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President's Column

by Judge Megan Goldish

Shalom and hello Decalogue friends and colleagues,

As we navigate the ever-evolving landscape of the legal profession, it is crucial to reflect on the significance of our Jewish presence within the legal community and the responsibilities it entails, especially in the face of recent events. It has been a particularly challenging time for Decalogue. While we persevered in presenting our terrific programs and thrived, we did so despite concerns for world events, particularly those affecting Israel.

In recent months, we have witnessed a troubling rise in antisemitism, notably following the attack on Israel by Hamas on October 7, 2023. This surge in hostility underscores the urgent need for us, as members of the legal community and as Jews, to take a united stand against antisemitism. The legal profession plays a pivotal role in upholding the values of fairness, justice, and tolerance. We must actively combat prejudice and discrimination, fostering an environment where every individual, regardless of their background, can seek justice without fear or bias. Since October 7, 2023, many of us have grappled with the daunting task of maintaining a semblance of normalcy in our lives while simultaneously contending with a pervasive sense of fear. We are deeply troubled by a staggering 388 percent rise in antisemitism. Amidst the depths of despair, we must remain resilient and endure. Even in the darkest of times, there is a glimmer of light that has the power to dispel hate and darkness. After October 7, 2023, our community will never be the same. Yet, despite our distress, we continue to stand united as a family, seeking this light, stronger than ever, and persistent against the troubling surge of antisemitism. Our unity in confronting adversity has fortified us, transforming us into a more resilient and formidable organization.

Decalogue was founded in 1934, in response to a growing tide of antisemitism, and since then, we have continued to fulfill the precepts of our founders, to pursue justice. Moreover, we have continued our tradition of providing educational and social opportunities to our members, fostering strong ties within the Jewish community, and strengthening relationships with other legal organizations. I am immensely impressed with all that we have achieved together in the face of our shared tragedy, and it has been gratifying to see our efforts come to fruition. We even managed to have a great deal of fun along the way, making the journey so rewarding.

We are tremendously fortunate to have **Joel Bruckman** as our First Vice President. His leadership, dedication, and vision have been indispensable in guiding us through our endeavors. As he prepares to take the helm this summer at our historic 90th Anniversary Installation and Awards Dinner (July 11 at Bryn Mawr Country Club), I am confident that our organization will continue to thrive and reach new heights under his stewardship. I also appreciate our energetic board, whose commitment is unparalleled. I also want to recognize our executive board, **Alex Marks, Kim Pressling, Michelle Milstein, Erin Wilson, Judge Myron Mackoff, Charles Krugel**, and **Robert Karton**, for their tireless efforts.

Over the past few months, Second Vice President **Alex Marks**, has planned and executed several exceptional events. Our Shmoozin and Boozin in the Sukkah, was entertaining and well-attended. Thanks to **Alon Stein, Eden Messick, Jonathan Lubin**, and **Kim Pressling** for contributing to hosting a great event. In addition, our Hanukkah Party was a dreidel-spinning great time, and included performances by children of our members, along with magic, comedy and singing. A heartfelt acknowledgment to **Alex, Kim, Adam Sheppard, Alon Stein, Joel Bruckman, Judge Martin Moltz, Erin Wilson, (Ret.) Judge Michael Strom**, and **Fred Lane** for a wonderful party. Further congrats to Alex for a successful Judges' night, where the company, the hot dogs, the bartending skills of **Sharon Eiseman, Michelle Milstein, Bob Blinick**, and **Rob Schwartz**, and the view at Hinshaw and Culbertson, were spectacular.

Moreover, **Alex Marks**, along with board members J**udge Pamela Saindon, Joel Bruckman, Judge Abbey Romanek, Clifford-Scott Rudnick** and **Judge Joel Chupack**, as well as members from the CCBA, the IJC, and BWLA, presented a meaningful and wonderful Solidarity Awards and CLE. We were honored to recognize **Justice Joy Cunningham, Judge Neil Cohen, Alan Solow**, and **James Montgomery**, with the Solidarity Award, for their dedication to fighting discrimination.

Alex Marks is already busy planning our Model Seder, which will be held on April 11, 2024, at the Holocaust Museum. This year, we will be co-hosting with special guests, the Justinian Society, along with our regular co-hosts, CCBA and IJC. It is sure to be a significant event, or "evento significativo!"

Our Committee Against Antisemitism and Hate remains dedicated and active under the leadership of J**udge Mitchell Goldberg, Alex Marks**, and **Jacqueline Carroll**. We are grateful to the committee for their steadfast efforts to combat hatred.

I am thrilled to announce the revival of the Womxn's Committee, led by **Judge Lori Rosen** and **Sylvie Manaster**. We have established a book club, co-sponsored a CLE, and are co-hosting, "Happy Hour in Heels," with other women's legal organizations. Thanks to **(Ret.) Judge Deb Gubin** and **Helen Bloch**, for their guidance with this committee.

Education is a cornerstone of Decalogue, and we were proud to present CLEs on topics such as the Biometric Privacy Act, cybersecurity, imposter syndrome, professionalism, non-compete covenants, bankruptcy, legal implications of AI, hate speech and the First Amendment, charitable trusts, religious divorce, and firearms and the Second Amendment. Many thanks to our presenters, including **Clifford Scott-Rudnick, Wendy Muchman, Judge Deborah Thorne, David Levitt, Alan Wernick**, and **Steven Elrod.**

(continued on next page)

President's Column *(cont'd)*

Our Social Action Committee, under the guidance of **Michelle Milstein**, continues to provide philanthropic and civic contributions to our community. Further, Decalogue, along with the Presidents of the CCBA, the WBAI, the ISBA, and the CBA, has formed the Presidents' Council, to create opportunities for communication and networking amongst at least 40 bar associations. The Council plans on assisting with the upcoming Veterans' event.

I am incredibly excited for our second annual Salute to Veterans in the Legal Field event, to be held on June 3, 2024, at Soldier Field. This year, we will celebrate the 80th anniversary of D-Day. Last year's inaugural event provided an opportunity to thank our colleagues who served, while honoring those who are missing or who made the ultimate sacrifice. We were able to donate to Veterans' charities, including agencies that support the Veterans' Court Calls in each Cook County Courthouse. A resounding salute to **Judge Michael Hood, Judge Martin Moltz, Joe Cook, Hon. Rachel Trest, Hon. Jennifer Pennix, Judge William Hooks, Conrad Nowak, Lisa Yee, Judge Donna Cooper, Scout Savage, Matt Savage, Judge John Lyke, Judge Sharee Henry, David Weiss, Hon. William Conway**, and **Judge Kenneth Wadas**, for their service, and for participating in our event. Additionally, we were so grateful to **Alison Slovin** and **Jacqueline Carroll** for including the Simon Wiesenthal Mobile Museum of Tolerance in our event. A special thank you to **Joel Bruckman** and **Alex Marks** for letting me roam around Soldier Field in excitement, taking selfies with every Dick Butkus photo as we plan our second annual event.

As rewarding as it has been to be a Decalogue member, there remains a shadow cast over our community. It is difficult to articulate what we are facing, as we battle against the avalanche of misinformation, try to correct mis defined verbiage, confront inaccurate press reports, and witness not implicit, but outright proud, displays of antisemitism. Jews are being assaulted on the streets, on campuses, and at places of business. Synagogues and Jewish property have been vandalized, and Jewish celebrities have been boycotted. Antisemitism even reached such dizzying heights that anti-Israel and anti-Jewish demonstrators lined up outside a children's hospital to yell at children being treated for cancer, and they blockaded elderly people from maneuvering their walkers and canes as they tried to leave their synagogue.

I understand there is so much to consider about October 7, 2023, that it could fill thousands of Tablets issues. I am also aware that Decalogue is not a political organization, and I am not looking to engage in a debate. Although, I am not sure when standing up against antisemitism, speaking on behalf of rape victims, not wanting people to yell death threats to the one Jewish member of our City Council, or wanting to honor the day that Auschwitz was liberated, became political or a subject for debate. Nonetheless, for this column, I would just like to focus on the hostages, particularly the crimes being perpetrated against the female hostages.

Frankly, I am shocked by the lack of outrage and inaction from groups who normally fight ardently against sexual assaults, who preach for us to believe all women, and who stress rape is never a weapon of war. Particularly when here, the attackers were not denying the assaults, but were instead bragging about their despicable actions, posting footage on social media for the world to witness their depravity, parading naked corpses through streets to cheering crowds, and calling their parents to earn their praise for their barbarity. "Believe All Women," or "MeToo" solidarity sentiments seemed to disappear from public discourse when it involved Jewish hostages, many of whom were, and possibly still are, subjected to repeated sexual violence. Still, many groups have not spoken out against this brutality. Rape is not resistance, and rape should never be weaponized. Sexual brutality must always be condemned, regardless of the religion or citizenship of the victim. Their silence is deafening.

As of this writing, there remain at least 130 hostages who were kidnapped from Israel to Gaza. Please hold them in your hearts and your prayers for their safe return home, and their security while in captivity. For those who did not make it home, may their memories be for a blessing.

There is a commercial that aired after the 9/11 bombings. On the screen, one can see a typical street in Main Street, USA, with a voiceover stating that the terrorists wanted to change America on 9/11, and that they succeeded. The next shot shows that same street, but in color, with American flags hanging from each of the houses. Similarly, we are a changed community. We are standing together stronger than ever, united with our allies, against hate. We are not alone. We are part of a family with a 5000-plus-year relationship.

As we embark on another season filled with opportunities for advocacy, collaboration, and community engagement, I want to thank again the board and the members of our vibrant organization. The Decalogue Society of Lawyers stands as a testament to the enduring values that guide us in our pursuit of justice and equality. Our commitment to the principles of the Decalogue is unwavering, and it is through these principles that we find strength and purpose in our legal endeavors.

As members of the Decalogue Society, we are not only representatives of the legal profession but also ambassadors of our shared values. Together, let us reaffirm our commitment to justice, equality, and the fight against antisemitism. Through our collective efforts, we can make a meaningful impact in shaping a legal community that stands firm against prejudice and intolerance. With a legacy steeped in the rich traditions of justice, compassion, and intellectual rigor, we continue to stand as a beacon of legal excellence. Together, we uphold the values of Tikkun Olam, striving to repair the world. In the spirit of unity and shared purpose, let us continue to inspire, empower, and support one another as we navigate the ever-evolving landscape of law and society. May this year be filled with meaningful connections and impactful endeavors for us all. L'chaim!

From the Judge's Side of the Bench: The Value of a Narrative Response

by Judge James A. Shapiro and Judge Mitchell B. Goldberg

Family law, which is a civil practice area, falls under the Civil Practice Act. See 750 ILCS 5/105(a) ("The provisions of the Civil Practice Law shall apply to all proceedings under this Act, except as otherwise provided by the Act"). Yet in domestic relations matters, many practitioners follow practice conventions that both (1) defy statutory rules governing pleading in civil matters; and (2) forgo the opportunity to educate the court by providing written argument and citation to case law in support of legal positions. This occurs most often in the context of responding to motions.

The Use of the Admit/Deny Response in Family Law Matters

In most other areas of civil practice, (for example in cases before the Law Division, the Chancery Division, or in federal court), the respondent to a motion files what practitioners and judges commonly refer to as a "narrative response." That means the respondent to a motion responds in complete sentences and paragraphs, reframing the issues the movant presents in a cogent and persuasive manner favorable to the respondent. By contrast, family law practitioners frequently respond to motions the way other civil practitioners file an answer to a complaint: by admitting or denying each paragraph, including in response to legal arguments as opposed to factual allegations.

It is unclear where or when the practice of responding to motions as if they were pleadings began. According to Don Schiller of Schiller, DuCanto & Fleck, the use of admit/deny responses in family law matters started back in the day when discovery was not "a thing." Then, trial by ambush was apparently commonplace, and far be it for a respondent to a motion to give their opponent (or even the court) an idea of what their defense to the motion was going to be. Admitting or denying each paragraph of a motion point by point became a way to hide a party's defense so the party could "spring it" on their opponent at trial or hearing. This account has been corroborated by several other practitioners not quite as august as Mr. Schiller. Another august practitioner, Miles Beermann of Beermann LLC, believes the practice began with the 1977 changes to the Illinois Marriage and Dissolution of Marriage Act ("IMDMA"), which may have confused practitioners regarding pleading requirements in family law matters.

Regardless of the origins of this practice, the use of an admit/deny response is singularly unhelpful to the judge deciding the motion. Moreover, it violates one of the cardinal rules of good advocacy: It defers to the movant's organization of the motion, effectively letting the opponent write the response for them. This article hopes to explain some of the technical aspects of motion practice under relevant rules and case law. In addition, it seeks to drive home the importance of taking advantage of the opportunity to present arguments through a narrative response to motions.

Understanding the Difference Between Pleadings and Motions

It is important for all practitioners to understand the definitions of pleadings and motions in order to correctly prepare the appropriate responses. A pleading consists of a party's formal allegations of their claims or defenses. *William J. Templeman Co. v. Liberty Mut. Ins. Co.*, 316 Ill. App. 3d 379, 388 (1st Dist. 2000). A pleading is a document that sets forth in paragraph-by-paragraph format the facts and arguments petitioners consider relevant to build the framework of their cause of action. See 735 ILCS 5/2-603. In the family law context, the Illinois Marriage and Dissolution of Marriage Act ("IMDMA") expressly states that pleadings include "any petition or motion filed in the dissolution of marriage case which, if independently filed, would constitute a separate cause of action." 750 ILCS 5/105(d). For answers to pleadings, admitting or denying the allegations in the pleading is an obligatory and logical response to narrow the issues for trial. According to the Illinois Code of Civil Procedure, "every answer and subsequent pleading shall contain an explicit admission or denial of each allegation of the pleading to which it relates." 735 ILCS 5/2-610. Importantly, this only applies to pleadings; it does not apply to motions.

Courts have repeatedly addressed apparent confusion among family law practitioners as to the distinction between pleadings and motions. In *In re Wolff*, the court distinguished between pleadings and motions in order to decide a motion to dismiss. 355 Ill. App. 3d 403 (2d Dist. 2005). Unlike a pleading (a party's formal allegation of their claims or defenses), "a motion is an application to the court for a ruling or order in a pending case." *Id.* at 407. In *Wolff*, the court denied the wife's motion to dismiss the husband's motion to reconsider. *Id.* The court based its denial on the fact that the wife's petition was a Section 2-619 motion, which applies only to the dismissal of pleadings. *Id.* The husband had filed a Section 2-1203 motion to reconsider, which is obviously a motion. Therefore, the wife's motion was a procedural nullity. *Id.* One cannot file a motion to dismiss a motion.

In cases governed by the IMDMA, a request for temporary or prejudgment relief in a pending case is a motion rather than a pleading. *See In re Marriage of Engst*, 2014 Ill. App. (4th) 121078. The IMDMA provides that either party may "move" for temporary maintenance or support, a temporary order of protection, preliminary injunction, or other temporary relief. 750 ILCS 5/501. Accordingly, such motions are applications to the court for a ruling or an order in a pending case. *Templeman*, 316 Ill. App. 3d at 388.

A recent unpublished Illinois case from the First District Appellate Court helps clarify the distinction between a pleading and a motion. *In re Marriage of Nguyen*, 2023 Ill. App. (1st) 21045-U. Though no bright line test exists, there are clear, functional differences between pleadings and motions that carry implications in their separate roles. In *Nguyen*, the wife filed a motion to compel enforcement of her Marital Settlement Agreement (MSA). *Id.* ¶ 6. The husband filed a motion to dismiss the wife's motion to compel.

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The Value of a Narrative Response *(cont'd)*

The husband also filed "affirmative defenses" to which the wife did not respond. The husband later argued those defenses were affirmed. The *Nguyen* court rejected the idea that a motion to compel is a pleading. The court followed the logic that in dissolution actions, either to start or modify the dissolution, the petition is considered a pleading, because it starts the new suit. *Id.* ¶ 23. As the wife's motion was simply to enforce a previously entered MSA, the court rejected the idea that a motion to compel enforcement is starting anything new. Rather, as it sought relief granted in a previously existing case, it was not a pleading and thus could not be subject to a motion to dismiss. *Id.* ¶ 22. Additionally, the court rejected the argument that by not responding to his "affirmative defenses" the petitioner had affirmed his defenses. Rather, the court pointed out that in the context of a motion, failing to respond to the respondent's defenses is not an automatic affirmation as it is in a pleading. *Id.* ¶ 23. "[T]he failure to file a written response to a motion within the time allowed therefor does not waive the right to contest the merits of the motion." *In re Marriage of Fahy*, 208 Ill. App. 3d 677, 685 (1st Dist. 1991). In sum, pleadings and motions are statutorily different and need to be treated as such.

How Lawyers Should Respond to Motions

Motions require a narrative response. When a party files a motion with the court, the party is telling the court a story about a specific issue within the pleadings already filed. In the motion, attorneys are the narrators telling the court about a problem or conflict the client needs the court to address before the ultimate resolution of that pleading. In so doing, the attorneys have opportunity to cite to statutory and case authorities in support of their argument.

A response to a motion grants the responding party or attorney the opportunity to tell that party's version of the narrative. It should ask for the responding party's own kind of remedy: to deny the opponent's motion. A response is supposed to make an argument for the respondent's side of the issue, not simply admit or deny the individual paragraphs of the original motion. An admit/deny response to a motion tells the court virtually nothing about the respondent's position regarding the facts or legal opinion of the original motion. In short, the admit/deny response lacks the care and advocacy that is required of a meaningful argument.

When an attorney prepares a response, it should tell the client's side of the story. It should be persuasive, it should advocate competently for the client, and it should have its own point of view. Of critical importance, a judge who has read the response to a motion should understand the responsive/ rebuttal argument. Based on strong support from cited legal authorities, the judge should also understand why the facts of the situation support the responding client's position. By contrast, an admit/deny response lets the other party effectively write the response. Attorneys who do this are failing as an advocate. They are choosing to forgo their opportunity to tell their client's story in a way that makes the judge feel they should win.

Conclusion

The failure of many family law practitioners to appreciate the distinction between pleadings and motions results in the common practice of using the "admit/deny" format in responding to motions. Hopefully, greater education as to the rules of civil procedure can reduce or even eliminate the practice.

But there are also very practical reasons to favor a narrative response. Unsupported denials and underdeveloped thoughts are generally unpersuasive. The legal argument of "I disagree" or "That is not true" is not as effective as actually setting forth your client's narrative story and logical legal argument in support of the client's position. Practitioners need to let the court know the client's position, as well as the facts and legal authorities that support the client in a way that presents the client as the hero of their own story. Anything less than this is lazy and underperforming. Accordingly, family law practitioners should embrace the narrative response for the sake of their clients and themselves.

Judge James A. Shapiro is a Circuit Judge sitting in Domestic Relations Court. Judge Mitchell B. Goldberg is an Associate Judge sitting in Domestic Relations Court. Both are past presidents of the Decalogue Society of Lawyers. Domestic Relations Division Attorney McKenna Deutsch also contributed to this article.

