that Mayor Karrer was ordered at gunpoint to release this information. Mayor Karrer knew that in other areas of Greece, Jews were being executed, or being sent to concentration camps. Mayor Karrer knew that if he revealed any Jewish names, he would be signing their death warrant. He was also cognizant that failure to comply with this request could put he and his family, including his then-pregnant wife, at risk. Mayor Karrer consulted with the Bishop of the island, Chrysostomos. The mayor and the bishop refused Berenz's request.

Our purpose is defined as much by what we say no to as what we say yes to.
– Kristi Hedges, executive and author

The next day, Mayor Karrer and Bishop Chrysostomos appeared before Berenz, and again, they were ordered to provide a list of Jewish residents. Again, the mayor and the bishop refused to comply. Instead, in a courageous act of defiance, the mayor and the bishop handed a piece of paper to Berenz.

(continued on next page)

An Island of Heroes *(cont'd)*

On that piece of paper only two names were written: Mayor Loukas Kerrer and Bishop Chrysostomos. The bishop reportedly said, "Here are your Jews. If you choose to deport them, you must also take me, and I will share their fate." The bishop told Berenz that Jews had been living harmoniously alongside the Christian people of Zakinthos for centuries. Further, the bishop allegedly wrote a personal letter to Hitler, stating that all Jews of Zakinthos were under the bishop's personal authority. Berenz and his colleagues were stymied by the refusal of the mayor and the bishop to capitulate, and halted the order to reveal Jewish names.

At his best, man is the noblest of all animals; separated from law and justice, he is the worst.
– Aristotle, 5th century BCE Greek philosopher

Karrer and Chrysostomos alerted Jews on the island of imminent danger. Jews were instructed to hide with Christian families or in the mountains. Within a day, the entire Jewish population of Zakinthos went into hiding. The Germans were unable to locate any Jews, and not one of the 32,0000 residents of the island turned in a Jewish person. The whole island knew where Jewish people could be found, yet not one person revealed their whereabouts. The Nazis later rescinded their request for the Jewish names. In October 1944, the Germans left Zakinthos.

I am not afraid of an army of lions led by a sheep; I am afraid of an army of sheep led by a lion.
– Alexander the Great, 4th Century BCE Greek conqueror

Recently, a documentary about the Jews of Zakinthos, *Life Will Smile,* was released. Hami Kantantini, a Holocaust survivor and native of Zakinthos, narrates it. He provided an eyewitness account of life on his island under Nazi occupation. He recalled how he and his family hid in the mountains, and that there were 13 people living in one room. Neighbors knew where Hami's family was being sheltered and, even as Nazis offered rewards for helping locate Jews, or threatened them with swift reprisals if they assisted Jews, nobody revealed Hami's location. He and his sister used to peek through the slats of the shutters of the house in which they hid, and often, they could see black shiny knee boots of Nazis as they walked around the paths. Hami's sister never wore shiny black knee-high boots in her lifetime because of this view.

Right is right even if no one is doing it; wrong is wrong even if everyone is doing it.
– Saint Augustine, theologian and philosopher, 400 CE

The 32,000 inhabitants of Zakinthos saved all 276 Jewish souls. In reality, they saved more than just those 276 souls; rather, they saved generations of souls. To illustrate, Hami alone had a family of about 30 people, most of whom might not have existed but for the great people of Zakinthos. They are a living testament to the bravery of the people of this fine island.

Everybody, every human being, has the obligation to contribute somehow to this world.
– Edith Carter, Holocaust survivor

Many monuments and materials detailing this miraculous preservation of the entirety of the island's Jewry were destroyed in 1953 when a severe earthquake hit Zakinthos. Many Jews of Zakinthos later made aliyah, but they never forgot the bravery of its mayor and bishop. The first boat to arrive with aid for the victims of the 1953 earthquake was from Israel, with a message that read, "The Jews of Zakynthos have never forgotten their mayor or their beloved bishop and what they did for us." In an act of appreciation, the Jews of Zakinthos donated blocks of stone to repair the damage to the island's Saint Dionysius Church.