Settling Cases by Consent Judgment

by Alon Stein

Yes, you do have settlement authority and you are negotiating in good faith if the only thing that your client can offer at a pretrial settlement conference is a consent judgment!

You have a case pending in federal court, which has been assigned to a magistrate judge for a pretrial settlement conference (i.e. a mediation). You represent the defendant, which is a corporation. Your client's representative tells you on the eve of the pretrial conference that the company is about to file an assignment for the benefit of creditors, which is a proceeding similar to a bankruptcy, but without the benefit of an automatic stay. Your client has no money to offer to the plaintiff at the mediation.

You and your client's representative appear at the pretrial conference the following day. On behalf of your client, you state you have authority to enter into an agreed consent judgment but cannot offer any money to the plaintiff. The settlement conference is then immediately cancelled by the magistrate judge, who issues an order demanding an explanation as to why your client should not be sanctioned under Federal Rule of Civil Procedure 16(f) for failing to participate in good faith in the settlement conference.

How should you respond?

First, you should review Federal Rule of Civil Procedure 16(f) (Sanctions), which provides the following:

> (1) In General. On motion or on its own, the court may issue any just orders . . . if a party or its attorney:
>
> (A) fails to appear at a scheduling or other pretrial conference;
>
> (B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or
>
> (C) fails to obey a scheduling or other pretrial order.
>
> (2) Imposing Fees and Costs. Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

Your response should respectfully point out the fact there is no basis for sanctions because a consent judgment is a valid good faith settlement offer.

Specifically, your response should state that an offer to enter into a consent judgment is a good faith offer comprised of valid consideration. It is therefore a proper settlement offer when made by a representative with settlement authority to do so. *United States v. Alshabkhoun*, 277 F.3d 930, 934 (7th Cir. 2002) (a consent judgment "is a court order that embodies the terms agreed upon by the parties as a compromise to litigation"); *see also, e.g., Southern R. Co. v. Brunswick Pulp & Paper Co.*, 376 F. Supp. 96, 101 (N.D. Ga. 1974); *United States v. Unified Court System*, 25 Empl. Prac. Dec. (CCH) P31,661 (S.D.N.Y. 1981); Stanley N. Barnes, *Settlement by Consent Judgment*, 4 A.B.A. Sec. of Antitrust Law 8, 8-13 (1954) (cited in *Antitrust at The Water's Edge: National Security and Antitrust Enforcement*, 78 Notre Dame L. Rev. 629 (January 2003).

In explaining consent judgments as an accepted means of settling and concluding litigation, the United States District Court for the Northern District of Indiana stated:

> **[T]he parties may request a consent judgment as a means of concluding the litigation.** While a stipulated dismissal is an agreement by the parties ending the Court's jurisdiction, **a consent judgment is a discretionary exercise by a court of that jurisdiction, in the form of an order that adopts and endorses with the court's authority the settlement agreement of private parties.** See *United States v. Alshabkhoun*, 277 F.3d 930, 934 (7th Cir. 2002) (a consent judgment 'is a court order that embodies the terms agreed upon by the parties as a compromise to litigation'); *Schurr v. Austin Galleries of Ill., Inc.*, 719 F.2d 571, 57 (2d Cir. 1983) (describing a consent judgment as 'an agreement of the parties entered upon the record with the sanction and approval of the court'). . . However, as stated above, a judgment cannot just be stipulated by the parties. Rather, it may be requested and granted by the Court if it is consistent with the law, does not harm third parties, and is an appropriate use of judicial resources.

Metro. Life Ins. Co. v. Hanni, 2017 U.S. Dist. LEXIS 222698; 2017 WL 6805318 (N.D. Ind. 2017).

In conclusion, if you are placed in a situation where the only settlement authority you have for a pretrial settlement conference is entering into a consent judgment, to avoid any potential Rule 16 sanctions, you should explain that a consent judgment is a good faith settlement offer. If you have the cases ready and available to argue your point, then you should be able to move forward with the settlement conference with everyone knowing your client's participation is in good faith.

Alon Stein practices business law and is licensed in Illinois, Wisconsin, and Arizona.

Want to write for the Tablets?

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

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

Mental Health and Criminal Justice

by Judge Jeanne Marie Wrenn

Do you ever ask yourself, when is the right time to sit down and reflect on life? What's working well and let's face it: what's not working well or at all?

As a Catholic, the season of Lent provides us with the unique opportunity to do so in a prayerful and spiritual manner with the hope of bringing one closer to God. As one of the five pillars of Islam, Ramadan is a period of fasting and spiritual growth for its followers. In the Jewish tradition, Yom Kippur – the Day of Atonement – marks the culmination of the ten days of awe, a period of introspection and repentance. *Do you ever ask yourself when is the right time to stop and reflect on my vocation?*

Although I am six years into my position as a judge, I consider myself new to the role. (I was going to reference that I consider myself a *younger judge*, but the Honorable Judge Megan Goldish will be proofreading this and she will absolutely disagree since she is younger than I!)

A few years back, I was really discontented with the levels of homelessness, abject poverty, and mental health issues that were routinely surfacing in my criminal call within the friendly confines of the Domestic Violence Division. *What to do about it and how to change it?* It's safe to say those issues are not in front of me to address, but aren't they impediments to any hope of a successful resolution of a case? If I don't have a steady address, or working cell and I cannot afford transportation, getting to court is a serious challenge. Not to mention, if I do not have access to mental health services and providers what is the court's expectation of my success?

How do you mend a broken call?

Simply put, you change the formula. The cases that involve individuals with mental health issues always take more time and impact both the feel of the call and my patience. Often, these cases involve family members where a child with bipolar or schizophrenia returns to the parent's home and causes a ruckus or destroys property regardless of any order of protection that might be in place. *These cases demand more attention, more time, and a lot more patience.*

As a Catholic, I was raised to believe that I am God's child created in God's image, so shouldn't the same hold true for these individuals? Something has to give and someone has to try to change the way we handle these cases. In my own outspoken and unrelenting way, I kept asking for a specialized diversion call until my Presiding Judge and the Chief Judge said yes — just like the dogged approach I used with my mom when I begged to get my ears pierced!

This – is- how- we – do - it (please read this to the beat of the one-hit wonder by Montell Jordan). The complaining witness must consent to the program (oftentimes they request help before it is offered), and the defendant must be willing to participate and acknowledge they have a mental health diagnosis. Our Bobby Wright/Westside Triage partners assess the defendant and perform an intake. Based on the assessment, the next steps and treatment options are undertaken. Roughly, the goal of the program is graduation with ongoing services. The program would not be possible without the dedication and extra effort that both the assistant state's attorney and public defender put in with each case, the coordination with the Cook County Sheriff's Office for movement and transportation, and the guidance of the mental health professionals at Bobby E. Wright.

According to NAMI (National Alliance on Mental Illness), there are over two million jail bookings of people with serious mental illness each year. Additionally, two in five adults in jail or prison have a history of mental illness. Further, it is estimated that there are 10,431 homeless people in Illinois and one in five live with a serious mental illness. Clearly, the need is great but the capacity is scarce.

As I said in the first training, none of us can be afraid to fail because we most assuredly will fail and likely it will happen more often than we succeed. However, when we do succeed, *the difference will be immeasurable.* Sure enough, I anticipated the trajectory of this call perfectly. We have learned a lot of lessons during this first year – who knew capacity was a thing or that mental health agencies have rampant staff turnover? Working with this population is challenging because there is a transient nature to their lifestyle especially when their respective illness is going untreated or self-medicated and there is a profound lack of trust in both treatment and the court system. Why keep trying? For me, it is the relief you see in the parent's eye when they realize someone is truly intervening, listening, and helping. Moreover, it is all the moments when you see a person believe in themselves for the first time in a long time. I am confident that we will continue to fail but I am more confident that when we succeed the success will stick!

Judge Jeanne Marie Wrenn is a full circuit judge assigned to the Domestic Violence Division where she oversees a criminal court call. The Mental Health Diversion call is held in Branch 61 on Wednesdays at 1 pm. Visitors and referrals are welcome!

SAVE THE DATE!
Thursday, July 11, 2024

The Decalogue Society of Lawyers 90th Anniversary Gala

Understanding how the SAFE-T Act has Changed the Cash Bail System and Impacted both Criminal and Civil Litigators

by Jonathan Federman and Bill Souferis

On January 22, 2021, Governor J.B. Pritzker signed into law the Illinois Safety, Accountability, Fairness, and Equity-Today Act, commonly referred to as the SAFE-T Act or the Pre-Trial Fairness Act. This article will address the sweeping changes that the SAFE-T Act has had in the criminal practice of law. Furthermore, the SAFE-T Act has also likely impacted appellate litigation, as the new law appears to have also led to unintended consequences of exponentially increasing the number of appeals throughout the Illinois Appellate Court system. Therefore, all litigators in Illinois, trial and appellate, should take the time to understand how the SAFE-T Act impacts their practice so that they can properly advise their clients.

While the voluminous SAFE-T Act bill made sweeping changes to a multitude of Illinois criminal code provisions, the focus of this article pertains to the specific provisions eradicating the cash bail system in Illinois. Specifically, effective January 1, 2023, the SAFE-T created an alternative to the previous cash bail system, through "pretrial release."[1] Essentially, the General Assembly abolished monetary bail (except in very limited circumstances)[2] as they instituted "pretrial release" systems. Pursuant to "pretrial release," the prosecution has the burden to prove by clear and convincing evidence that any condition of release is necessary.[3] The State also has the burden to prove when the court should deny "pretrial release" because the person presents a real and present threat to the safety of any person(s) or the community.[4]

Now, monetary bail procedures in almost all criminal act charges have been eradicated and references to "bail," "bail bond," or "conditions of bail" have been replaced with "pretrial release" or "conditions of pretrial release."[5] Further, the SAFE-T Act replaced certain provisions in the Criminal Code of Procedure addressing and providing statutory guidance for the determination of bail for pretrial release. It replaced them with provisions addressing and providing statutory guidance for courts in determining whether a defendant shall qualify for pretrial release.[6] Specifically, when a court determines the conditions of pretrial release it will take into account, in part, the following: (1) the nature and circumstances of the offense charged; (2) the weight of evidence against the defendant, except that the court may consider the admissibility of evidence sought to be excluded; (3) the history and characteristics of the defendant; (4) the nature and seriousness of the real and present threat to the safety of any person(s) or community; and (5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process.[7]

Following its enactment, the constitutionality of the SAFE-T Act's changes to the criminal code, and specifically the abolition of the bail system in Illinois, was challenged. In *Rowe v. Raul*, the State's Attorney of Kankakee County and the Sheriff of Kankakee County[8] filed suit against the Illinois Attorney General, the Illinois Governor, the Illinois House Speaker, and the Illinois Senate President, in the Circuit Court of Kankakee County. In their lawsuit, the plaintiffs challenged the constitutionality of various aspects of the SAFE-T Act, including the abolition of the pretrial bail system under the criminal code with a new pretrial release system that did not include monetary bail.[9] The Illinois Supreme Court, before ruling, granted a supervisory order staying the effect of the specific pretrial release provisions within the SAFE-T Act.[10]

The supervisory order established that, sixty days after the court issued its opinion, the stay of pretrial release provisions in the SAFE-T Act would be vacated.[11] Thus, 60 days after the Illinois Supreme Court issued its opinion in *Rowe*, the pretrial release provisions would become effective.

On July 18, 2023, the Illinois Supreme Court issued its opinion.[12] That triggered the 60-day window, and the pretrial release provisions became effective on September 18, 2023.[13] The Illinois Supreme Court reversed the trial court's order, which had granted summary judgment in favor of the plaintiffs.[14] The Illinois Supreme Court held that the Illinois Constitution of 1970 does not mandate that monetary bail is the only means to ensure criminal defendants appear for trials or the only means to protect the public, as the constitution creates "a balance between the individual rights of defendants and the individual rights of crime victims."[15] The SAFE-T Act's pretrial release provisions "set forth procedures commensurate with that balance."[16]

While the purpose of the SAFE-T Act, in its entirety, along with debates regarding the groundbreaking changes to the criminal code are available for public review, it is worth examining or considering one aspect of the implementation of these novel changes to the monetary bail system. While the SAFE-T Act sets forth various factors and considerations for the courts to use in determining whether pretrial release or incarceration is necessary, the Act also provides: decisions regarding release, conditions of release, and detention prior to trial must be individualized, and no single factor or standard may be used exclusively to make a condition or detention decision.[17] Also, risk assessment tools cannot be used as the sole basis to deny pretrial release.[18] This in turn leads to the primary inquiry of this article; that is, has the SAFE-T Act's sweeping changes to the monetary bail system created a binary pretrial system in which the accused is either incarcerated or released?

Since the September 18, 2023 effective date, there have been a significant number of appeals by criminal defendants relating to their pretrial incarceration and/or release. As an illustration, it appears that between February 1, 2024 and February 9, 2024, the Illinois Appellate Court filed thirty-three (33) separate appellate decisions specifically relating to pretrial release under the SAFE-T Act.[19] The First District, Illinois's most populous appellate district and certainly the busiest docket of Illinois's appellate districts, appears to have accounted for eleven (11) of the 33 appellate decisions filed during that same time. By contrast, during the same date range the previous year (February 1, 2023 through February 10, 2023) there were a total of thirty-five (35) criminal case appellate decisions filed.[20]

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SAFE-T Act *(cont'd)*

Of the thirty-five (35) appellate decisions filed, none appear to have pertained to issues of pretrial detention, pretrial release, or monetary bond.

Before the enactment of the SAFE-T Act, Illinois utilized monetary bond as the established method of pretrial processing for criminal defendants. Notably, it appears that the number of criminal defendants' appeals addressing the imposition of monetary bonds as "excessive" was significantly fewer than the number of appeals filed by challengers to the pretrial release provisions in only months.[21] Similarly, appeals by criminal defendants before the SAFE-T Act, relating to pre-trial detention without bond, are also less voluminous than the SAFE-T Act appeals. Indeed, the Illinois Constitution only allowed pre-trial detention without bail in certain cases, including capital crimes, which were eliminated in Illinois over a decade ago.

With the disparity in the volume of appeals pre-dating and post-dating the SAFE-T Act's enactment, the next issue is how those appeals are impacting the appellate districts' dockets. To that end, it is important to understand how parties appeal SAFE-T Act pretrial release rulings. Illinois Supreme Court Rule 604(h) provides the requirements for "Appeals From Orders Imposing Conditions of Pretrial Release, Granting or Denying a Petition to Deny Pretrial Release, or Revoking or Refusing to Revoke Pretrial Release." Perhaps the impactful provision of Illinois Supreme Court Rule 604(h) is sub-paragraph (5), which provides:

> *Time for Decision; Oral Argument*. After the appellant has filed the Notice of Appeal, supporting record, and any memorandum and the time for filing any response and memorandum has expired, the Appellate Court shall consider and decide the appeal within 14 days, except the court may extend the deadline for good cause. Oral argument will not be heard, except on the court's motion.

It is therefore statutorily prescribed that appellate courts across the State of Illinois rule on these seemingly voluminous appeals within 14 days (absent good cause extensions). One cannot overlook the importance of setting a time limit for issuing Appellate rulings under Illinois Supreme Court 604 because courts must always uphold the Constitutional right to liberty and freedom of person. However, the question then becomes whether the imposition of this 14-day deadline, coupled with the very high volume of appeals under the SAFE-T Act's pretrial release procedures, is burdening the appellate courts. In turn, if the appellate courts are being burdened with voluminous SAFE-T Act appeals under Illinois Supreme Court Rule 604(h), does this create a delay in appellate proceedings for civil litigators? As of the most recent data available from 2022, 45.8% of the total 2,731 civil appellate cases across the State of Illinois were disposed in six months or less. Indeed, 75% of the civil appellate cases were disposed in less than one year. With respect to criminal appellate cases, in 2022, 16.1% of the total 2,385 cases were disposed of within six months, and 36.6% of the cases within 12 months.

Unfortunately, the Annual Report of the Supreme Court of Illinois for the year 2023, and perhaps more importantly 2024, will not be compiled and published for several years. However, it will be interesting to see whether any trends will begin to develop after September 18, 2023 and whether the volume of the SAFE-T Act appeals will negatively impact the time of disposition and handling of other appeals, including those of civil cases.

The increase of appeals related to pretrial release versus the number of appeals related to excessive bonds demonstrates that the legislature may have unintentionally created problems related to the SAFE-T Act's goals. That is, by removing cash bail, the legislature may have created additional burdens on Illinois's court system, specifically the appellate courts. In turn, this could affect every litigant, including civil litigators, if the disposition of appeals related to the SAFE-T Act ultimately delays resolution of all other appeals.

While the SAFE-T Act applies specifically to criminal law, the implications of the bill appear to have indirectly impacted litigants throughout the State. Attorneys who focus on criminal defense work must be familiar with the sweeping changes so that they can best counsel and represent their clients. Prosecutors must be familiar with how the changes impact pretrial hearings. And while civil litigators will not have to address the arguments or issues the SAFE-T Act raises, the sheer quantity of appeals will likely, if not certainly, affect timing considerations for appeals. Therefore, civil litigators need to understand how the SAFE-T Act is driving an increase in appeals. Furthermore, the fact that under the SAFE-T Act such appeals take a heightened priority over other matters may mean that civil appeals will face delays. The sweeping changes in the SAFE-T Act therefore are something that every litigator in Illinois must account for and understand.

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[1] 725 ILCS 5/110-2 establishes that all persons charged with an offense shall be eligible for pretrial release before conviction, with a presumption that a defendant is entitled to release on personal recognizance.
[2] Monetary bail is still applicable when the matter involves the Uniform Criminal Extradition Act, the Driver License Compact, or the Nonresident Violator Compact. 725 ILCS 5/110-1.5.
[3] 725 ILCS 5/110-2(b).
[4] 725 ILCS 5/110-2(c).
[5] 5 ILCS 70/1.43.
[6] See Pub. Act 101-652, § 10-255 (eff. Jan. 1, 2023) (amending 725 ILCS 5/110-5).
[7] 725 ILCS 5/110-5(a).
[8] 2023 IL 129248, ¶ 7, 223 N.E.3d 1010 (2023).
[9] Id. at ¶ 1.
[10] Id. at ¶ 52; People ex rel. Berlin v. Pritzker, No. 129249 (Ill. Dec. 31, 2022) (supervisory order).
[11] Rowe, 2023 IL 129248, ¶ 52.
[12] Id. at ¶ 1.
[13] Id. at ¶ 52.
[14] Id. at ¶ 1.
[15] Id. at ¶ 51.
[16] Id.
[17] 725 ILCS 5/110-6.1(f)(7).
[18] Id.
[19] The authors randomly and arbitrarily selected the date range as a small but recent sample size without consideration of appellate district schedules, tendencies, and/or patterns in reviewing and issuing decisions.
[20] One of the thirty-five counted cases was withdrawn on June 15, 2023.
[21] The authors were able find fifty-three (53) total criminal case appeals based on challenges to excessive bond amounts.

The True Cost of Incivility in the Legal Profession

by Erika N.L. Harold

While some lawyers view incivility as a relatively minor transgression, a 2022 New York Supreme Court decision shows incivility can be costly.

Justice Andrea Masley's decision is noteworthy not only because of the steep penalties she imposed but also because of the strength of the opinion itself. Justice Masley rejected the notion that incivility is simply vigorous advocacy and instead reinforced civility as a first principle of the legal profession.

Objecting on the grounds of 'being obnoxious'

The litigation at issue involved a dispute over music publishing and production agreements between plaintiff Jacob Hindlin, a music writer and producer, and defendants Prescription Songs LLC and Kasz Money, Inc., a music publishing company and a music production company, respectively. (*See Hindlin v. Prescription Songs LLC*, New York Supreme Court, New York County; Cal. No. 2022L-01547; Ind. No. 651974/2018.)

Defendant Kasz Money filed counterclaims, including claims against Nonstop Management, LLC, which served as plaintiff Jacob Hindlin's manager. Notably, the plaintiff's wife Jaime Hindlin was the CEO of Nonstop Management.

The defendants sought to depose Mrs. Hindlin, and Justice Andrea Masley ordered that her deposition be taken over two days. Following day one of Mrs. Hindlin's deposition, however, the defendants sought sanctions against the lawyers representing Mr. and Mrs. Hindlin. They alleged that the Hindlins' lawyers:

> (i) relentlessly obstructed the deposition by making personal attacks on Defendants' counsel and our law firm with disparaging and insulting diatribes and threats of retribution in violation of established rules of civility and the rules of professional conduct, (ii) amplified this orchestrated obstruction repeatedly with pages and pages of argumentative speaking objections, often filled with invective, and (iii) repeatedly instructed the witness not to answer appropriate questions.

(Defendants' Memorandum of Law, NYSEF Doc. No. 960, p. 1.)

According to the defendants, the lawyers representing the Hindlins collectively "interjected with improper speaking objections and/or colloquy" approximately 300 times, and Mrs. Hindlin was improperly instructed not to answer 30 questions. (*Id.*, at pp. 2-3.)

The defendants also alleged that the Hindlins' lawyers "repeatedly engaged in abusive, unprofessional, insulting, and bullying behavior, stating to opposing counsel, among other things:

- 'You're pretty terrible about asking questions…'
- 'I'm going to object on the grounds of it being obnoxious.'
- 'Somebody ought to teach you about conducting depositions.'
- '[S]omebody ought to run a CLE program for your firm.'
- 'I suggest that maybe you and your colleagues attend a CLE about what depositions are really about.'
- '[W]e have a combined approximately … 100 years of litigating experience, and I join in his — in his statement. And, by the way, I know [other] lawyers who have the same opinion of you gentlemen.'
- 'You're going to get your comeuppance for this, I can guarantee it.'
- 'If you don't show up [to a post-deposition conference], you will suffer the consequences. It is not a threat. It is a promise.'"

(*Id.*, pp. 1-2) (Internal emphasis and citations omitted.)

Additionally, the defendants asserted that "counsel repeatedly swore, and used inappropriate and aggressive language throughout the deposition" and suggested that if the defendants' counsel continued asking questions about a certain topic, then "God help you, because it will be up to a higher [power] than me or the Court[,] and you have to look at yourselves in the mirror in the morning." (*Id.*, p. 10.)

The Hindlins' lawyers filed pleadings in opposition to the Motion for Sanctions, arguing the questions posed by the defendants' lawyers were improper both in form and substance and designed to cause undue stress and the waiver of privilege. (*See e.g.*, Affirmation in Opposition, NYSEF Doc. No. 975; Memorandum in Opposition, NYSEF Doc. No. 995.) They also emphasized the significant health challenges the witness was already experiencing.

The risks of 'tarnishing the profession'

Justice Masley, however, rejected these arguments. Following her review of the deposition transcript and the parties' pleadings, she issued a decision, sanctioning the Hindlins' lawyers. (NYSEF Doc. No. 1037.)

In her ruling, Justice Masley found that:

> This is not the first time [Attorney] Goodman has exhibited this type of unprofessional, bullying behavior in this action, though it was only brought to this court's attention with this motion. … [Goodman: 'You are not very good at asking questions, but you are very good at interrupting others.'], … [Goodman: 'You are really obnoxious']; … [Goodman: 'wipe that silly smile off your face'] … [Goodman: 'You have no knowledge of the law at all. You're a joke …. you're nonsense.']; … [Special Master: 'Ok, Mr. Montclare. You are on mute sir … You've got to unmute yourself.' Montclare: 'I said it's nice to see you again …' Goodman: 'You could have stayed on mute Paul. That would have been fine'].

(*Id.*, at p. 4.) Justice Masley then delineated key reasons why lawyers must exhibit civility, even when vigorously advocating for their clients.

First, Justice Masley noted that "lawyers are expected to 'advise their clients and witnesses of the proper conduct expected of them … and make reasonable efforts to prevent [them] from causing disorder or disruption." (*Id.*, pp. 4-5) (quoting 4C NY Prac, Com Litig in New York State Courts § 86: 16). As such, Justice Masley exhorted that "[a]ttorneys must model civility for their clients." (*Id.*, at p. 5.)

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The True Cost of Incivility in the Legal Profession *(cont'd)*

Second, Justice Masley found that incivility impedes legal proceedings. She explained that a lawyer's incivility in a deposition might "incite the witness," thereby "necessitating that the deposition be retaken." (*Id.*) Instead of emboldening witnesses to join them in thwarting legal proceedings, Justice Masley underscored the obligation lawyers have to intervene when their witnesses engage in abusive or obstructive conduct.

Finally, and perhaps most importantly, Justice Masley found that incivility "tarnishes the profession." (*Id.*) Accordingly to Justice Masley, "[o]ffensive and abusive language by attorneys in the guise of zealous advocacy is plainly improper, unprofessional, and unacceptable." (*Id.*)

She emphasized that "[a]n attorney who demonstrates a lack of civility, good manners and common courtesy taint the image of the legal profession and, consequently, the legal system, which was created and designed to resolve differences and disputes in a civil manner." (*Id.*) (Internal quotations and citations omitted.)

Justice Masley then ruled that the conduct of the Hindlins' lawyers was "uncivil and obstructive" and therefore sanctionable. (*Id.*, p. 6.) She ordered the following:

- The Hindlins' lawyers must reimburse the defendants the fees and expenses they incurred during the first day of the deposition and in connection with filing the motion for sanctions. The defendants attested that such fees and costs totaled $56,040.54.
- The attorney representing the witness, Mrs. Hindlin, was required to pay $2,000.00 to the Lawyers' Fund for Client Protection.
- The attorney representing Mr. Hindlin was required to pay $10,000.00 to the Lawyers' Fund for Client Protection for engaging in obstructive conduct despite not even being the witness' lawyer.
- The Hindlins' lawyers were mandated to attend a CLE on civility and provide the CLE instructor with a copy of the deposition transcript at issue so the instructor could use it in his seminar "as an example of uncivil sanctionable behavior." (p. 6, n. 8.) They were then required to submit to the court "an affirmation attesting to their attendance and whether they complied with this court's order that they read the standards of civility." (*Id.*, p. 7.)

Civility is foundational to our justice system

While surveys conducted by the Illinois Supreme Court Commission on Professionalism show that incivility is commonplace in the legal profession, the imposition of judicial sanctions for incivility is far less common.

Indeed, many litigators and law firms are loath to even seek sanctions against opposing counsel, as they don't want to be perceived as weaponizing motions and legal proceedings and are concerned about escalating a cycle of incivility. Ironically, some of the lawyers most likely to threaten to seek sanctions are those whose behavior is most warranting of sanctions.

This creates a quandary for judges wishing to foster civility, as a significant amount of incivility occurs outside of the courtroom and is never brought before them via a motion. Some Illinois judges are proactively attempting to prevent incivility in their courtrooms.

For example, the Domestic Relations Division of the Cook County Circuit Court has an expansive Civility Rule, which includes a prohibition against lawyers "engag[ing] in offensive conduct or do[ing] any acts that may contribute to hostility or acrimony between the parties or others related to the pending action," "even when called upon by a client to do so." (Rule 13.11(a)(iv).)

Additionally, in 2022, Judge Michael J. Chmiel, who currently serves as Chief Judge of the 22nd Judicial Circuit in McHenry County, Illinois, issued a Standing Order on Professionalism and Civility, stating that "Parties and the attorneys who represent them are reminded to engage in professionalism and civility in the handling of cases which come before the Court." As Chief Judge Chmiel told me in a Reimagining Law interview, "We as judges have to use the tools we have" to combat incivility.

Justice Masley did just that in her Order. Not only did she impose sanctions to punish alleged incivility in the case before her, but she also wrote an instructive opinion articulating the foundational role of civility in preserving both the legal profession and the justice system.

As Justice Masley noted, "[s]ociety at large, and the legal community in particular, is increasingly less tolerant of sharp practices and sharp behavior that verges on harassment. It is a question of enlightened self-interest for lawyers and their clients to be tough yet civil." (*Id.*, p. 3) (quoting Hon. Lawrence K. Marks, Jeremy Feinberg and Laura Smith, § 86:1 Scope note, 4C NY Prac, Com Litig in New York State Courts § 86:1 [5th ed.].)

Staying up to date on issues impacting the legal profession is vital to your success. Subscribe here to get the Commission on Professionalism's weekly news delivered to your inbox.

Erika N. L. Harold is the Executive Director of the Illinois Supreme Court Commission on Professionalism. A dedicated advocate for civility, empathy, and inclusion, Erika leads the Commission's extensive educational programming focused on advancing professionalism among the state's lawyers and judges to build trust and confidence in the justice system. Connect with Erika on LinkedIn.

Section 303 of the Bankruptcy Code: Friend or Foe?

by Michael H. Traison and Kelly McNamee

The Bankruptcy Code (the "Code") provides different chapters for a debtor to voluntarily seek relief from its creditors. Most commonly, businesses use Chapter 11 to reorganize and Chapter 7 to liquidate. However, Section 303 of the Code also provides a unique tool that allows creditors to file an involuntary petition against a debtor who is unable to pay its debts as they become due.

Bringing an involuntary petition against a debtor can have a dramatic impact beyond the debtor itself, affecting other creditors, secured lenders, and banks. The potential damage is why courts will examine such petitions carefully, as should the petitioners before they file. Our bank and trade creditor clients will contact us when they are involved in such a situation. The debtor will have the right to contest the petition, or to convert the case from the chapter which the petitioners sought.

Perhaps the most important concept underlying Section 303 is that it should not be used as a debt collection tool on behalf of individual creditors, but rather, used as public policy to assist when an insolvent debtor is generally not paying its debts as they become due.

Section 303(h)(1) provides that the court shall order relief only if (1) the debtor is "generally not paying such debtor's debts as such debts become due," and (2) the petitioning creditor's or creditors' debts are not subject to a bona fide dispute. This discussion will focus on those two elements.

What is the meaning of generally failing to pay debts as they become due?

A recent case, *In re Navient Solutions, LLC*, stated that "'generally not paying its debts' does not mean 'balance-sheet insolvent.'" No. 21-CV-2897 (JGK), 2022 WL 863409, *5 (S.D.N.Y. 2022), *aff'd*, No. 22-1376, 2023 WL 3487051 (2d Cir. 2023) The court explained that it does not mean that a "debtor could not pay its debts, but rather that the putative debtor is not doing so." This is a significant distinction.

In its discussion, the court explained that courts within the Second Circuit, rely on four factors in determining whether a debtor is generally failing to pay its debts as they become due:

1. the number of unpaid claims;
2. the amount of such claims;
3. the materiality of the non-payments; and
4. the debtor's overall conduct of its financial affairs.

Courts in the Second Circuit have found that a debtor will be considered as generally not paying its debts when the debtor fails to pay one debt that makes up a substantial portion of its overall liability. *In re Amanat*, 321 B.R. 30, 39 (Bankr. S.D.N.Y. 2005).

The *Navient* court also explained that the Court does not look to the insolvency of the debtor. The court ruled against the petitioners' argument who presented a calculation of the debtor's balance sheet showing insolvency. The Court found this irrelevant and boiled the issue down to a simple question: "whether [the debtor] is 'generally not paying its debts.'" *Navient Solutions,* 2022 WL 863409, *5.

What is the meaning of not subject to a bona fide dispute?

As with many terms within the Code, "bona fide dispute" is not defined. Courts must determine whether a bona fide dispute exists as to a claim. However, a court need not determine the "outcome of any dispute, only its presence or absence." *In re 35th & Morgan Development Corp.*, 510 B.R. 832, 846 (Bankr. N.D. Ill. 2014).

The test in the Second Circuit for determining whether there is a bona fide dispute was established by *In re BDC 56 LLC*, 330 F.3d 111 (2d Cir. 2003), abrogated on other grounds by *Adams v. Zarnel*, 619 F.3d 156 (2d Cir. 2010). In this case, the Second Circuit followed the Seventh Circuit's formulation of an objective test which states that "[t]he bankruptcy court must determine whether there is an objective basis for either a factual or a legal dispute as to the validity of [the] debt." *In re BDC 56 LLC*, 330 F.3d at 117. The court stated, "Congress intended to disqualify a creditor whenever there was a legitimate basis for the debtor not paying the debt. Congress … did not intend to require a debtor to pay a legitimately disputed debt simply to avoid the stigma of bankruptcy."

Additionally, the Second Circuit adopted the Seventh Circuit's burden-shifting framework for determining whether a bona fide dispute exists. The burden-shifting framework requires "that the petitioning creditor establish a prima facie case that no bona fide dispute exists. Once a prima facie case is established, the burden shifts to the debtor to demonstrate the existence of a bona fide dispute." *In re BDC 56 LLC*, 330 F.3d at 118.

But what do courts actually consider to be a bona fide dispute, and does a dispute arise just because a creditor brings a claim for an unpaid debt? This is an objective standard.

The Seventh Circuit has stated that the mere existence of pending litigation or the filing of an answer is insufficient to establish the existence of a bona fide dispute. Compare that with courts in the Second Circuit, who have found where there are multiple litigations pending or extensive litigation over the same claim, gives rise to the possible existence of a bona fide dispute. *In re TPG Troy LLC*, 492 B.R. 150, 158-60 (Bankr. S.D.N.Y. 2013); *see also Navient Solutions*, 2022 WL 863409, at *6.

Similarly, courts have explained that outstanding factual issues "[make] clear that . . . a bona fide dispute" exists. *Navient Solutions*, 2022 WL 863409, at *6. As the case law illustrates, determining whether there is a bona fide dispute is a complicated, fact specific inquiry that the court must carefully analyze.

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Alex Jones and Non-Dischargeable Debt

by Michael H. Traison

The Sandy Hook School massacre that occurred on December 14, 2012 is a tragedy that will forever be engrained in the memories of Americans, but even more so for the families of the victims of that tragic day, who are still in contentious legal battles with alt-right radio show host and conspiracy theorist Alex Jones.

For years, Jones broadcast that the shooting was a hoax. Plaintiffs brought actions based upon legal theories for defamation and intentional infliction of emotional distress in Texas and Connecticut state courts against Jones and his company, Free Speech Systems LLC. In both the Texas and Connecticut state court actions, the defendants defaulted, and default judgments were entered in both states. Now Jones faces another motion: whether the judgments entered against him are non-dischargeable under Section 523(a)(6) of the Bankruptcy Code.

The Bankruptcy Code provides debtors the chance at a "fresh start" in bankruptcy. However, Section 523 of the Code creates exceptions to the discharge of certain types of debts and can take away the privilege of a debtor's fresh start. Examples of these debts include debts arising from (i) money, property or services provided to the debtor obtained by false pretenses, false representation or actual fraud (section 523(a)(2)(A)); (ii) the debtor's fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny (section 523(a)(4)); or (iii) the debtor's willful and malicious injury to another entity or property of another entity (section 523(a)(6)).

In our current case, plaintiffs brought this adversary proceeding to determine the dischargeability of the debts against Jones under § 523(a)(6) of the Code. They moved for summary judgment arguing that the Final Judgment satisfies the requirements of collateral estoppel on the issue of willful and malicious injury. *Heslin v. Jones*, No. 23-33553 (Bankr. S.D. Tex. Oct. 19, 2023).

The theory of collateral estoppel prevents parties from relitigating issues of fact that were already determined by a valid and final judgment in a prior lawsuit in any future lawsuit involving the same parties.

With regard to the Connecticut suits, Bankruptcy Judge Christopher Lopez of Houston stated that the allegations in the complaint were deemed admitted when a default judgment was entered and that the findings about Jones's willful and malicious injury to the plaintiffs were also necessary to the judgment and the jury award damages. Based on this fact, a final judgment was rendered, and collateral estoppel applied. However, Judge Lopez only granted partial summary judgment as to non-dischargeability. He was unable to grant summary judgment as to the attorney fees as common law punitive damages because the jury could have found liability for a reckless act, which would not have been non-dischargeable.

A similar holding was rendered in regard to the Texas suit. There, Judge Lopez found that the default judgment also amounted to an admission by Jones, and collateral estoppel applied to the default judgment on willful and malicious injury. Judge Lopez stated that he was granting summary judgment "as to the findings of willful and malicious injury about defamation and intentional infliction of emotional distress, but [denying] the motion as to the amount of any damages."

Between the two state court actions, Jones is now saddled with $1.2 billion in non-dischargeable debt, with potentially more to come. It will be up to the jury to determine whether the additional damages can be deemed as willful and malicious, and if so, they will be non-dischargeable.

Michael H. Traison is a partner in the bankruptcy and creditors' rights department at Cullen and Dykman. If you have any question regarding discharge or non-dischargeabililty of debts, please contact Mtraison@cullenllp.com or 312-860-4230. Please note this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and the recipient. Thank you to Kelly McNamee, a law clerk pending New York bar admission, who assisted in the preparation of this article.

Section 303 *(cont'd)*

What are the perils faced by petitioning creditors?

Petitioning creditors need to be wary of filing an involuntary petition against a debtor. Using the Code as a litigation tactic or filing a petition in bad faith can result in severe penalties, such as costs, attorney's fees, damages, or even sanctions. The Code will protect the unfortunate debtor from frivolous filing on the part of creditors.

As illustrated throughout this article, a court will look to every fact, aspect, and circumstance to make sure a creditor has satisfied the requirements of Section 303 and has used the tools provided by the Code properly when filing an involuntary petition.

As always: Think before you file!

Michael H. Traison is a partner in the bankruptcy and creditors' rights department at Cullen and Dykman. Kelly McNamee is a law clerk at Cullen and Dykman in Uniondale, New York. If you have any question regarding the provisions discussed above, or any other aspect of bankruptcy law, please contact Mtraison@cullenllp.com or 312-860-4230. Please note this is a general overview of developments in the law and does not constitute legal advice.

Genius Gone Awry: The Sam Bankman-Fried Trial

by John J. Miceli and Howard Rosenburg

The rise and fall of Sam Bankman-Fried is a cautionary tale of ambition and greed.