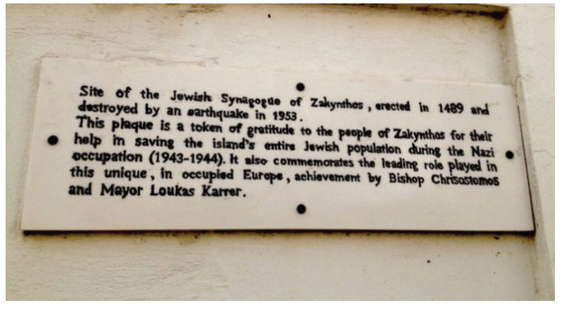
Great people never forget what others have done for them. In fact, having a sense of appreciation makes a person worthy of respect."
– Daisaku Ikeda, Buddhist philosopher

The people of Zakinthos are proud of this important part of their heritage, and that they stood together to protect humanity. They continue to teach this story to the next generations. The local high school still has field trips to its Jewish cemetery, and the story of the preservation of the Jewish community is part of the high school's curriculum.

"For the dead and the living, we must bear witness."
– Elie Wiesel

Judge Megan Goldish is the Second Vice President of the Decalogue Society of Lawyers. She currently sits in the Domestic Violence Division.

Maria Augustus is an Assistant State's Attorney, who was actually in Zakinthos at the time this article was written.



Dr. Albert Bourla: He is a mensch. (שטנעם) (Μεντς)
He has Philotimo. (מיטוליפ) (Παναγιωτα)

by Judge Megan Goldish

Decalogue is excited that the Hellenic Bar Association will be sharing in our traditions as they join us for our Seder this season. Some scholars believe the Seder ceremony is modeled after the Greek symposium. Moreover, during the Seder, we hide the afikomen and find it after dinner. The word "afikomen" derives from the Greek word for dessert (although I admit the Greek pastries I bought at Artopolis taste much better than the same box of matzah I've been nursing for a year). During this season, both peoples also eat unleavened bread; Greeks eat lagana on Clean Monday and Jews eat matzah.

Greeks and Jews share many similar traditions and origins. To illustrate, the Talmud was written at a time when Greek was the international language. According to some scholars, at least 100 Greek terms are in the Talmud. Further, many Hebrew words have become part of the Greek language (e.g., "Amen" and "Halleluia"). Additionally, the Greek and Jewish communities are known to treasure our yiayias and bubbes, and children in both cultures are traditionally named after grandparents. At religious celebrations, you might hear klezmer or bouzouki bands, and both have traditional wedding celebration dances: the Jews have the *Hava Nagila*, and the Greeks have the *Oraia Pou Einai I Nifi Mas*.

At the Greek New Year, a pomegranate is smashed, the multiple seeds symbolizing much good luck for the upcoming year. At the Jewish New Year, a pomegranate is also opened, and the multiple seeds correspond to the many good deeds in the coming year. Both cultures try to avoid the evil eye (in Greek, *Mati,* in Hebrew, *ayin ha'ra* or *kehan hora*) and both spit three times to defend against the evil eye (in Greek, "*ftou, ftou, ftou,*" in Hebrew, "*ptu, ptu, ptu*").

And now we share joint pride in a wonderful Greek Jewish man, who is making headlines for saving lives and philanthropic contributions, Dr. Albert Bourla.

Dr. Albert Bourla is the Greek-Jewish CEO of Pfizer. He was born and raised in Thessaloniki, Greece. He is the son of Greek Holocaust survivors. Dr. Bourla trained as a veterinarian and a scientist and began working at Pfizer in 1993. He moved to the United States in 2001 and, since 2018, he has been the CEO of Pfizer. In 2020, Dr. Bourla was ranked as America's top CEO in the pharmaceutical industry by *Institutional Investor*.

Pfizer is at the forefront of the fight against COVID-19. Dr. Bourla oversaw the quick development of a safe and effective COVID-19 vaccine, saving countless lives. This vaccine was created in just eight months, without compromising quality, when that process typically takes 8-10 years. Certainly Pfizer profited monetarily, but it is worth noting that Dr. Bourla pushed for the development of the vaccine before FDA approval so that it would be ready to ship immediately upon approval. It's been said that Dr. Bourla declined billions of dollars in US subsidies to avoid government bureaucracy and expedite production of the vaccine.

Dr. Bourla lives in New York with his wife, Myriam, and their two children. He still proudly supports his Greek heritage. He was born, raised, and educated in Greece. He has read the Greek classics, including Homer. He visits his home in Chalkidiki, Greece every summer, and he is an avid supporter of the athletic club *Aris Thessaloniki*. He is friendly with Geoffrey Pyatt, the US Ambassador to Greece. In fact, in April of 2019, at the Prix Galien of Greece Awards, the Ambassador awarded Bourla the "Preeminent Greek Leader" Award for his contributions to the global pharmaceutical industry. Dr. Bourla has also organized vaccine donations for Greece, and more than $1 million in medicine to help uninsured patients in Greece. He chose Thessaloniki to establish the Pfizer Artificial Intelligence Center and, recently, Greek scientists from all over the world applied to join the Center. Pfizer also participated in the Thessaloniki International Fair.

Dr. Bourla is equally as proud of his Jewish heritage. During the pandemic, there were protests against vaccine requirements where people invoked offensive comparisons to the Holocaust. Dr. Bourla has spoken out against this practice. After all, Bourla is the son of two Holocaust survivors, Mois and Sarah Bourla, and believes that comparing public health guidelines to the Holocaust is an insult to victims. Bourla's parents were from the once-flourishing Jewish community of Thessaloniki. Bourla's family fled Spain for Greece in the 15th century due to the Alhambra Decree, requiring that all Spanish Jews convert or be expelled from the country. For a time, Thessaloniki was known as "*la Madre de Israel*" (the mother of Israel). Before World War II, approximately two-thirds of the residents of Thessaloniki were Jewish. However, in 1941, German Nazis occupied Thessaloniki and killed about 96% of the Jewish community there. Before the occupation, there were 520,000 Jews in Thessaloniki; after the war, there were only 2,000 Jews. As Bourla has described it, "It took the Nazis less than three years to eliminate and exterminate the Jewish community that had been living there for hundreds of years."

All members of Bourla's paternal family were killed by the Nazis except his father and his uncle. All but Bourla's maternal aunt and mother were murdered by the Nazis in Auschwitz. Bourla considers himself fortunate that his parents were willing to share their painful stories of survival, and that they never spoke of hatred or revenge, just of the need to heal and preserve their heritage. Bourla said his parents' stories created "a very strong Jewish identity, and a sense that I want to work with others to make sure that those things never happen again, to us or to others." Bourla said that his father had two dreams for him: that Bourla become a scientist, and that he marry a nice Jewish girl. Bourla was happy that his father lived to see both dreams come true.

Bourla was named the winner of the 2022 Genesis Prize, known as the "Jewish Nobel," that "honors extraordinary individuals for their outstanding professional achievement, contribution to humanity, and commitment to Jewish values." The award includes a $1 million prize, which Bourla is dedicating to Holocaust memorials, including establishing a Holocaust Museum in Thessaloniki. "It's a great, great honor, which I accept on behalf of everyone at Pfizer," said Bourla. He noted the overlap between his work and his Jewish values, and referenced the Talmudic teaching that one who saves a life is considered to have saved the whole world.

How Fascism Takes Root in a Democratic Society

by Alon Stein

On a nice autumn Sunday afternoon, we gathered on Zoom to watch the documentary "Lesson Plan, The Story Of The Third Wave" about the 1967 Palo Alto High School experiment in fascism, which was followed by a presentation by extremism disengagement consultant Jeff Schoep.

The documentary is about an experiment called The Third Wave, which took place at Cubberley High School in Palo Alto, California.

Ron Jones was a history teacher at Cubberley High School. Instead of lecturing about how children got indoctrinated into the Hitler Nazi Youth, he decided to do a demonstration of how it could happen in America.

In a nutshell, by creating a sense of belonging and exclusion, and by disciplining the students through chants like "strength through discipline," "strength through community," and "strength through action," in five to eight days there were students recruiting other students, students fist fighting with other dissenting students and student reporters, and students acting as goon Gestapo bodyguards.