The son of two Stanford Law School professors, Bankman-Fried graduated from MIT in 2014, with a physics major and a mathematics minor. In 2017 he left the proprietary trading firm he was working at and co-founded the quantitative trading firm Alameda Research. Two years later he founded FTX, a cryptocurrency derivatives exchange that eventually became headquartered in the Bahamas.

Bankman-Fried grew FTX into one of the leading exchanges for buying and selling cryptocurrency derivatives and, in early 2022, investors valued FTX and its U.S. operations at a combined $40 billion. At the peak, Bankman-Fried's estimated wealth totaled $26.5 billion. People were fascinated by this young billionaire genius who wore his hair long and messy and dressed in stretched out t-shirts and cargo shorts. Yet, like so many others before him, Bankman-Fried's world came crashing down.

What Happened?

FTX collapsed over the course of just ten days. On November 2, 2022, cryptocurrency news site CoinDesk reported that the majority of Almeda Research's assets were comprised of cryptocurrency tokens that were invented and controlled by FTX. Four days later, Binance, a FTX rival exchange, sold the FTX-invented tokens that it held and FTX's customers began to withdraw their funds from FTX.

The next day, FTX announced a liquidity crisis and sought a bailout from venture capital firms including, ironically, its rival Binance. On November 9, Binance, after conducting due diligence, walked away from discussions about acquiring FTX's non-U.S. business.

The following day, the Bahamas froze FTX's assets and Bankman-Fried admitted that FTX's non-U.S. businesses faced a liquidity crisis. He also announced that he would wind down Alameda Research. Capping it off, on November 11, FTX filed for Chapter 11 bankruptcy protection and Bankman-Fried stepped down as CEO.

On December 12, Bankman-Fried, who had been living with some coworkers in a $35 million penthouse in the Bahamas, was arrested and jailed there before being extradited to the United States. The next day, the U.S. Department of Justice unsealed an indictment with eight criminal counts including wire and securities fraud, money laundering, unlawful campaign finance contributions. The SEC and CFTC also brought enforcement actions for civil claims of securities and commodities fraud.

The government called this "one of the biggest financial frauds in American history." Three of Bankman-Fried's top associates pleaded guilty to fraud and agreed to cooperate with prosecutors. Among those who testified were Gary Wang, an FTX co-founder, Nishad Sing, a top FTX executive, and Caroline Ellison, the Alameda Research chief executive who was also Bankman-Fried's former girlfriend.

Wang testified that Bankman-Fried instructed him to create a secret back door in the exchange's code that allowed Alameda Research to borrow a virtually limitless amount of customer funds. Sing testified that billions in FTX customer funds had gone missing. And Ellison testified that she conspired with Bankman-Fried to mislead the public and doctor up balance sheets she sent to lenders.

After a monthlong trial, a Southern District of New York jury convicted Bankman-Fried of seven charges of fraud and conspiracy. The trial exposed the house of cards Bankman-Fried constructed. In the end, it took little over twenty-four hours of deliberation for the jury to reach its verdict. The verdict closed one of the most spectacular and captivating falls from grace in modern history. Once heralded as a modern J.P. Morgan, Bankman-Fried now faces up to 110 years in prison. His sentencing is scheduled for late March.

Behind the splashy headlines though are a number of intriguing issues, each of which merit significant consideration.

1. Social media doomed Bankman-Fried's testimony.

If it wasn't dangerous enough to provide post-indictment interviews to the press, Bankman-Fried took the rare step of testifying in his own defense. Exposing a criminal defendant to cross examination is a highly risky strategy, and no doubt his defense team gave it careful consideration before allowing it.

The risk did not pay off. Bankman-Fried tried to convey that while he made mistakes, he relentlessly sought to make FTX successful and never engaged in anything criminal. However, over the course of his testimony, the government effectively used social media and other electronic communications to attack him. While on the stand, Bankman-Fried said "I do not recall" more than one hundred times. Over and over again, the prosecutor quickly presented him with his own tweets, pictures, texts, and other electronic communications. The quick repetition of this cycle during the course of cross-examination undermined and demoralized Bankman-Fried. It showed in both his oral responses and his body language. Slumped in his chair and irritated with the cross examination, he resorted to giving rambling responses to questions, prompting the judge to admonish him repeatedly. This undoubtedly left an overwhelmingly negative impression on the jury.

2. FTX Bankruptcy Proceedings.

The FTX recovery and restructuring efforts are proving to be a long and difficult process. As of April 2023, FTX received $7.3 billion in cash and liquid cryptocurrency assets, marking a significant milestone in its efforts to address the fallout from its collapse.

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Genius Gone Awry *(cont'd)*

In proceedings before a Delaware court, FTX submitted plans that outline its strategy for restructuring. However, the complexities of creditor negotiations and asset distribution mean that a Chapter 11 plan isn't expected to be approved before the second quarter of 2024.

The bankruptcy has also presented the issue of when to value the cryptocurrency assets frozen in bankruptcy. The value of many cryptocurrencies has increased significantly since the FTX bankruptcy filing. Many FTX customers have complained about the company's decision to value the digital assets on the November 2022 bankruptcy petition date, arguing it is unfair because they would miss out on the recent price recovery. However, Judge John Dorsey, who presides over the FTX bankruptcy case, said that the bankruptcy code is "very clear" and that a claim is to be determined in U.S. dollars as of the petition date.

Additionally, since filing for bankruptcy in November 2022, FTX has filed several lawsuits in an attempt to claw back other funds it claims it is owed. In September 2023, FTX said it had identified $16.6 billion in potential actions.

The company faces over 36,000 claims from customers that total over $16 billion. FTX has said customers would get as much as 90% of whatever is recovered during the bankruptcy. It is yet to be seen what that ultimate recovery will be.

3. No Second Trial on Campaign Contribution and Other Charges.

In December 2023, prosecutors told the U.S. District Court that a second trial of Bankman-Fried was not necessary. The second trial would have included the additional charges that were brought against Bankman-Fried but were withdrawn because they had not been approved as part of Bankman-Fried's extradition from the Bahamas in December 2022. The dropped charges included conspiracy to make unlawful campaign contributions, conspiracy to bribe foreign officials and two other conspiracy counts.

Authorities have said the Bankman-Fried and others at FTX made $90 million in campaign contributions to about three hundred political candidates or political action committees using customer deposits. However, after FTX's collapse, prosecutors and bankruptcy lawyers for FTX asked for the return of the donations from recipients.

According to prosecutors, a second trial would duplicate evidence already shown to a jury and would ignore the "strong public interest in a prompt resolution" of the case. Importantly, prosecutors noted that the victims would not benefit from the second trial if sentencing was delayed. One could wonder how the case outcome would differ if the campaign contribution and bribery allegations were included.

4. Bankman-Fried's parents face potential liability.

The fallout from the FTX collapse also has resulted in lawsuits being filed against Bankman-Fried's parents. According to a lawsuit filed in September 2023, Bankman-Fried's father allegedly received a $10 million gift in early 2022 from funds originating from Alameda Research. The lawsuit also alleges that Bankman-Fried helped his parents obtain a $16 million luxury property in the Bahamas with FTX money. According to the lawsuit, Bankman-Fried's parents "exploited their access and influence within the FTX enterprise to enrich themselves." His parents have responded, asserting that the claims are false. If this case proceeds to trial, many of the same matters will be at issue, albeit in the civil context.

5. Regulators step in.

Since the Bankman-Fried trial regulatory bodies worldwide have been reassessing the regulatory framework surrounding cryptocurrencies and digital assets. They see the FTX collapse as underscoring the necessity for clearer regulations, improved transparency, and enhanced consumer protections in the crypto industry.

Criminal and civil enforcement actions have also followed. In June 2023, the SEC sued Binance and Coinbase alleging that they operated as securities exchanges without properly registering their business with the SEC.

In November 2023, United States Department of Justice announced that Binance CEO Changpeng Zhao ("CZ") would plead guilty to felony charges and also announced a $4.3 billion settlement with Binance and CZ to cover "civil regulatory enforcement actions" by government departments including the U.S. Treasury and CFTC. As part of the action, the Department of Justice stated that Binance's policies allowed criminals involved in illicit activities to move "stolen funds" through the exchange. The DOJ said that the exchange "pretended to comply" with U.S. laws by offering paths for certain users to access Binance despite ties to illicit funds. It also said that Binance would be subject to monitoring and reporting requirements and be required to file suspicious activity reports for past transactions. While the settlement resolved many of the civil and criminal investigations into Binance, the SEC's civil case remains pending.

Conclusion

In 2021, Forbes listed Bankman-Fried in its "30 Under 30" list. Two years later, it listed him in its "Hall of Shame" list. The story of Sam Bankman-Fried, from his meteoric rise to his dramatic fall, encapsulates the volatile nature of the cryptocurrency market itself. As the cryptocurrency industry continues to evolve, the lessons learned from the rise and fall of FTX and its founder will undoubtedly shape its regulatory and operational landscape for years to come.

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Hate Speech and the First Amendment

by David H. Levitt

About one year ago (February 2023), I published this article in *The Times of Israel*, evaluating Supreme Court jurisprudence on whether hate speech is protected, and if so, whether the level of protection is subject to restriction. The question presented did not include defining hate speech – itself a thorny issue to be addressed another day. Rather, assuming that there is agreement that a particular expression does indeed constitute hate speech (few would dispute, for example, that "Gas the Jews" so qualifies even where there is not an imminent threat of that occurring at the time of the utterance), the question is whether such speech can be constitutionally restricted.

Many believe that hate speech is fully protected by the First Amendment. Contrary to common perception, I conclude that the Supreme Court and lower courts have never really reached the question. There are legitimate and as-yet untested arguments supporting the right of government—whether through legislation, rules/regulation, or court action—to regulate hate speech.

That was, of course, before the October 7, 2024 Hamas pogrom in Israel and the subsequent explosion of antisemitic and anti-Zionism hate speech on campus and elsewhere. It was also prior to the now-infamous December 5, 2023 Congressional hearing in which three university presidents could not agree that calling for the genocide of Jews on their campuses violated their respective institutions' Codes of Conduct. Each responded that it would depend on that now equally infamous word, "context," and none of them could answer a simple "yes" due to their professed First Amendment/free speech concerns.

One does not have to be a fan of Representative Elise Stefanik or her policies and priorities to recognize that the actual questions that she asked, whatever her larger agenda, were actually softball questions that any reasonable non-idealogue should have been able to hit for a homerun. She asked President Liz Magill of Penn: "Does calling for the genocide of Jews violate Penn's rules or code of conduct? Yes or no?" The questions to the other two presidents were similarly phrased. The post-October 7 protests and the university presidents' amazingly tone-deaf testimony further highlight the question: "is hate speech protected speech under the First Amendment?"

The university presidents' referenced "context" is not entirely incorrect, however inappropriate, and may have been in response to the particular question asked. Any area of law, and especially free speech, requires context – the factual and legal background of the issues presented to the decision maker, whether that decision maker is a university administration, a judge, or a jury. The International Holocaust Remembrance Alliance Working Definition ("IHRA Definition") of Antisemitism, one indicator of whether speech may qualify as hate speech, requires context, even though critics of that definition almost never mention it:

> Contemporary examples of antisemitism in public life, media, schools, the workplace, and in the religious sphere could, *taking into account the overall context*, include, but are not limited to. . .

(emphasis added).

References to Justices Holmes and Brandeis are Misplaced.
The problem with so much of First Amendment discourse about hate speech is that it so often starts from the wrong place. Cited virtually universally in the academic literature are the famous statements of Justices Holmes and Brandeis – yet the citations are almost always out of context. Justice Holmes is most often cited for his proposition that the First Amendment "imperatively calls" for "freedom for the thought that we hate." However, the occasion for Justice Holmes's statement was a *dissent* in *United States v. Schwimmer*, 279 U.S. 644 (1929). Not only was Justice Holmes's opinion not the law of that case, but the case involved an applicant for citizenship who refused to take the oath of allegiance because she was a pacifist and would not agree to take up arms in defense of the country. The majority opinion upheld the refusal to grant her citizenship – and despite the use of the word "hate" in the Holmes dissent, the case did not in any way involve hate speech such as that under consideration here.

The famous statement by Justice Brandeis in *Whitney v. California*, 274 U.S. 357 (1927), the so-called "more speech" remedy, is also cited out of context. Again, his opinion (joined by Justice Holmes) was not the ruling of the Court. Rather, it was a concurrence, not the majority opinion. The Brandeis concurrence stated: "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence." Even if the Holmes/Brandeis formulation was the law articulated by Court majorities (and they were not and never have been), and even if the factual context of those cases involved hate speech (and they did not), then the factual context of hate speech has changed substantially since the 1920's when those opinions were filed.

At present, we live in a world of siloed news, echo chambers, and algorithms that use "push" to serve up only those stories that support pre-determined views of the user. "News" networks report from a narrative perspective, whether Fox or MSNBC. In the "context" of the Israel/Palestinian conflict, certain self-described pro-Palestinian advocates actively and deliberately refuse as a matter of policy and tactics to engage in dialogue or reasoned debate. Additionally, the now (compared to the time of the Holmes and Brandeis opinions) better-understood concepts of anchoring and cognitive dissonance, with which every seasoned trial lawyer is familiar, only compound the problem. The notion, as those who so often cite Justice Brandeis, that "more speech" to expose falsehood and fallacies, is a fallacy and a fantasy, especially when balanced against the real harm that hate speech causes.

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Hate Speech and the First Amendment *(cont'd)*

Academia too often misses the point.
Typical of the academic approach on these issues is a paper that collects and summarizes much of the academic literature, at least as of the time it was published in 1995: Jeffrey M. Shaman, *The Theory of Low-Value Speech*, 48 SMU L. Rev. 297 (1995). The article quotes the Holmes and Brandeis as settled law (*Id.* at 327-328), relegating the fact that these were a dissent and a concurrence to parenthetical notes in the footnote without further comment. It then quotes the Supreme Court in *Texas v. Johnson*, 491 U.S. 397, 414 (1989) for the "bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." (*Id.* at 328). Shaman next asserts (*Id.* at 328-329):

> One of the reasons for this "bedrock principle" is that there is no stopping place for the notion of offensiveness. If speech could be suppressed because it is offensive, little would remain of the First Amendment. There is no denying that hate speech is extremely offensive or that pornography can be pernicious… But if pornography or hate speech can be restricted because it is so offensive, then…so can civil rights marches, which were every bit as offensive to those "fine and upstanding" citizens who opposed desegregation as pornography is to many people today. Banning speech is a repressive act that drives attitudes underground, rather than addressing or redressing them. Allowing the expression of offensive speech has the positive function of provoking responses to it, which can lead to change. The suppression of offensive speech does little to alter the odious attitudes that spawn it, while a free marketplace of ideas is more likely to point the way to reform.

The analogies and arguments in this article, typical of those of the dozens of others in academia on this topic, are fundamentally flawed. Hate speech is not merely "offensive or disagreeable;" it goes exceedingly far beyond being "disagreeable" to cause an essential breakdown in the social fabric, undoing any notion of civility and positive value. Many commentators on hate speech simply elude this distinction, lumping hate speech into the category of generally "offensive" speech at the outset of their analysis and never mentioning it again. This is a rhetorical device that should be unworthy in any setting, but especially so in an academic evaluation.

The "free marketplace of ideas" will not lead to change in an era when social media, and indeed the mainstream media, push only pre-determined narratives, actively suppress conflicting perspectives, and conditions listeners to reject opposing views out of hand. Moreover, the slippery slope argument ("there is no stopping place for the notion of offensiveness") is itself a flawed concept. Of course there is a stopping place. As discussed further below, courts and practicing lawyers outside of academia make these kinds of fine judgments in case after case, in practice area after practice area, every day in the real world, including in the regulation of speech.

Courts have not reached the issue of whether hate speech is protected speech.

Aside from the Holmes and Brandeis non-majority opinions discussed above, the starting point for most discussions of hate speech and the First Amendment is *Brandenburg v. Ohio*, 395 U.S. 444 (1969). What is remarkable about *Brandenburg* is the limited scope of the discussion and, importantly, the context. This is true of the rest of the jurisprudence on speech. Although frequently cited as evidence that hate speech is protected speech, the courts have, in fact, never held any such thing; indeed, one might legitimately question whether the same facts and the same speech might have reached a different result in a somewhat different context.

Brandenburg, like most of the cases in this area, was a criminal case. This is significant because, as we will see in discussion of later cases as well, the criminal overlay has its own set of additional rules. The Court overturned a criminal conviction of the leader of the Ku Klux Klan who made a speech including many derogatory statements about "Negroes" (that word appears in the opinion) and Jews, specifically noting that "there might have to be some revengeance [sic] taken." In this context, the Court's relatively short *per curiam* opinion said: "[The mere abstract teaching. . .of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action. . ." This quote appears in most of the subsequent jurisprudence for the proposition that even urging the use of violence is allowed unless the violence is "imminent."

While *Brandenburg* established the "imminent" and "mere abstract teaching" standards, Supreme Court jurisprudence evolved to allow further restrictions on speech. Thus, thirty-four years later in *Virginia v. Black*, 538 U.S. 343 (2003), the Court established a lesser standard – the "true threats" doctrine. Like *Brandenburg*, the facts again involved a criminal conviction and the KKK, this time a statute that criminalized cross-burnings' "intent of intimidating any person or group of persons . . ." Importantly, the Court majority *upheld* the constitutionality of the statute, reversing only because a plurality determined that the *prima facie* intent standard in the statute was facially unconstitutional. In so doing, the Court recognized that speech could be restricted, even criminalized, in important ways even if the threat of violence was not "imminent":

> "True threats" encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. A speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats "protect[s] individuals from the fear of violence" and "from the disruption that fear engenders," in addition to protecting people "from the possibility that the threatened violence will occur." Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.

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Hate Speech and the First Amendment *(cont'd)*

*Id.*at 359-360 (internal citations omitted). Note that even the "true threats" doctrine does not address the larger question of hate speech because even though the cross-burnings at issue were clearly expressions of hate (*Id.* at 357), it is limited as expressed to placing the victim "in fear of bodily harm or death." What about hate speech that does not threaten violence or bodily harm, but creates an oppressive, intimidating, chilling environment? This issue, which is the main problem with hate speech these days, was not addressed.

Importantly, the *Black* Court distinguishes a case that arose after *Brandenburg*, the Court's 1992 decision in *R.A.V. v. City of St. Paul, Minnesota*, 505 U. S. 377 (1992). The criminal statute in *R.A.V.*, yet another cross-burning case arising to the Supreme Court, was different from the one at issue in *Black* in that it criminalized symbols and other communications "which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender . . ." Justice Scalia's majority opinion first noted that the Court was bound by the Minnesota Supreme Court's statutory construction of the statute as falling within the "fighting words" doctrine established as another free speech exception in *Chaplinsky v. New Hampshire*, 315 U. S. 568, 572 (1942). Scalia's initial summary: "Assuming, *arguendo,* that all of the expression reached by the ordinance is proscribable under the 'fighting words' doctrine, we nonetheless conclude that the ordinance is facially unconstitutional in that it prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses." He noted, with approval, that the *Chaplinsky* court had approved restrictions of speech "which are 'of such *slight social value* as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.'" (emphasis added).