In the documentary movie, the students involved in the experiment are interviewed, along with the teacher Ron Jones, who returned to the school after being away for nearly 40 years.

Two of Mr. Jones's former students, Philip Neel and Mark Hancock, produced the documentary. They were present to answer questions from Decalogue participants on issues such as a lack of disclosure and/or informed consent, and whether or not they believed some other teacher not as popular as Ron Jones could have gotten the results that Mr. Jones obtained. They stated the experiment was probably unfair, especially because there are long-term effects to the participants that remain for some.

Next, Jeff Schoep, a former leader of the National Socialist movement spoke. He gave a presentation called "Inside White Nationalism: A Look at Neo-Nazism In America." He spoke about how people get radicalized, why, and what can be done to change hearts and minds.

The main theme of his presentation was that many white nationalists get radicalized because they mistakenly believe they are doing something honorable and noble. They feel that that they are defending their people from "the other." Everyone wants to feel needed and if someone starts disagreeing with the group, that person is thrown out. Hate is present but it is not often the sole reason for joining such a group, but rather the mistaken belief that one is doing something good due to fear that they are at risk of losing something in their reality.

By changing such perceptions, ideas can be changed, which is what caused Mr. Schoep to leave the National Socialist movement. It has also led him to shift his focus from leading hate groups to getting others out of hate groups.

All in all, both the documentary and Jeff Schoep's presentation were eye opening.

It was a great way to spend a Sunday afternoon.

Alon Stein is Founder of Stein Law Offices of Illinois and Wisconsin, and President of the Israeli-American Bar Association.

Learn More About the Program and the Presenters

Watch "The Lesson Plan" at https://www.lessonplanmovie.com/watch/

For more information about the Wave experiment visit https://www.thewavehome.com/

What is Ron Jones doing now? Find out at https://ronjoneswriter.com/

Visit Mark Hancock's page at https://www.markhancock.com/

More about Philip Neel at https://www.imdb.com/name/nm0624167/

Learn more about Jeff Schoep's efforts to counter extremism at https://beyondbarriersusa.org/

My Lunch with Judge Andreou, Part 2: Dave and Frank's Bogus Journey!

by David Lipschutz

Last year, I wrote Part 1 of My Lunch with Judge Andreou. In it, I explained that I planned to have a lunch outing with The Honorable Judge Frank John Andreou, Judge for the Circuit Court of Cook County, Illinois (hereafter "Judge Andreou"). However, due to unforeseen COVID variants, we decided to postpone lunch and instead have a short chat in his chambers. This last "Honorable Adventure" article focused on our delightful history (tl;dr, I clerked for him a dozen years ago when I was in law school and he was in private practice). The piece also detailed my irrational nerdery about my former boss and mentor being a freakin' judge. Even as I write this, I can't help but think, "My goodness! How cool is *that*?"

Fast forward to 2022. COVID is [allegedly] nonexistent. Mask mandates are [foolishly] lifted. People are [excitedly/nervously/skeptically] going out to places in public once again. Two such [excited/nervous/skeptical] folks are Judge Andreou and me.

After WHeeks of planning and a WHopping amount of effort, Judge Andreou and I looked at our WHork schedules and set a lunch date.

Before I proceed to how lunch unfolded, you're probably WHondering WHy I keep putting "WH" at the beginning of certain WHords. Pretty WHeird, right? Okay, I'll stop now! In order to truly understand my complex history with Judge Andreou, I should explain that, for some strange reason, we have had this long-running joke that originated from the animated series, Family Guy. There's a joke about one character pronouncing "Cool Whip" in a funny manner (pronouncing it "Cool WHip" with an emphasis on the "WH"). Every day at work, whenever either of us would say something that began with a "W," it inevitably ended up being pronounced incorrectly.

Since then, every email, social media post, and in-person encounter always, without question, ends up with a "WH" word or two. I fear the day I am in Judge Andreou's courtroom and, when he turns to ask if I am ready for my opening statement, I say, "WHell, Your Honor…" and then am immediately held in contempt.

Anyway! We met for lunch and literally one of the first things said by one of us is "Where's the waiter?" which was then corrected to "Where's the WHaiter?" which was then corrected to "WHere's the WHaiter?" It's nice to see some things have not changed in the last decade.

We had lunch near the Skokie Courthouse at a restaurant in Old Orchard Mall. It was great being able to chat with an actual human person in an actual public setting. Judge Andreou told me about his family, his role as a judge, and his life in general. I did the same. We also talked about tips and tricks for appearing in court by Zoom. This was the perfect opportunity for me to segue into telling him about a play I wrote that was getting performed that upcoming weekend. The play centered around a man late to a Zoom work call when things go very, very awry. I was able to share with him a link to the performance.

All in all, it was wonderful catching up with Judge Andreou. We intend to have another outing in the near future. So, who knows, maybe we will make this a trilogy. I'm thinking of calling it, "My Lunch with Judge Andreou, Part 3: Two WHild and Crazy Guys!"

David Lipschutz is currently the Managing Attorney at Trunkett & Trunkett, P.C. and formerly a law clerk at Andreou & Casson, Ltd. If you'd like to check out the play referred to in the article, you can rent it on demand at https://vimeo.com/ondemand/hindsight20222.

SAVE THE DATE!

2022 Vanguard Awards

Wednesday, May 4, 2022
4:00-5:30pm

Decalogue Honoree:
Hon. Grace Dickler
Presiding Judge, Domestic Relations Division

More details to come

Jewish Heroes in the Revolutionary War

by Justice Robert E. Gordon

When the American colonies broke away from England, there were approximately 2,500 Jewish families living in the colonies. Many of them were wealthy merchants and businessmen. Some of them supported the British, while others became involved with the American cause.

Mordecai Sheftall was an Orthodox Jew who lived in pre-revolutionary Savannah, Georgia, and history reveals that he was one of the first colonists to publicly call for a rebellion against British rule. He helped organize America's revolutionary armies, paying for uniforms and rations. He organized and was head of the local revolutionary committee, and the Continental Congress made him Deputy Commissary General of Issues for Georgia.

History further reveals that approximately 100 Jews fought in the Continental Army. The first Jew to die fighting for American independence was ironically also the first Jew elected to public office in the colonies: Francis Salvador, a member of South Carolina's Provincial Congress.

At this time in history, many colonists who were Jewish hid their religious belief or upbringing. Most patriotic Jews served as blockade-runners, civilian contractors who supplied the clothing, gunpowder, lead, or other needed equipment, or helped finance the Revolutionary War.

Haym Salomon was the most significant financier of the Revolution, and the Continental Congress named him Treasurer of the Army in America. He was a Polish-born Sephardic Jew who descended from Spanish immigrants. He provided interest-free loans to the Continental Government, as well as loans to James Madison, Thomas Jefferson, James Wilson, Edmund Randolph, and Generals Friedrich Von Steuben and Arthur St. Clair. When George Washington needed money to finance and continue the battle, he called for Salomon, who put his heart and soul into finding money to win the war. When he died at age 42 in 1785, he was penniless and had $638,000 in debt and was never repaid by the government. He founded the first synagogue in Philadelphia, Mikveh Israel.

Colonel David Salisbury Franks was a rebel and part of the military who participated in many battles and is considered to be a military hero. However, he was General Benedict Arnold's aide-de-camp at the time of the infamous treason, although there is no evidence he had any knowledge of Arnold's intentions.

Colonel Solomon Bush was the Adjutant General of the Pennsylvania militia and was involved in many victorious battles to help the American cause and is also considered to be an American hero in the Revolutionary War.

Dr. Philip Moses Russell was General Washington's surgeon and endured the hardships of Valley Forge.

Isaac Moses, Aaron Lopez, Michael Gratz, and Joseph Simon were wealthy financiers who saw their fortunes ruined by aiding the American cause. They were international businessmen who gave large sums of money to General Washington, only to see their ships and goods destroyed by the British and their loans never repaid.

The Jewish people as a whole have always been involved with and supportive of democracy and America's quest to keep America safe and free for all its people.

Illinois Appellate Court Justice Robert E. Gordon is Presiding Judge of the Sixth Division and a member of Decalogue's Board of Managers.

Links to videos of most of Decalogue's 2020 and 2021 events are available for viewing on our website at

www.decaloguesociety.org/past-events

SAVE THE DATE!