However, the problem with the St. Paul ordinance was not that it was wrong in regulating speech of slight social value, but that it gave a pass to some kinds of fighting words while creating penalties for others. As the majority opinion states (*Id.* at 391, 393, emphasis in original):

> The ordinance applies only to "fighting words" that insult, or provoke violence, "on the basis of race, color, creed, religion or gender." Displays containing abusive invective, no matter how vicious or severe, are permissible unless they are addressed to one of the specified disfavored topics. Those who wish to use "fighting words" in connection with other ideas—to express hostility, for example, on the basis of political affiliation, union membership, or homosexuality—are not covered.

The legislation in *Black*, by contrast, did not discriminate in favor of any particular groups or subjects. Thus, *R.A.V.* and *Black* make clear that, even in a criminal context, hate speech is subject to regulation as long as the restriction is not picking winners and losers on the topic of the hate speech. As Justice Scalia highlighted in *R.A.V.*, it is not the content but the mode of expressing that content that can be proscribed. Hate speech is a classic example of "mode of expression."

Criminal vs. Civil standards can make a difference.
As noted, most of the jurisprudence discussing limitations on speech is in a criminal context, and the Court has noted this expressly. In *Elonis v. United States*, 575 U.S. 723 (2015), the Court overturned a conviction based on rap lyrics threatening violence against the rapper's ex-wife and an FBI agent, finding that a jury instruction applying the "reasonable person standard" rather than the criminal specific intent requirement was erroneous; the Court noted that the reasonable person standard is applicable to civil litigation and tort law, not criminal law. Interestingly, on remand the Third Circuit upheld the conviction, finding that the reasonable person standard instruction was harmless error because the evidence was so overwhelming that Mr. Elonis would have been convicted under proper jury instructions. Thus, the Court made a specific reference to the standard for tort law as inapplicable to the case before it, but suppose the case had presented a civil action brought by the ex-wife. Would the same exact conduct and same exact speech be allowed to support a cause of action? This was not a hate speech case, and the issue was a matter of private concern, but the courts have not yet had occasion to evaluate whether speech can be regulated in this way in a civil rather than criminal context.

The same is true of the most recent Supreme Court decision in this area, *Counterman v. Colorado*, 600 U.S. 66 (2023). Again, this was a criminal case, albeit not involving hate speech but rather harassing conduct by a fan/stalker who posted harassing social media messages to a local singer, despite many attempts to block him. The Court reversed the criminal conviction because it was based on the reasonable person standard, holding that criminal cases require subjective understanding of a statement's threatening nature, but further holding that the First Amendment requires no more demanding a showing than recklessness.

That said, it is worth noting that the Court occasionally misrepresents even its own precedent – and *Counterman* is no exception. For example, Counterman's majority references *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347 (1974) in a way that confirms that it is still good law, but fails to take on the issue of whether speech restrictions could have been applied in a civil law context under *Gertz*, notwithstanding one reference to the First Amendment precluding "punishment, whether civil or criminal" without the required mental state, thereby creating a level of ambiguity.

It is further worth noting that the *mens rea/scienter* requirement inserted by the Court in *Counterman*, *Elonis*, and *Black* in criminal matters means that speech is not entirely "free" – because one who speaks with the requisite mental state (per *Counterman*, recklessness) faces potential criminal consequences for that speech. Again, the *Counterman* Court did not have occasion to consider whether hate speech, or harassing speech for that matter, can be regulated in an appropriate case. Indeed, it suggests that if the statute had applied a recklessness standard, or if a civil action were to be filed by the singer based on a reasonable person standard, then the precise speech and conduct at issue could have resulted in constitutionally permissible consequences. The few civil litigation matters that are oft-cited on speech restrictions do not, upon closer review, resolve the issue either.

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In *NAACP v. Claiborne Hardware Co*., 458 U.S. 886 (1982), white merchants brought a civil action against the NAACP for organizing a boycott of their businesses. It is often cited in the context of the general legality of boycotts, especially in later cases that tested the constitutionality of anti-BDS legislation. In the free speech context, it is cited as a sort of civil equivalent to *Brandenburg*, since the facts of the case established that the boycott leaders threatened, and committed, violence against Black community members who violated the boycott. The Court held that the statements were protected under the First Amendment in the claims brought by the white merchants; the decision was twenty years before *Virginia v. Black* recognized the "true threats" doctrine, so that doctrine was not evaluated in the ruling. But what if the plaintiff had not been the white merchants who merely lost economic benefits, but the Black community members who were intimidated and assaulted? What if the "true threats" doctrine as it evolved twenty years later in *Black* were applied to those civil claims? Same speech, same conduct, same boycott – different result? To date, there have been no cases to test this potential application of free speech doctrine to such facts.

Snyder v. Phelps, 562 U.S. 443 (2011), arguably involved hate speech, but again the facts of the case demonstrate that the Court was not called upon to evaluate or rule on the issue of whether hate speech is subject to restrictions and regulation. This was a civil case asserting the tort of intentional infliction of emotional distress arising from members of the Westboro Baptist Church protesting near a military funeral. Signs held up near the funeral included hate messages such as "Thank God for Dead Soldiers" and "God Hates Fags." The Court rejected the tort claim and upheld the Church's First Amendment rights, holding that the subject of the signs was a matter of public, not private, concern. "While these messages may fall short of refined social or political commentary, the issues they highlight—the political and moral conduct of the United States and its citizens, the fate of our Nation, homosexuality in the military, and scandals involving the Catholic clergy—are matters of public import."

However, there are crucial facts – the context that is always important in evaluating any court decision or any legal dispute. Critically, the protesters were well away from the memorial service and Snyder could see no more than the tops of the signs when driving to the funeral; picketing did not interfere with the funeral service itself and could not be seen or heard from the service. The Snyder family did not learn the content of the signs until watching a news broadcast that evening. Additionally, the Court expressly refused to consider a posting on the Westboro website that specifically attacked the Snyders, finding that it was not properly before the Court. The Court nonetheless hedged its ruling. While all court rulings are always based on the particular facts before them, the Court stated:

> Our holding today is narrow. We are required in First Amendment cases to carefully review the record, and the reach of our opinion here is limited to the particular facts before us.

That the Court felt the need to expressly limit its ruling is itself somewhat extraordinary, and suggestive that it may be open to a different result in a different setting. Suppose some different facts (for example, that the Church members had entered the cemetery property) were properly before the Court, thereby at least putting some issues of private concern into play. Same speech, same words, different facts. Would the result be different? To date, no case has presented these facts. Suggesting that *Snyder* supports full free speech protection for hate speech is contrary to the Court's own limiting language.

Speech is often subject to regulation – and no different from other areas of law.

The *Counterman* Court recognized that speech is not always free, and is often subject to regulation. It specifically references incitement, obscenity, and defamation as areas where limitations on speech are appropriate. Why should hate speech not be such an area as well? The Court discusses defamation at length and, as discussed above, does so with a level of intellectual and rhetorical inaccuracy. In addition to its repeated citations to *Gertz* without ever mentioning the lower standard that Court set for non-public figure defamation cases, the Court notes in footnote 7 – which is itself a footnote to the Court's discussion of the "Court's more general observation that 'vagueness' of 'content-based regulation of speech' is of 'special concern' *when it comes to 'criminal* statute[s]'" (emphasis added):

> Analogously, the Court's civil defamation case law recognizes that heightened liability can require a heightened *mens rea*; even as to nonpublic figures, a higher standard must be met for punitive damages in certain cases. *See, e.g., Gertz v. Robert Welch, Inc.*, 418 U. S. 323, 349–350 (1974).

Why this footnote? A higher standard for punitive damages is required in all cases, in both state and federal courts. *See, e.g., BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996). Defamation is no different.

As to the notion that there is "no stopping point" and the slippery slope, courts in speech-related cases are able to discern lines on a case-by-case basis. When does content cross the line into proscribable obscenity? Does a particular speech constitute incitement or not? These are all fact-driven inquiries where the outcome will vary depending on the context and setting. This is commonplace and hardly a valid argument against restricting hate speech.

In defamation, we see the same dynamic. Often litigated are such issues as whether the person qualifies as a public figure; if so, whether there was actual malice, and if not, whether the lesser standard was met for liability. As to the accused defamatory statements, were they within the specified categories to qualify as defamatory *per se* (presuming damages without requiring additional proof) or *per quod* (requiring proof of actual harm to the plaintiff)? Were the statements matters of opinion (not actionable) or assertions of false facts (actionable)? In some states, were the statements subject to an innocent construction and therefore not actionable?

The point is that even for a well-defined exception to free speech doctrine like defamation, there remain in any given case any number of legal and factual issues to be determined. Lawyers and judges – and the parties to the lawsuits – deal practically with these issues

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every day, yet no one seriously argues that defamation law creates a slippery slope with "no stopping point" in a way that has a "chilling effect" on free speech so that a potential speaker (to paraphrase the majority opinion in *Counterman*) will exercise self-censorship due to uncertainty as to which side of the line his speech falls.

Indeed, in addition to providing a remedy for defamed persons (and in the case of business disparagement, for defamed entities), part of the reason for having defamation law in the first place is to *chill speech*, to cause a speaker to pause before issuing a potentially defamatory content, and to reduce the occasions where defamation occurs. The public policy, then, behind defamation law is to prevent defamation from happening, thereby restricting speech.

Nor is the only example of multiple standards and issues being handled in courts on a regular basis without concerns about chilling or slippery slopes. Consider: copyright law and trademark law concern speech. In the area of copyright law, on the subject of infringement and copying, the standard is "substantial similarity." How similar is "substantial"? One never knows until the judge or jury makes an after-the-fact determination – yet we do not hear criticism in academia or elsewhere that this chills authors from creating new works, even though the reason for copyright protection is intentionally to do just that by providing consequences for infringement. The right of publicity, recognized by state statutes and common law, also involves limitations on speech that are litigated on a case-by-case basis in courts around the country every day.

In non-speech contexts that nevertheless govern and potentially restrict conduct that can fundamentally impact liability exposures and livelihoods, we are accustomed to a myriad of examples in the law where the outcome is indeterminate (even if not necessarily based on constitutional rights) without complaints that the existence of such standards imperils rights in a free society. Driving on a snowy day, how fast is too fast for conditions? Does not knowing the answer to that in advance result in "chilling" driving? In product liability cases, how dangerous is "unreasonably" dangerous so as to trigger liability? Do we hear arguments that the inability to know, in advance, the answer to that question chills the manufacture and distribution of products that are essential to our economy?

The existence of multifactorial tests and uncertain outcomes to be made after the speech or conduct at issue is commonplace in the law – and as applied in the real world – with very real and very significant consequences following from those determinations. Despite concerns of academics and idealogues, there is no good reason why this should not apply equally in the hate speech context, especially when balancing the "slight social value" of hate speech against the "social interest in order and morality" – one of the formulations for regulating speech as identified by Justice Scalia in *R.A.V.*

A possible standard for hate speech.

Another recognized area of regulable speech is commercial speech. While protected, the Supreme Court has held that it is less protected than non-commercial speech. In *Central Hudson Gas & Elec. v. Public Svc. Comm'n*, 447 U.S. 557 (1980), the Court set out an important four-part analysis governing commercial speech (that is, expression related solely to the economic interests of the speaker and its audience) that seems quite on-point in evaluating hate speech. That test:

1. Is the speech about a lawful activity or is it misleading?
2. Does the regulation relate to a substantial governmental interest?
3. Does the regulation directly advance the asserted governmental interest?
4. Is the regulation more extensive than necessary to serve that interest?

That the Court has already recognized such a test in the context of speech is significant; it suggests that it might be willing to apply a similar formulation to speech that, like commercial speech, provides less than high social value. Further, it provides a mechanism to evaluate government restrictions on speech in an organized framework, and to rein in governmental overreaches, while still providing the opportunity to manage those occasions when hate speech is implicated.

Conclusion

A test that allows restrictions on hate speech, and consequences for engaging in it, is fully constitutional and has never been tested in the courts in a proper factual setting. Bad facts make bad law, and out-of-context extrapolations of case law by academics and pundits only makes things worse.

Line drawing is difficult and often done on a case-by-case basis – but that is not a legitimate argument against settings standards for public discourse and requiring accountability for speech and conduct that crosses the line. Lack of in-advance knowledge of the results does not abrogate the need for that line drawing to be done. Such legal processes are commonplace and regularly applied.

Hate speech is one of the most important banes of our time, a major contributor to the decline of society-wide civility, reasoned discussion and debate, and the extreme polarization that permeates virtually every aspect of public life. Ought we begin to evaluate its relative value to our robust free speech principles? To date, no reported cases have addressed these issues head-on. It is time to find one that presents appropriate facts and bring it before the courts. It is also time to end broad statements about speech protection that are based more on ideology than a detailed review of the relevant jurisprudence.

David H. Levitt is a partner at Hinshaw & Culbertson LLP, Co-Chair, DePaul University School of Law JLJS Advisory Board, and Chair of Hinshaw's Jewish Cultural Heritage Employee Resource Group.

Join Decalogue on May 9 for David Levitt's CLE on Hate Speech and the First Amendment. Registration will be opening soon at https://www.decaloguesociety.org/cle-schedule

The Marginalization and Discrimination of Jewish Students on College Campuses

by Jacqueline Carroll

For Jews across the world, Hamas's brutal attack on the State of Israel on October 7, 2023, was a huge shock to our systems. It was the largest single-day slaughter of Jews since the Holocaust. October 7 reignited intergenerational and cultural trauma and quashed any sense of physical or emotional security. However, October 8 and the past few months have been just as unsettling. We have seen videos of Jews hiding from violent mobs, swastikas, and vandalism found on Jewish property. Worst of all, these events are happening here, in America, in 2024, and they are happening on college campuses to young adults simply because they identify as Jewish. How can schools let this happen? The Congressional hearings answered that question. American universities are not properly protecting Jewish students.

Writing about anti-Semitism on college campuses has been overwhelming. New legal cases and complaints against universities have popped up weekly. The Department of Education's Office of Civil Rights ("OCR") has opened more than 70 investigations into Title VI Shared Ancestry Investigations. This article focuses on the allegations in the Title VI complaints filed on behalf of Jewish students at some of the Universities where the discrimination has been more notorious. A good summary of what Jewish students have gone through was presented in the Complaint against the University of Pennsylvania (the "Penn Complaint"):

> (Plaintiff) has been assaulted, mocked, abused, harassed, intimidated, and demonized, solely because she is Jewish and supports her ancestral homeland and the people who live there. She is terrified not only for physical safety and indeed for her life, but also for what will happen to her if she dares to speak out about the antisemitism she must constantly confront on campus. She has spent parts of her *freshman fall semester* cowering in her dorm room … and is excluded from the same protections that Penn affords non-Jewish students who might be subjected to bias-related harassment and intimidation. (Penn Complaint at ¶ 221, emphasis added).

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives federal funding or other federal financial assistance. The U.S. Department of Education ("DOE") Office of Civil Rights (OCR) has clarified that Title VI covers discrimination against Jews on behalf of their "actual or perceived shared ancestry or ethnic characteristics." In December 2019, President Trump issued Executive Order 13899, directing the executive branch to enforce Title VI discrimination "rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI and to consider the International Holocaust Remembrance Alliance (IHRA) definition of anti-Semitism. In January 2023, the DOE released a Fact Sheet reiterating that Title VI protects "students who experience discrimination, including harassment, based on their…(i) shared ancestry or ethnic characteristics; or (ii) citizenship or residency in a country with a dominant religion or distinct religious identity." In May 2023, President Biden released a comprehensive U.S. National Strategy to Counter Antisemitism and, one month after October 7, OCR reminded schools of their legal responsibility to "provide all students a school environment free from discrimination…[and] to address prohibited discrimination against students and others on campus-including those who are or perceived to be Jewish [or] Israeli," and "take immediate and effective action to respond to harassment that creates a hostile environment." This article presents allegations made in complaints against universities brought by Jewish students based on experiences that made them feel discriminated against and marginalized due to an aspect of their identity.

University of Pennsylvania

On December 5, 2023, two Jewish students filed a Complaint against the University of Pennsylvania, alleging Penn violated Title VI by subjecting them to a "pervasively hostile educational environment." *Yakoby v. University of Pennsylvania*, No. 2:23-cv-04789 (E.D. Pa. filed Dec. 5, 2023). The Complaint notes that Penn has at least seven policies designed to protect students from discrimination and harassment but has failed to enforce these policies to protect Jewish students and allowed a culture of anti-Semitism on campus pre-October 7.

In April 2016, the Students for Justice in Palestine ("SJP") hosted its first annual "Israel Apartheid Week" ("IAW") on Penn's campus. IAWs have become popular on many college campuses, especially ones where complaints of anti-Semitism have been made. Less than a week later, flyers with swastikas were posted around campus. While the flyers violated a number of Penn's policies, Penn administrators refused to require the removal of the flyers. Penn Complaint at ¶¶ 63-64. In 2017, SJP created and distributed a "Penn Disorientation Guide" for new students where it labeled Jews as racists and oppressors. *Id.* at ¶ 65. In 2020, a Jewish student posted that they were given a "privilege quiz" by a professor who taught a mandatory course on racism with Judaism ranked as the most privileged of the religions categories at a rate five times higher than Christianity. *Id.* at ¶ 76.

The Complaint notes that Penn's hosting of the Palestine Writes Literature Festival, beginning on the eve of Yom Kippur, September 22, 2023, the holiest Jewish holiday, set the stage for the wave of anti-Semitism the plaintiffs allegedly endured. *Id.* at ¶ 92. Palestine Writes was "sponsored with Penn funds and promoted by Penn academic departments" included several speakers known for making anti-Semitic statements. *Id.* at ¶¶ 93-96. Plaintiff, hundreds of Jewish students, Jewish organizations, and more than 2,000 Penn alumni, including members of its own Board of Trustees, all expressed concerns to Penn's President Elizabeth Magill and other Penn officials prior to Palestine Writes and asked Penn to take proactive steps to make Jewish students feel safe and welcome. *Id.* at ¶¶ 97-112. While Penn was on notice:

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- A swastika was painted on campus and the Chabad House (a center for Jewish religious, social, cultural, and educational activities) was vandalized.
- An individual broke into the Hillel (a Jewish campus organization), knocked over furniture, yelled "Fuck the Jews" and that Jews killed Christ (to which a Penn administrator said not to worry because it wasn't about Palestine).
- A speaker said Birthright trips to Israel were propaganda tours to recruit Jews to become our "colonizers, tormentors, and lords." *Id*. at ¶¶ 100-117.

Considering Penn's lack of action to protect Jewish students, it is not surprising that two weeks later, on October 8, a Palestinian student organization promoted an emergency rally where someone said, "I think we should all give applause right now, to Hamas, for a job well done." *Id*. at ¶ 126. An associate professor posted on social media, "Israel is antisemitic, anti-human, anti-children and anti-life!" *Id*. at ¶ 129.