Thursday, July 7, 2022

Decalogue Society of Lawyers
88th Installation & Awards Dinner

Union League Club of Chicago

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Chai-Lites

by Sharon L. Eiseman

For each issue of the Tablets, the Chai-Lites section features news about our busy members coming, going, celebrating, being recognized, speaking, writing, making new career moves, standing up for the oppressed, volunteering, and acquiring more new titles and awards than seems possible.

Jeff Schulkin was named as a 2022 Illinois Personal Injury Super Lawyer. He also recently co-authored the 2022 Update to the IICLE for Medical Malpractice Chapter 1. We wonder what he does in whatever precious minutes he has left in any given day!

Judge Ilana Rovner was included in Slate.com's 80 Over 80: Most Influential Americans list. In light of her astonishing career and her impact on the legal profession, Decalogue applauds Slate's decision to feature Judge Rovner. For your enjoyment: Here is the link to the article: https://slate.com/human-interest/2020/12/80-over-80-most-influential-hank-aaron-gloria-steinem-buzz-aldrin.html.

Judge Helaine Berger (ret.) is being honored by the WBAI at its Judicial Reception on April 26. She has had a long and productive career—so consider attending the Reception to learn more about her contributions to the profession.

Michele Katz has founded a non-for-profit organization called 'Plus One Adoption Foundation, Inc.' Its mission is to build connections with charitable services in the space of adoption and fundraising in order to help families come together and stay together. The primary focus of this NFP is to provide the resources to help place 2.5M children into loving families, with the driving influence stemming from the 2.5 million children lost in the Holocaust and the Jewish credence of mending a broken world—WHEN YOU SAVE A CHILD, YOU SAVE THE WORLD. Learn more at www.plusoneadoption.org.

On February 24th, **Judge Joel Chupack,** Decalogue past president, visited Greenbriar Elementary School in Northbrook and read "Abe Lincoln's Hat" to 3rd grade classes as part of the Page It Forward initiative of the Illinois Judges Association. That sounds like a mutually fulfilling event!

Decalogue Past President **Barry Goldberg** has been slated as the Democratic candidate for the Jacobius vacancy in the 9th Judicial Subcircuit. Best wishes to Judge Jacobius in his retirement and to Barry for his election.

Mazel Tov to Decalogue Financial Secretary **Logan Bierman** and Tavor Allali-Bierman on the birth of Aya Mira Bierman March 24.

Decalogue Board Member **David Lipschutz** will be performing in the play, *After the Blast*, with Broken Nose Theatre, from May 13th to June 11th at the Den Theatre. David has also written several plays with upcoming performances, including Ahavah with future productions in Michigan and New Jersey. Visit davidlipschutz.com for more information.

Ukraine Relief

People all over the world are seeking help the people of Ukraine in this horrific war. Here are several Jewish charities and a few general charities, all of whom are helping on the ground in Ukraine.

American Jewish Joint Distribution Committee
www.jdc.org

HIAS *(formerly Hebrew Immigrant Aid Society)*
www.hias.org

United Hatzalah *(through U.S. Chesed Fund)*
israelrescue.org

Tikva *(evacuating children from Odessa to Moldova)*
www.tikvaodessa.org/relief

Afya Foundation *(through UJA NY)*
afyafoundation.org/campaign/ukraine

AJC with IsraAID
global.ajc.org

Project Kesher *(fund for women and children in Ukraine)*
www.projectkesher.org

JRoots *(assisting Ukrainians across the border to Poland)*
www.jroots.org

World Jewish Relief
www.worldjewishrelief.org

Keren Hayesod *(through Israel Gives)*
www.kh-uia.org.il

International Rescue Committee
www.rescue.org

Doctors Without Borders
www.doctorswithoutborders.org

International Fellowship of Christians & Jews
www.ifcj.org

And, of course, through the JUF
www.juf.org

May all evil (Rashah) dissipate like smoke, for the removal of tyranny ushers in the overall reign of God.

Welcome New Members!

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Aileen Bhandari
Sunil Bhave
Bridget Bodee
Mark Todd Campbell
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