On October 9, while Plaintiff was walking to class wearing a Jewish star, protestors wearing keffiyehs yelled "dirty Jew" at her. Traumatized, she retreated to her dorm room where she locked herself in and wept, unable to attend classes for the rest of the day. *Id*. at ¶¶ 141-142. The next day, more than ten student organizations signed a statement blaming Israel for the murder of its own citizens. On October 16, a Palestinian student group and faculty held a walk-out where people called Jewish students "kikes" and screamed, "Israel, Israel, you can't hide, we charge you with genocide." *Id*. at ¶ 160-165. This seven-hour rally, which occurred during midterm exams, disrupted classes and studies with one speaker telling Jewish students to "go back to Moscow, Brooklyn…fucking Berlin where you came from." *Id*. at ¶ 160. Bomb-sniffing dogs were sent to the Hillel, signs calling Jews Nazis were placed outside a Jewish fraternity house, and an Israeli flag was ripped from a home. During one protest, people marched through campus into downtown Philadelphia where they vandalized an Israeli Jew's restaurant while shouting anti-Semitic chants. Meanwhile, professors harassed students, with one forcing a Jewish student to present class material stating that Israel has no right to exist. *Id*. at ¶ 145.

Penn's silence in response to these events represented discriminatory treatment towards its Jewish students, when contrasted with Penn's prompt action in response to violence against Asian American students in the wake of COVID-19, its affirmative support of Penn's students of color after George Floyd's murder, its condemnation of "the cruel attack by the Russian Federation" following Russia's invasion of Ukraine, its prompt suspension of organizations for violating anti-hazing policies, and its sanctioning of professors who invited conservative speakers and made race-related comments because it claimed could cause students to feel unwelcome. *Id*. at ¶¶ 205-213.

Penn filed a Motion to Dismiss the Penn Complaint ("Penn MTD"). Dkt. 21 (E.D. Pa. filed Feb. 12, 2024). Penn claims that it has "led the fight against antisemitism by implementing a comprehensive Action Plan to Combat Antisemitism." Penn MTD at 8. Penn further claims it is investigating events which have led to arrests of individuals and created a Task Force on Antisemitism. Penn further claims the lawsuit is not "ripe" because the questions presented are "contingent" on the outcome of Penn's ongoing investigation, disciplinary proceedings, and Action Plan steps. Penn also argues that Plaintiffs lack standing for injunctive relief as they do not show a certain impending future injury traceable to Penn's alleged violation of Title VI, and that they fail to state a claim under Title VI for numerous reasons but mainly that that Title VI does not require a private university to enforce antidiscrimination policies at the expense of free speech, particularly when such enforcement violates the First Amendment. *Id*. at 11. Penn stated that three individuals have been arrested for anti-Semitic actions and were referred for disciplinary proceedings for violations of the Code of Student Conduct. Penn also notes that its senior leadership attended a November 2023 Brandeis Center Leadership Symposium on Antisemitism in Higher Education. *Id*. at 14.

Harvard University

On January 10, 2024, a lawsuit was brought against Harvard University ("Harvard Complaint") by one named plaintiff and the "Students Against Antisemitism" ("SAA"), a group of five Jewish students at the University and Law School. The Harvard Complaint describes a culture of anti-Semitism prior to October 7 stemming primarily from SJP and other organizations' hosting of IAWs. From 2017 to 2023, incidents that occurred during or around IAWs included anti-Semitic speakers, smashed windows at the Hillel, swastikas; mock detention notices on Jewish students' dorms for the students' alleged mistreatment of Palestinians; and signs reading "Zionism Is Racism Settler Colonialism and White Supremacy Apartheid." During this time, the named plaintiff raised concerns about a course that called Jewish history "mythology," denied Jewish indigeneity, and downplayed the Holocaust. In all cases, Harvard remained silent. Harvard Complaint at ¶¶ 51-65. In one instance, after a Brandeis Center complaint against a professor, Harvard hired an independent law firm that concluded that the professor violated Title VI and Harvard's statement of Rights and Responsibilities by "subjecting students to anti-Israel and anti-Semitic bias and discrimination on the basis of their identities as Jewish Israelis." Harvard accepted the findings of fact, and then did nothing about them. *Id*. at ¶¶ 74-77.

In the immediate aftermath of October 7, a Palestinian student organization and 33 other Harvard student organizations signed a statement stating "We, the undersigned student organizations, hold the Israeli regime entirely responsible for all unfolding violence." Without mentioning the massacre and hostage-taking of Israelis, the actual statement called on the Harvard community to take action to "stop the ongoing annihilation of Palestinians." Since that date, there have been near daily protests, disruptions, harassment campaigns and the regular calling for violence against Jews on campus and social media. Harvard Complaint at ¶¶ 74-77, 82. A Harvard Law Review editor was seen on video using his keffiyeh with others to surround and restrain a Jewish Israeli student screaming "shame" at him. He is still a teaching fellow. *Id*. at ¶¶ 96-97, 132-133. Plaintiffs have also been targeted by professors, one of which said that Jews are colonizers who blow up babies. *Id*. at ¶ 134.

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The anti-Semitism flourishing on college campuses led to a Congressional hearing on December 5, where the unimaginable happened. When asked, "Does calling for the genocide of Jews violate Harvard's rules of bullying and harassment?", then-President of Harvard Claudine Gay responded, "It depends on the context." *Id*. at ¶ 142. President Gay resigned on January 2, 2024, not because of anti-Semitism, but because of accusations of plagiarism. Of course, Jews were blamed. On Harvard's community group and social media services (all of which require a Harvard email address to join), some of the messages posted included:

- "stfu pedo lover! all of you Zionists are the same. Killers and rapists of children!"
- "Blondie pro-doxing, pro-genocide sophomore ... looks just as dumb as her nose is crooked."
- "Forgot the moment where yall made it clear that the 'nova massacre' [the music festival where Hamas murdered, tortured and raped young people on October 7] that our zionist classmates were using as propaganda was carried out by the IDF." Id. at ¶129.

Harvard has several applicable policies, and even holds trainings stating that that "sizeism," "fatphobia," "cis heterosexism," "racism," "transphobia," "ageism," and "ableism" are prohibited because they "contribute to an environment that perpetrates violence." Harvard has disinvited speakers, rescinded students' admissions, placed a Christian student group on probation, and cancelled soccer teams, all based on their speech. They even dismissed three freshmen for violating social distancing rules during COVID-19 pandemic. *Id*. at ¶¶156-169. And yet they have not applied these policies equally to make Jewish students feel welcome. Jewish students have spent their time at Harvard fearing for their physical safety, enduring abuse, losing their sense of belonging, having trouble focusing on their schoolwork, hiding their identity, and pleading with administration for assistance. *Id*. at ¶ 182.

New York University

The Complaint against New York University ("NYU Complaint") brought by three named plaintiffs tells a similar but scarier tale. In 2019, an NYU alumnus had published an op-ed entitled "Anti-Semitism at NYU" and more than 140 alumni and faculty members of NYU School of Medicine wrote a letter to the President urging him to combat a climate at NYU that "creates a hostile environment for Jewish students" stating that anti-Semitism has been "normalized" on campus. NYU Complaint at ¶¶ 73-81. This led to a student filing an OCR Complaint against NYU. *Id*. According to the NYU Complaint, the school created action items and policies to prohibit discrimination and harassment based on anti-Semitism, but they were insufficient and not enforced. *Id*. at ¶¶ 85-86.

In the aftermath of October 7, NYU's SJP Chapter and 28 other groups signed a letter endorsing "Palestinian resistance, in any form it takes." *Id*. at ¶ 111. The President of the Law School's Student Bar Association stated, "I want to express, first and foremost, my unwavering and absolute solidarity with Palestinians and their resistance against oppression toward liberation and self-determination. Israel bears full responsibility for this tremendous loss of life." *Id*. at ¶ 113. A named plaintiff immediately wrote to the President of the school requesting a safe space for Jewish students.

A National Day of Resistance was planned where students and faculty led an anti-Semitic protest in Washington Square Park. *Id*. at ¶¶ 118-120. Posters of the Israeli hostages that the plaintiffs put up were torn down and defaced. *Id*. at ¶¶ 124-126. At the rally, faculty and students burned an Israeli flag, screamed "Gas the Jews" and "Death to Kikes" at Jewish students, and also threatened to rape and murder one of the plaintiff's Jewish friends, causing the plaintiff to suffer a panic attack. *Id*. at ¶¶ 128-129. As of the date of the NYU Complaint's filing, there had been no repercussion for the perpetrators. *Id*. at ¶ 130. Protestors took over the library during midterms with professors demanding to know if the students were "pro-Palestinian." If they were, they were given a face mask to join the demonstration; if not, the faculty refused to engage with them. *Id*. at ¶ 148. Faculty members made numerous anti-Semitic comments and intimidated students, with one filming a Jewish student as she sobbed. *Id*. at ¶¶ 150-154. He continues to teach at NYU. Plaintiffs were scared to go back to the library to print out exam outlines. *Id*. at ¶ 165. President Linda G. Mills had a meeting with Jewish students who explained the hostile environment. She responded by asking students to spread a message that the reports were overblown. *Id*. at ¶¶ 174-175. The next day, SJP held a rally outside the library with a person holding a sign with a Star of David that said, "Jewish Supremacy — Pure Evil" and the years "1948-2023." He acted like he held a gun. NYU's Campus Safety said it was free speech, but when a Jewish student held an Israeli flag, Campus Safety told them to move across the street to de-escalate the situation. *Id*. at ¶ 176.

On November 7, two plaintiffs and other Jewish students held a "silent sit-in" on the ground floor of the library. An NYU student became confrontational, and asked the plaintiff if she was "indigenous," told her she should get skin cancer, said "Palestine will be free from you eventually," and then slammed the metal security gate onto her hand. When the student found out he had been recorded via camera phone, he punched the recorder, threw the phone on the street, and lunged toward the plaintiff. *Id*. at ¶¶ 182-185. He was arrested for assault, but not suspended or expelled, with NYU allowing him to attend classes with the plaintiff. *Id*. at ¶¶ 182, 186.

Like other universities, NYU has policies to protect students, and has enforced them in other circumstances. NYU sent immediate statements condemning hate against the Asian American community during the COVID-19 pandemic, the murder of George Floyd, and the slaughter at the Club Q nightclub in Colorado, offering solidarity to communities affected, but made no such statement to support Jewish students after October 7. *Id*. at ¶¶ 190-203. While plaintiffs were mourning friends and family who were victims of Hamas' massacre, they became victims of anti-Semitism at their own school due to their Jewish identity.

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Jewish Students on College Campuses *(cont'd)*

University of California at Berkeley
A Complaint for Injunctive and Declaratory Relief was brought by the Brandeis Center and Jewish Americans for Fairness in Education ("JAFE") against the University of California Berkeley ("Berkeley Complaint"). JAFE's membership includes Berkeley Jewish undergraduate, graduate, and law students as well as faculty. Berkeley Complaint at ¶21. The Complaint focuses on Berkeley's "all-comers" policy which provides that membership in student organizations will not be restricted.

In August 2022, Law Students for Justice in Palestine amended its bylaws to state that they will not invite speakers that have expressed and continue to hold views or host/sponsor/promote events in support of Zionism. *Id.* at ¶¶ 70-71. An attorney for this group explained that they "are trying to build a mass movement" against Israel and are not interested in alleviating "the discomfort of Zionist students." To the contrary, he said, "it is good for people like that to be uncomfortable." *Id.* at ¶ 73. Twenty-three other student groups – most of which have no inherent connection to Middle East issues – have adopted a similar exclusionary bylaw. *Id.* at ¶ 75.

The Berkeley Complaint alleges that under these new exclusionary bylaws, to be members of Women of Berkeley Law, Queer Caucus of Berkeley, or Asian Pacific American Law Students, students must support the Boycott, Divest, and Sanction movement against Israel. The Berkeley Journal of Gender, Law, and Justice prohibits Zionists from speaking or publishing in their journal. To volunteer for pro bono services at Berkeley Law Legal Services, students must undergo a "Palestine 101" training which teaches that "Israel is an illegitimate state that does have a right to exist." *Id.* at ¶¶ 76-86. The Berkeley Complaint calls out the school by noting that "[f]or over a year, student organizations at Berkeley Law have been enacting and enforcing policies that confront Jews with an unthinkable and unlawful ultimatum: Disavow an integral component of your Jewish identity — Zionism — or be denied the same rights and opportunities enjoyed by other members of the campus community." *Id.* at ¶ 2.

The Berkeley Complaint reiterates that universities and organizations consider Zionism to be a political viewpoint and therefore not a protected class for discrimination purposes. However, the U.S. National Strategy to Counter Antisemitism makes it clear that "[w]hen Jews are targeted because of their beliefs or their identity, when Israel is singled out because of anti-Jewish hatred, that is antisemitism." *Id.* at ¶ 55. The Berkeley Complaint further highlights that Jewish and Israeli students will be blocked from participating in journals and learning hands-on legal experience unless they renounce or hide their identities. *Id.* at ¶¶ 81-84. Jewish students who chose not to do that and therefore not join these groups have noted, "There is tolerance to marginalize us because of our faith." *Id.* at ¶ 81.

Unlike the other complaints, the Berkeley Complaint's plaintiffs brought claims against UC Berkeley under 42 U.S.C. §1983, the Equal Protection Clause and the Free Exercise Clause for not enforcing their own policies of nondiscrimination on groups that adopted exclusionary bylaws and for depriving students who are "practicing Jews from whom Zionism is a core tenet of their religious identity" the right to compete or participate. *Id.* at ¶¶ 117-118.

Berkeley filed a Motion to Dismiss. See *Brandeis Center v. Regents of the University of California*, No. 23-6133-JD Dkt. 44 (N.D. Cal. filed Feb. 5, 2024). Berkeley states that the University denounced the Exclusionary Bylaws and did not incorporate them into its own curricular standards for students to get academic credit. Berkeley argues that Plaintiffs lack standing to sue, ask the University to discipline student organizations for First Amendment-protected speech, and do not allege the kind of animus, hostility, or intentional discrimination by the University to bring any of their claims.

School of the Art Institute of Chicago
While there have been anti-Semitic incidents at several Illinois universities (and high schools), Decalogue became aware of a complaint brought by one Israeli Jew against the School of the Art Institute of Chicago ("SAIC") and a professor at SAIC, alleging visceral anti-Semitism ("SAIC Complaint"). *Canel v. School of the Art Institute of Chicago*, No. 23 CV 17064, Dkt. 1 (N.D. Ill. filed Dec. 22, 2023). The plaintiff is enrolled in SAIC's Art Therapy and Counseling master's program, a program that ostensibly promotes tolerance and empathy. However, the SAIC newsletter has promoted an anti-Israel narrative on numerous occasions, as exemplified by this drawing:

Classic and new anti-Semitic tropes are used in this imagery including 1) Jews are "monsters" who 2) intentionally stomp on innocent women and babies 3) while grabbing bags of money. SAIC Complaint at ¶¶ 19-20. In 2018, when a Jewish student inquired whether matzah or kosher food would be made available in the cafeteria, that student was told that it would not be and indicated that advertising kosher food could make some students uncomfortable. *Id.* at ¶ 26. While the plaintiff had experienced anti-Semitism before, those experiences grew post-October 7 even after she informed the school that she knew people murdered at the Nova Music festival and her family in Israel was suffering. A professor posted on social media that "Israelis are pigs… May they all rot in hell." *Id.* at ¶ 41. Classes that were designed to focus on art therapy devolved into anti-Israel discussions. A student refused to work with the plaintiff for being Israeli, but plaintiff was the one given a failing mark. *Id.* at ¶¶ 53-68. The plaintiff decided to call for a formal investigation of discrimination against the school and her professor. The professor then changed their final assignment to review images of Israeli soldiers engaging in violence against Gazan children. *Id.* at ¶¶ 69-85.

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Jewish Students on College Campuses *(cont'd)*

The Line Between Criticism of Israel's Politics and Anti-Semitism Has Been Crossed
Anti-Semitism has been around since time immemorial. Hatred and discrimination of Jews has morphed from disparate time periods and political ideologies. A report by Rutgers University's Miller Center for Community Protection and Resilience illustrates how motifs such as covert dominance, genocide and bloodlust, privilege and appropriation, and dehumanization of Jews have been manifested repeatedly in conspiracy theories, from Biblical times to modern history, and in the views of white supremacists, Black Hebrew Israelites, pan-Arab extremists, and left-wing extremists.

During the Holocaust, nearly 6 million Jews were annihilated because the Nazis considered Jews to be a dangerous and inferior race to their Aryan race. Now, Jews are being accused of undue privilege, power, and control and seen as unworthy of "protected class" status. This is manifesting on college campuses, as described above.

Out of 8 billion people in the world, there are only 15.7 million Jews, less than 1% of the world's population. 46% of the world's Jewish population live in Israel, the only Jewish state. The chanting of death to Israel on college campuses is frightening to many Jews. To be clear, not all Jews are Zionists. In fact, some of the loudest protestors against Israel are Jews. While the Israel-Hamas war is political, and criticism of Israel's policies and politicians can be valid, university administration, faculty, and students are confusing political speech with identity-based hate speech. Jewish students who feel an affinity toward Israel based on religious, ancestral, or national origin reasons, are supposed to be protected under Title VI from discrimination. Instead, they are forced to decide between hiding or even denouncing their identity to fit in and succeed on campus or receive intimidating expressions of hatred and criticism based on their identities and affiliations, untethered to those students' personal conduct or actions. This new status quo must be challenged and reversed.

Jacqueline Carroll works for the Simon Wiesenthal Center and is co-chair of the Decalogue Society's Committee Against Anti-Semitism and Hate.

Join the YLS for a week of educational programming aimed at unpacking some of the most important diverse topics in the legal field. Check out our full list of programming below!

Monday, April 15
12:00-1:00 PM: SCOTUS, College Admissions, and Affirmative Action – Past, Present, and Future (Co-Hosted by the Albanian Bar Association)
5:30-6:30 PM: Embark on a Journey: Navigating Your Career as a Diverse Attorney (Co-Hosted by the Black Men Lawyers' Association)

Tuesday, April 16
12:00-1:00 PM: Sanctuary Cities and Our Borders: A Discussion with Richard Hanus (Co-Hosted by the Decalogue Society)
4:30-5:30 PM: Protecting your Mental Health as a Minority Lawyer: A Discussion with Myrna McCallum (Co-Hosted by the South Asian Bar Association)

Wednesday, April 17
12:00-1:00 PM: How to Recruit and Retain a Diverse Workforce (And Why it Matters) (Co-Hosted by the Cook County Bar Association)
4:30-6:30 PM: The Path to Becoming a Judge as a Minority, a Panel Discussion (Co-Hosted by the Puerto Rican Bar Association)

Thursday, April 18
12:00-1:00: Changing Laws of LGBTQ+ Family Rights and Surrogacy (Co-Hosted by the CBA LGBTQ+ Committee)
5:00-6:30 PM: Diversity Week Closing Reception (Co-Hosted by the Women's Bar Association of Illinois and Black Women Lawyers' Association of Greater Chicago)

Be sure to join us on April 18th for the closing reception at the CBA Building (321 S. Plymouth Court) featuring keynote speaker **Judge Mary Cay Marubio!**

Diversity Week is co-sponsored by the CBA D.I.C.E. Program

Information and Registration HERE

Cognitive Biases, Motivated Reasoning, and Why I Never Win Facebook Debates

by Michael I Rothstein

As a trial lawyer concentrating in complex litigation for over three decades, I thought I understood well how to win an argument: Gather the persuasive facts and law, stir them together, and present them with a theme and dash of an emotional hook. Voila! "Thank you very much. I have nothing further. I'll sit down."

Imagine my surprise when I learned that the skills of persuasion that had served me so well in the courtroom were rather less successful in the debate halls of Facebook.

I first joined Facebook shortly after Barack Obama defeated John McCain in the 2008 Presidential election. Facebook provided an easy means to reconnect with long-lost friends and rarely-seen relatives. I relished these renewed relationships and enjoyed learning about lives and families and catching up on too many years apart. As friends and relatives do, we started discussing the events of the day. That's when things got interesting. Surprise! It turned out that those long-lost friends and rarely-seen relatives held a wide variety of views about the events of the day. Some views were similar to mine and some were not. And that was okay, at least for a while. It was okay until we started trying to convince one another. The great Facebook debates had begun.

We covered the gamut: Climate change. Guns and murder rates. Deficits, taxes, and the economy. Immigration. Voter fraud and voting rights. Election integrity. Government investigations. Court cases against past and present government officials. And on and on.

In my naïve early years, I thought at least some of these debates were winnable. People posted crazy things. Misinformation. Disinformation. Conspiracy theories. Much was easy to rebut, and I knew what to do: Gather the persuasive facts and law, stir them together, and present them with a theme and a dash of an emotional hook. I was wrong. I wasted many hours finding and posting peer-reviewed studies, government reports, court decisions, statutes, and the U.S. Constitution. It was mostly for naught. Evidence and authoritative documents that clearly and convincingly rebutted the crazy opposing assertion did not seem to matter one whit. Why was that?

Why indeed. The answer? Humans are humans, not computers. A computer will process the information it is given under logical rules and if the rules are logically valid, the computer produces a logical result. Not humans, at least not always. Humans process information differently under different circumstances. Sometimes humans ignore information and sometimes humans process information illogically. Both lead to inaccurate results. But why?

After years of study, psychologists and social scientists have identified multiple cognitive mechanisms and psychological phenomena, often interacting, that lead individuals to resist accepting information that contradicts their beliefs. I briefly review the major ones below. One important caveat: I am a lawyer, not a social scientist. I base the following summaries of cognitive phenomena on my unscientific survey of articles accessible through Google searches with assistance from Alex Rothstein, a political communications major at The George Washington University. I welcome corrections.

Belief Perseverance Bias

Belief perseverance bias is "the tendency to maintain a belief even after the information that originally gave rise to it has been refuted or otherwise shown to be inaccurate." (APA Dictionary of Psychology 2018) The belief perseverance bias arises through causal thinking. "Individuals spontaneously create causal explanations for an observed event or a particular claim." (Siebert 2023) Once formed, these causal connections remain entrenched in memory independent of the events or claims upon which they were originally based. Thus, retracting or refuting the underlying event or claim does not disturb the causal connection that remains in memory. (*Id.*)

Multiple experiments have confirmed this effect. In one of the early experiments, students falsely told that they had done well or poorly on a task continued to believe the assessment of their abilities even after being told that the assessments were false. Their brains remained stuck on the initial information. (Ross 1975) Thus, if your Facebook friend formed an opinion about climate change or guns or the economy based on false information, the belief perseverance bias makes it exceedingly difficult to change their mind by showing them that the information they relied upon is false.

Confirmation Bias

Confirmation bias is "the tendency to gather evidence that confirms preexisting expectations, typically by emphasizing or pursuing supporting evidence while dismissing or failing to seek contradictory evidence." (APA Dictionary of Psychology 2018) Confirmation bias works in tandem with the belief perseverance bias to immunize individuals from changing their beliefs. So, as you and your Facebook friend try to convince one another, you each will be searching the internet for materials that support your own views while ignoring or discounting anything contrary, including the materials you share with each other.

Motivated Reasoning Theory

Confirmation bias is a related factor to motivated reasoning. While "confirmation bias is an implicit tendency to notice information that coincides with our preexisting beliefs and ignore information that doesn't," motivated reasoning is our tendency to readily accept new information that agrees with our worldview and critically analyze that which doesn't. The underlying impetus behind why these biases exist is to minimize cognitive dissonance, which is a result of our innate desire to minimize pain or discomfort . . . ." (Maloney 2019)

In a seminal 1990 article, Ziva Kunda examined the effect that motivations have on human reasoning. Kunda divided motivated reasoning into two major categories, accuracy goals and directional goals. (Kunda 1990) Kunda found that "when people are motivated to be accurate, they expend more cognitive effort on issue-related reasoning, attend to relevant information more carefully, and process it more deeply, often using more complex rules." (*Id.*) Bolsen and Druckman described the accuracy goal in motivated reasoning theory as individuals aiming to arrive at "the best outcome given the evidence at hand." (Bolsen 2018)

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Because biases often result from hasty reasoning, the effort expended to evaluate information by accuracy-driven individuals substantially reduced the effect of those biases and produced more accurate evidence-based results. (*Id;* Kunda 1990)

In contrast, individuals motivated by directional goals, meaning they are motivated to arrive at a particular conclusion, cherry-pick from available information, memories, and experiences to construct beliefs that they believe logically support their desired conclusion. The goal is not accuracy, but to mentally assemble information that supports a conclusion while ignoring contrary information that could lead to a different result. (*Id;* Kunda 1990)

Bolsen and Druckman describe the directional goal in motivated reasoning theory as individuals processing information in ways that "protect, or defend, their prior beliefs, identities, and/or worldviews." (Bolsen 2018) Notably, individuals strive to protect their identity and standing within affinity groups that share fundamental values:

> Even among modestly partisan individuals, shared ideological or cultural commitments are likely to be intertwined with membership in communities of one sort or another that furnish those individuals with important forms of support—emotional and psychic as well as material. . . . If a proposition about some policy-relevant fact comes to be commonly associated with membership in such a group, the prospect that one might form a contrary position can threaten one's standing within it. Thus, as a form of "identity self-defense," individuals are unconsciously motivated to resist empirical assertions . . . if those assertions run contrary to the dominant belief within their groups. (Kahan 2013)

Thus, as social beings, we care more about protecting our tribe and our status within our tribe than discovering that our tribe was wrong about an important issue. If the issue you are debating with your Facebook friend is important to their tribal identity, the odds of changing their mind become very low.

Epistemic Closure

While eschewing the terminology and conceptual frameworks of social scientists, libertarian blogger Julian Sanchez identifies "epistemic closure" as another explanation for a pervasive resistance by some to contrary facts. (Twitter August 26, 2020) ("Epistemic" means of or relating to knowledge or knowing.) Sanchez defines epistemic closure as having an ideology and media ecosystem that enables one to reject new contrary information. Sanchez believes that epistemic closure better explains the prevalence of fact-resistant partisans than common excuses such as media echo chambers.

"So an 'echo chamber' just means you never hear any contrary information. The idea of 'epistemic closure' was that you *would* hear new and contrary information, but you have mechanisms in your belief system that reject anything that might force you to update your beliefs." (*Id.*) Thus, if an individual believes that the U.S. government orchestrated the September 11, 2001 terror attacks, and that the U.S. government is manufacturing the evidence that contradicts this belief, no evidence will convince the individual that their belief is false.

Acknowledging that this phenomenon occurs on both sides of the political divide, Sanchez sees it to a greater degree on the right and more recently with respect to devoted followers of former president Donald Trump.

As one example, he notes the reflexive use of the "Deep State" cry as a mechanism to dismiss the large cadre of former Trump officials who now say he is unfit for office. Similarly, Trump partisans wield cries of "Fake News" and "The Swamp" to dismiss all information deemed unfavorable to Trump or his policies and all criticisms from present or former government officials or other DC denizens, including those from longstanding conservative Republicans. Epistemic closure immunizes Trump partisans from all such attacks. It's not that they exclusively receive their information from pro-Trump news sources—although perhaps some do—it's that the epistemic closure mechanisms "effectively judo-flip it into confirmation of the preexisting narrative, rather than new contradictory data." (*Id.*)

The Backfire Effect That Isn't

We now know why those millions of Facebook debates ended in a draw. In many circumstances, we are hard wired to remain steadfast in our beliefs, the evidence be damned. Humans evolved an ability to reason but also evolved countermeasures that sometimes make reasoning difficult or impossible. Mother Nature has a sense of humor, doesn't she?

Indeed, for a time, researchers thought that Mother Nature had played an even crueler joke through a phenomenon called the "backfire effect." In a 2010 study, researchers observed that an attempt to correct false information led to study participants increasing their belief in the very misconception the correction was aiming to rectify. (Nyhan 2010; Swire-Thompson 2020.) In other words, "rather than simply ignoring factual information, presenting respondents with facts can compound their ignorance." (Wood 2016) Fortunately, later studies have shown that the backfire effect either does not exist at all or exists only under a small number of circumstances. (*Id*; Swire-Thompson 2020)

So Now What?

Although we now know why the prospects of winning a Facebook debate are so dismal, rest assured that hope for human discourse remains. The cognitive biases which inhibit reason are most influential when an individual has strong prior beliefs about the topic and especially when such beliefs are important to the individual's conception of self and their membership and position within their society. Not all topics of importance fall into these bias-triggering categories. Moreover, social scientists are hard at work trying to identify techniques that might enable the delivery of corrective factual information without triggering the biases that make individuals fact resistant. What techniques are those, you ask? That, my friends, will have to await another article.

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Israel's Judicial Reform: Part II

by Adv. A. Amos Fried

Part I of this article appeared in the Fall 2023 issue of The Decalogue Tablets.

The principle that Israel's Supreme Court is authorized to void administrative acts and decisions on the grounds of "lack of reasonableness" was first propagated in earnest back in 1980, primarily via the seminal ruling in HCJ 389/80 *Dapei Zahav Inc. v. The Broadcasting Authority*. It was then-Associate Justice Aharon Barak who expounded upon the court's ability to exercise judicial review over the reasonableness of administrative discretion. Without any express sanction bestowed under statute, the court would now be equipped to disqualify instances where proper weight was not afforded the various competing interests that the administrative agency was obliged to take into account. After determining a "realm of reasonableness" in its interpretation of the law, the court may then conclude that "a balance made outside this scope is unreasonable, and the court will intervene in the matter."

As discussed in our previous installment, over the years Israel's Supreme Court has incrementally expanded its capacity to apply the "the rule of reason" for the purposes of judicial review. Despite the fact that Israel has no formal constitution but rather a series of "Basic Laws," the High Court of Justice developed a growing propensity to declare a vast array of laws and state actions "unconstitutional," *inter alia* on account of their falling outside "the realm of reasonableness." Eventually, the court delegated to itself the competency to review the legitimacy of the entire legislative, administrative and executive process, determining whether at each stage any particular adoption, interpretation or execution indicated improprieties that no reasonable official or agency would have allowed.

Such self-endowed judicial powers were all meant to be drastically curtailed upon enactment in July 2023 of an amendment to Israel's "Basic Law: The Judiciary," explicitly intended to abolish the grounds of "unreasonableness" as a means for courts to overrule administrative acts and decisions. Almost simultaneous with the law's ratification, a battery of petitions was submitted before Israel's High Court of Justice, decrying the move as the end of democracy, no less. The very next day, Supreme Court President Esther Hayut abruptly cut short an official visit to Germany in honor of the State of Israel's 75th anniversary and hurried back home with her delegation of senior Justices. In an unprecedented move, she ordered that the petitions be heard *en banc* before all 15 Supreme Court Justices, and with unusual determination scheduled a hearing already for mid-September, days after the end of the summer recess. A series of dates for the respondents' answers were set at an accelerated pace, far beyond common practice. Their motion to defer the date of the hearing was summarily dismissed and the lead attorney's request for an extension to submit his filings was obliged by only a few days. President Hayut roundly denied motions for her recusal, despite statements she had previously made in various public forums challenging the validity of the proposed judicial reform and warning of its dire ramifications. Why all the urgency? See below.

As per Hayut's order, on September 12, 2023, a full day of the court's proceedings was broadcast live on national television. Already from the very start, it was clear where the battle lines were drawn. Justice Yitzchak Amit made no secret of addressing the Knesset's efforts in the most foreboding hyperbole: "Democracy does not die by a few strong blows, but in a series of small steps," he portended during the hearing.

And the histrionics didn't stop there. When the court's decision came down, Justice Anat Baron opened her opinion with a staggering comparison between amending "Basic Law: The Judiciary" and Hamas' murderous attack that left over 1,200 dead and took hundreds more into captivity: "These days, 75 years after that historic moment of the Declaration of Independence, existential dangers hover over the State of Israel, both outside and at home. While these lines are being written, and since the terrible massacre and atrocities of October 7, the State of Israel has been engaged in a bloody war against a barbaric enemy that has risen up against us.… Israeli democracy is currently under threat from home, and it is embodied in the amendment to the 'Basic Law: The Judiciary' - which is intended to bring about a fundamental regime change in the State of Israel."

Indeed, the fact that the Supreme Court saw fit to render its divisive, unprecedented ruling to void an amendment to a Basic Law, in the midst of a bloody war that continues to cost Israel thousands of casualties while virtually every Jewish family has at least one relative involved in the military effort, raises serious questions of judicial propriety, decency, and sensitivity, not to mention just plain level-headedness. Why the insistence to issue the 8-7 ruling nullifying the amendment on January 1, 2024, of all days? The answer was crystal clear: a mere week or so later, both President Hayut and Justice Baron – two avowed stalwarts of the Court's activist Left – would be concluding their allotted time to hand down opinions from the bench, thus securing the razor thin majority just before time ran out. With bitter irony – some might say, abject cynicism – one of the justifications underlying Hayut's verdict was her call for a "broad consensus" necessary to adopt such "radical" changes to the governmental structure of Israel. Broad consensus, you say? Seven out of 15 judges, soon to be 7 out of 13, found that the amendment could stand in one variation or another. Never mind that the landmark "Basic Law: Human Dignity and Liberty," upon which Aharon Barak built much of his inventive constitutional theories, was enacted by a vote of l*ess than half* of the members of Knesset in plenum (54 out of 120), with only 32 (barely a quarter!) voting to adopt.

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To strike down this current amendment, however, the High Court of Justice would first have to establish jurisdiction to apply judicial review over Basic Laws. Not to worry, the seeds for this self-empowerment were already planted in 2021 when the Court willingly adjudicated the "constitutionality" of "Basic Law: Israel - the Nation State of the Jewish People." After decades of bestowing constitutional status upon Israel's collection of Basic Laws, the Supreme Court was ready to position itself above the very "constitution" its own jurisprudence had conceived. And yet, in that case, the Court stopped short of declaring this particular Basic Law null and void, with none other than President Hayut rejecting a challenge based on the conjecture of the "unconstitutional constitutional amendment."

But that was way back then, and in 2023 Justice Yitzchak Amit found such a doctrine simply too enticing to forego, as he opined: "Canceling the doctrine of reasonableness in relation to the government and its ministers violates the core principles of democracy; violates the rule of law; violates the right of access to the courts; violates the separation of powers; and violates fundamental constitutional rights. Due to each of these reasons, the amendment to the Basic Law must be rejected as an unconstitutional constitutional amendment."

One might venture to ask, in absence of an official constitution how was the court going to find the "unreasonableness" amendment "unconstitutional"? Not a problem: several of the Justices relied on the "fundamental characteristics of the State of Israel as a democratic state," as embodied in its Declaration of Independence of 1948. Yet strangely, neither the term "democracy" nor any of its variant forms appear anywhere in this founding document. No mention of "laws," "courts," "judicial review," "separation of powers" or "reasonableness" for that matter either. The only reference to a "Constitution" is that one "shall be adopted by the Elected Constituent Assembly no later than 1 October 1948," that is – a date which came and went over 75 years ago, and still no constitution. What else does Israel's Declaration of Independence declare? For one, a commitment "to cooperate with the agencies and representatives of the United Nations in implementing the resolution of the General Assembly of the 29th November, 1947," i.e. the infamous Partition Plan of Resolution 181, establishing what eminent Israeli statesman Abba Eban denounced as "Auschwitz borders." To be sure, there is a promise to base the State of Israel "on freedom, justice and peace," but those terms are to be understood "as envisaged by the prophets of Israel." Theocracy, anyone?

As originally conceived, the government's proposed judicial reform was to address perceived defects prevalent throughout the legal system, of which negating "the rule of unreasonableness" amendment was arguably the least threatening. Firstly, this act of legislation by no means eliminated the court's license to apply judicial review over legislation and administrative acts. As a matter of fact, the Court would retain its statutory prerogative to annul legislation, executive orders, and administrative decisions made without authority, contrary to the law, in violation of rights, or out of extraneous considerations and discrimination. As we've discussed previously, this was one of the main critiques voiced by some on the Right as to the eventual ineffectiveness of merely denying the court from applying its own value-subjective standard of "reasonableness." Without too much effort, the Justices could obtain the very same obstructive dispositions simply by enforcing the powers they've already appropriated for themselves by utilizing expansively liberal interpretations of "Basic Law: Human Dignity and Liberty" and "Basic Law: Freedom of Occupation."

Why then did the Justices take such umbrage at the Knesset's efforts to deny them this one relatively inconsequential component of their jurisprudence? Proponents of the reasonableness doctrine see it as an indispensable pillar of judicial review that can be objectively ascertained. "Unreasonableness is measured by objective standards," Bark sermonized in *Dapei Zahav*. "This is an objective test. The question is not what the administrative authority actually did, but what it should have done. The reasonable person in this context is the reasonable public servant, standing in the place and position of the public servant [who] made the decision." Yet at its core, this metric of "the reasonable public servant" is in truth the most variable, capricious and in the end – subjective of grounds to void administrative acts and decisions. Unsurprisingly. the extensive legal capacity to make such determinations will not be expunged without a fight.

A handful of Supreme Court Justices have appointed themselves the sole and final arbiters of all things "reasonable" as pertains to the other two branches of government. The result is a hermetically confined system, impervious to non-conforming logic, exempt from competing points of view. Any attempt to deny them this all-powerful authority would itself be proof of such an effort's "unreasonableness." One can't help but be reminded of the Kurt Vonnegut character, Diana Moon Glampers, the viciously totalitarian "Handicapper General of the United States," responsible for regulating the minds and bodies of the American citizenry.

As of this writing, Israel is still reeling from the horrific events of October 7, 2023, the country remains engaged in one of its most challenging, protracted wars, and the government is engrossed in navigating an international crisis of growing proportions. The audacious judicial reform promulgated just a short while ago seems farther away than ever. For this round anyway, the Supreme Court Justices have clearly emerged victorious.

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Navigating Trauma: A Reflection on Mental Health, Resilience and Community Healing in the Wake of October 7th

by Paul Sweetow, LCSW

Two of the most influential people in the world of mental health treatment were Sigmund Freud – the creator of psychoanalysis - and Albert Ellis – the creator of cognitive/behavioral therapy. Both men were Jewish, so I was not surprised to learn that Israel has a world-leading team of professionals to respond to traumatic events.

Within hours of the October 7th attack on Israel, the Psychotrauma Crisis Response Unit of United Hatzalah was deployed to the scene treating victims, responders, and family members in real time. As Jews, we have a significant history and contribution to mental health, we value it, we lead the way in the industry, and now is the time to check in on our own emotional well-being and of those we love and care about.

I have had the honor to consult with the Illinois Holocaust Museum's children's exhibit that aims to enable the child's sense of being aware and an upstander in the face of discrimination and antisemitism. Further, I was deeply affected as a member of the three-person team who interviewed and recorded the stories of survivors for Steven Spielberg's Shoah Foundation. Recently, I have volunteered my time to provide therapy services to families in Israel – it is perhaps the most purposeful work I've ever done in my 33-year career.

The October 7th events, marked by the attack on Israel, have stirred deep emotions for Americans grappling with the ongoing impact and rise of antisemitism. In the intricate web of human experience, mental health is a cornerstone, profoundly affected by trauma. Recognizing trauma signs in ourselves and others becomes a crucial step in fostering understanding and facilitating healing.

In the mental health community, consensus on a universal source of trauma is lacking. Some argue every person encounters trauma, suggesting even birth could be a traumatic experience. Further, distinctions between "small T" and "big T" trauma, like critical parenting versus violent acts, are recognized.

From my perspective, symptoms and emotional responses are more crucial than getting caught up in defining the term trauma. Many Americans have experienced significant mental health issues from the October 7th attacks, feeling shared pain and a heightened readiness to defend ourselves and loved ones.

Let's examine symptoms of trauma in ourselves:

Emotional Responses:

1. Experiencing intense emotions disproportionate to daily annoyances. Are you angrier about issues you used to let go?
2. Grappling with persistent feelings of sadness, anxiety or fear. Do you feel like a dark cloud follows you all day?
3. Feeling emotionally numb or detached from others. Are you disconnecting too much due to overwhelming feelings?

Behavioral Changes:

1. Withdrawing from social activities or isolating oneself. Are you saying no to gatherings that you normally would attend?
2. Experiencing changes in sleep patterns. Are you sleeping more or less than normal? Is it harder to fall and stay asleep?
3. Engaging in risky behaviors or turning to substances as coping mechanisms. Are you consuming a higher amount of alcohol (or other substances) more than usual, especially when alone?

Cognitive Signs:

1. Facing intrusive thoughts, flashbacks or nightmares related to the traumatic event. Do you constantly think about it?
2. Encountering difficulty concentrating or making decisions. Has it affected your work or ability to focus?
3. Experiencing memory lapses or forgetfulness. Are you forgetting things or losing track of conversations?

Physical Symptoms:

1. Dealing with unexplained aches and pains. Do you feel muscle tension or gastro disturbances?
2. Experiencing changes in appetite or weight. Are you binging or not eating?
3. Feeling fatigued or having low energy levels. Do you notice reduced energy levels?

Recognizing trauma signs in others:

Observing Behavioral Changes:

1. Noticing significant changes in social interactions. Does your child want to avoid playdates or, for teens, hanging out with friends.
2. Witnessing unusual expressions of anger, irritability or mood swings. Compare this to their usual baseline.
3. Observing avoidance of places or activities associated with the traumatic attack on Jews. In America, we may be concerned about attending synagogue or places of Jewish gatherings.

Listening to Verbal Cues:

1. Hearing expressions of overwhelming sadness, fear or hopelessness. Many young children may question, "Why do they hate us? Why do they want to hurt us?"
2. Noticing frequent mentions of distressing memories or nightmares. Graphic content on TV and the internet may linger in our minds as a protective mechanism.
3. Recognizing difficulties in discussing the traumatic event. When we discuss our emotions, we often feel them, and that may feel overwhelming and lead us to avoiding talks which may be very healing.

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Navigating Trauma *(cont'd)*

Physical Signs:

1. Observing changes in physical appearance or hygiene. Feeling overwhelmed might lead to neglecting personal care.
2. Noticing sleep disturbances and signs of fatigue. Are they sleeping more or less than normal? Is it hard for them to fall asleep?
3. Recognizing increased substance use or dependency. Are they using more than normal or when they are alone to self-medicate?

Once signs of trauma or emotional distress are recognized, proactive treatment is essential. While time can reduce the intensity of emotions, waiting for them to fade is not recommended. Investing time and resources in mental health, for both you and your loved ones, may be the best investment of your life.

Getting Care for Trauma and Mental Health:

1. Encouraging Open Communication
Create a safe, non-judgmental space for individuals to share experiences. Use phrases like, "I understand how you feel" even if you don't agree. Validate their feelings and thoughts. Be a compassionate listener without pressuring them to disclose uncomfortable details. Say, "share whatever is on your mind, and if you want to talk later, we can do that too."

2. Seeking Professional Support:
Encourage individuals to consult mental health professionals, such as therapists or counselors. Despite societal progress, some still associate seeking mental health help with being "wrong" or "crazy." Dispel this outdated mindset. My 96-year-old father still cries about the loss of his wife, saying, "I must be weak." I remind him that his tears are an expression of love and strength.

Recognize that professional help provides valuable specialized guidance and coping strategies. Psychotherapy is helpful and has minimal to no side effects – putting professionals in our corner is a gain.

3. Promoting Self-Care Practices:
Emphasize the importance of self-care routines, including adequate sleep, healthy nutrition and regular exercise. While psychotherapy is valuable, controlling controllable factors is crucial for self-care. Encourage engagement in activities that bring joy and relaxation, promoting a sense of well-being. Having happy experiences is not turning your back on Israel or the hostages. Strengthening emotional well-being allows you to be of service to others more effectively.

4. Building a Supportive Network:
Foster connections with friends, family or support groups. The term "des-pair" signifies being alone, an unpairing. Work to "re-pair" and connect with others. Healing occurs through connection. Recognize the role of social support in healing and encourage individuals to share feelings with trusted individuals. Connect with friends, attend synagogue, engage in group therapy, or call the mental health hotline at 988.

5. Understanding Triggers:
Recognize potential triggers that may exacerbate symptoms. Triggers could be watching the news or reading social media feeds. Consider if online debates with haters are necessary or if taking a break is healthier. Balancing staying informed and having recovery time is essential. Healthy recovery breaks are beneficial.

6. Promoting Resilience:
Focus on building resilience through mindfulness practices, meditation and positive affirmations. Find a meditation app like Waking Up and practice for ten minutes a day. Reinforce the idea that healing is a gradual process and setbacks are a normal part of the journey. Allow self-compassion when feeling overwhelmed and talk to oneself (and others) like you are your own best friend.

The events of October 7th have left an indelible mark on our collective consciousness, stirring emotions and challenging our mental well-being. As we navigate the complex landscape of trauma, both individually and as a community, it is crucial to recognize the signs, support one another, and seek professional help when needed. By fostering open communication, encouraging self-care practices and promoting resilience, we can embark on a journey of healing and growth. In these challenging times, let us remember that investing in our mental health is not only an act of self-preservation but a commitment to building a stronger, more compassionate society. Together, we can navigate our trauma and emerge stronger, more connected, and resilient.

Paul Sweetow, LCSW, is a graduate of the University of Chicago and has been a psychotherapist for over 30 years. He was a psychological consultant for the Illinois Holocaust Museum (Children's Exhibit), a volunteer member of the 3-person team for Steven Spielberg's Shoah Foundation interviewing and recording survivors. Paul has worked with people affected by trauma throughout his career blending cognitive/behavioral therapy, mindfulness and warrior mindset.

October 7th

The terrorist attack on October 7 was a traumatic event for Jews all over the world. The trauma affected us as a community but also as individuals. Decalogue members have family and friends in Israel and some of our members live there either full or part-time. On the following pages, three members who were in Israel on that horrific day share their stories and their perspectives with us.

by Robert W. Matanky

I am a lifelong Zionist. My first trip to Israel was also the first trip for thirty-two other members of my family who joined me for my bar mitzvah in 1968. My wife and I raised our children as religious Zionists, so it is no surprise that our middle four children made aliyah and are Israeli citizens. This year marked the first year when my wife and I became empty nesters since our youngest daughter went on a gap year to Israel. Although I have traveled to Israel dozens of times, I have never lived there, and I have specifically avoided being there for the Jewish festivals since it would be difficult to fully observe the second day of *Yontif*. Nonetheless, with five of our children, daughters-in-law, a son-in-law and five grandchildren living in Israel and on vacation for the festival of Sukkot, my wife, Lee, and I decided that we would go there and spend time with our children and grandchildren.

Our daughter, Katie, and family had moved from an apartment in Jerusalem to a house in Kiryat Gat since a house with a backyard in Jerusalem is prohibitively expensive. We decided to stay with her at her house, since our sons' apartments in Jerusalem did not have accommodations for us to be with them other than daily visits. While I knew that a minyan for the second day of *Yontif* could be found in Jerusalem, there were only six adult men in Kiryat Gat who were interested in a second-day minyan. Thus, one of my concerns before the trip was, "What would I do without a minyan on the day which I would observe as Simchat Torah?" In hindsight, this became one of the least of our concerns.

Sukkot in Israel was beautiful. Unlike Chicago, this was the first time that I did not experience any chilly weather on the holiday. The throngs of people going to the old city of Jerusalem caused traffic jams and made for an incredible sight. We went on tours and to museums and had lunch in a restaurant succah built to accommodate a hundred people. We visited with friends and family, and everything was wonderful. We went to the synagogue on Friday night, October 6, for Shemini Atzeret/Simchat Torah. There was much joy, singing and dancing with the Torah scrolls. Plans had been made for the next morning to accommodate many hundreds of congregants in this young community. I continued to think of how strange it would be to have the singing and dancing with the Torahs, have each person receive an *aliyah*, recite the Yizkor prayers in memory of departed loved ones, and then have the solemn prayer for rain concluding with the words, "For a blessing and not for a curse, for life and not death, for plenty and not for scarcity." I found it strange that I would have the combination of joy and revelry alongside the somber, sad and serious prayers which are usually held on two different days outside of Israel, combined into one day.

As it turned out, none of this would come to be. Kiryat Gat is located southeast of Ashkelon and north of Be'er Sheva, approximately fifteen miles from the Gaza Strip. At 6:30 a.m. on Saturday morning, October 7, 2023, I was awakened by an air raid siren. Our daughter's home office converts into a modest guest bedroom. In case of emergency, it's the bomb shelter in her house.

I woke my wife who was sound asleep, knowing that our daughter and her family had only 45 seconds to get from their second-floor bedrooms into the first-floor bomb shelter. Seconds later, our daughter appeared carrying our one-year-old granddaughter, and our son-in-law was right behind her holding the hands of our five-year-old granddaughter and three-year-old grandson. Our son-in-law closed the big heavy bomb shelter door behind him as well as the metal plate cover over the window. Since it had been low in charge, I had left my cell phone plugged in before Shabbat. It was sitting on the nightstand. My daughter explained that in this type of emergency there was a rabbinical opinion which provided that she could turn the phone on to get news reports and directions if done in a backhanded manner. While she was doing that, I looked at our grandchildren, and, so that they would not be alarmed, told them that we were having a pajama party. This worked for our grandchildren, but the intensity of the bombing and the national reports which we were getting from my cell phone were causing alarm to the adults in the room. Hundreds of rockets and missiles were being shot in our direction. The house was shaking. The noise from all the explosions was intense. A couple of those explosions were even louder and more intense than most. There were 17 air raid sirens that morning. The protocol requires that you stay in the bomb shelter for at least 10 minutes after the siren stops. I wanted to go to the synagogue that morning, but it was not safe. (In a way, the pandemic had prepared me for how an emergency could cause me to miss an important morning in the synagogue, including the Yizkor service, since that was my experience on Passover, 2020.) For several hours, we barely left the bomb shelter.

Finally, in the late morning, it had been a while since we heard the air raid siren. The house was still shaking, the windows were rattling, and we still heard loud explosions. However, we felt that we would be able to go on the north side of the house, away from the Gaza side, so that we could see what was going on. There was still a constant barrage of rockets and missiles. They were going mostly to the west of our neighborhood. We watched as they were blown up in midair by the Iron Dome. We saw one missile which overshot our neighborhood and landed in an open field just to the north. Smoke rose with increasing intensity from the location where that missile hit. Later, we saw a piece of shrapnel in the backyard, and the second floor of a house on the next street was destroyed by a rocket from Gaza.

Clearly, it was the intent of Hamas to overwhelm the Iron Dome defensive system by firing thousands of rockets in rapid succession. News reports also made it clear that this attack was very different from previous attacks by Hamas. It bore similarities to the surprise attack on Yom Kippur 1973. In fact, this attack was the day after the 50th anniversary of that surprise attack. However, unlike the attack by organized armies of sovereign states, we were living through a barbaric attack by terrorists.

(continued on next page)

October 7th *(cont'd)*

Our niece and her family live in Rehovot where she is pursuing graduate studies. Her husband was called up with his reserve unit to serve in Gaza and stopped at our daughter's house on his way. There were virtually no other cars on the streets or people walking outside. My daughter's house is only a 10-minute walk from the synagogue, but there are no bomb shelters along the way.

I felt the need to attend the afternoon services. We discussed the situation and contingency plans for where I could possibly hide in the event of an air raid siren. It turned out that there were no other air raid sirens that afternoon, and I was one of only 13 men who went for the afternoon *mincha* service which was taking place in the synagogue's bomb shelter. I found out that the morning service had also taken place in the bomb shelter. It was attended by 40 people instead of several hundred, and the service was conducted in an expedited fashion for a total of two hours instead of more than four hours.

When I returned to the house, the first day of the holiday was nearly concluded and I was preparing to recite the kiddush for my wife. My daughter and son-in-law were checking messages, emails and making phone calls. She told me that I received text messages from United that my return flight to Chicago was canceled and asked if I wanted her to see what she could do about booking travel for us to return home. I told her I would take care of it myself the following night. I had mixed emotions about leaving Israel while it was under attack, especially because both of our sons had served in elite combat units in the Israeli army and our older son was already called up with his reserve unit to defend the northern border against Hezbollah. Nonetheless, Lee needed to return to teach in her classroom and I needed to go back to my office. Thus, on Sunday night, after I finished the second day of the holiday, I went online and started making phone calls to see what I could do to replace the travel arrangements which had been canceled by United. It had been our plan to attend the wedding of a cousin's daughter on the outskirts of Jerusalem the next evening. My cousin called me that night to let me know that they were changing the venue for the wedding. They made arrangements for a bus to leave Jerusalem to drive about two hours north to a different venue in Beit Shean. At that point, my children all warned against us traveling more than three hours in each direction since there were terrorists on the loose who were trying to infiltrate and kill more people. Regrettably, I told my cousin that we would not be able to attend his daughter's wedding.

On Sunday night, United Airlines offered no assistance. A couple of agents told me that even if I was able to leave Israel, they would not get me back to Chicago. I checked numerous possibilities including 38 destinations from El Al which would get me somewhere between Israel and Chicago, but every time I thought something would be available it was not. After several hours I decided to try again on Monday morning. I searched more possibilities and with the assistance of a travel agent finally booked a flight on El Al to Cyprus. I connected with a third agent from United. By this time, he agreed that he would get us back to Chicago from Cyprus. Instead of the direct non-stop 1:00 a.m. flight which would land in Chicago later that morning on Wednesday at 5:30 a.m., with total travel time of 12.5 hours, we left Kiryat Gat at 4 a.m. on Tuesday for what would be a 42-hour journey. Along the way we encountered a roadblock on a major highway. The border patrol stopped us to ascertain that we were not terrorists. A little further along the highway we saw cars parked on the shoulder for more than a mile and realized that was near the entrance to an army base where reservists were reporting for duty. When we got to the airport, the security lanes for checking in all of the foreign airlines were empty. However, the check-in lines for El Al were totally packed. It was complete mayhem.

We arrived in Larnaca, Cyprus, at 8:30 a.m. I could not help but think of the irony. After World War II, surviving European Jews attempting to enter British Mandatory Palestine were arrested and shipped to internment prison camps in Cyprus. We spent the next five hours sitting with our luggage and carry-ons in the entry hall to the airport. Finally, three hours before flight time, we were able to check in for our next flight on Lufthansa to Munich. That destination was also ironic since 51 years earlier the 1972 Israeli Olympic team was massacred in Munich. We needed to spend the night in Munich, and the next day we boarded a Lufthansa flight back to Chicago.

We began to hear more details of what was going on Israel when we arrived in Chicago. We learned that sons of two families with whom we are friends were murdered at the Supernova music festival. We also learned that Hersh Polin, the son, nephew, and grandson of Chicago friends, was kidnapped from that music festival and being held hostage in Gaza. If that wasn't enough, just a little over one week before, on the Monday of Sukkot, we had had a wonderful lunch in the sukkah with Shelley and Rabbi Doron Perez and our youngest daughters. They were very excited about the upcoming wedding of their oldest son. On the morning of October 7, their second son, Daniel, a tank commander, was stationed along the border of Gaza. His tank was hit by an RPG which killed one of his men. He and his other two soldiers were taken prisoner. There has been no information about their condition.

Our oldest son completed 145 days of active reserve duty on February 29. We are delighted that he could return to our daughter-in-law and grandsons.

There are banners all over Israel which say, "Bring Them Home." There are also signs which say in Hebrew, "*B'Yachad N'Natzeach*." Literally, it means that together we will win. But it also means that if there is unity we will win. For nine months, the level of divisiveness in Israel was horrible. Democracy in action was beautiful. There was no violence. There was patriotism. Flags were waving, and people were singing, but there was no middle ground. It is unfortunate that it took a tragedy to bring out the best in all of our people so that we can all work to support each other, from all segments of society.

We must continue to pray for the success of the IDF, the salvation of all of the hostages and prisoners, security for the Jewish people around the world, destruction of Hamas, and realization of peaceful co-existence between the Jewish State of Israel and peace-loving Palestinians.

We must also continue to provide support and assistance for Israel in these difficult times. Whether through donations to the JUF Israel Emergency Fund, the Jewish National Fund, Magen David Adom, or so many other major organizations which are providing desperately needed funds to assist the victims of terror and the Jewish people, or for those who can, there are many opportunities to volunteer in Israel since so much of the workforce has been called up to active duty.

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Finally, we must continue to advocate on behalf of Israel. Among other things, Israel needs the United States to replenish the Iron Dome on which it relies for defensive purposes against incoming rockets and missiles. It also means continued advocacy by the United States on behalf of Israel at the United Nations, including the all-important veto power at the Security Council.

Together we will win. *Am Yisrael Chai*!

* * *

By Cathy Horwitz

We live in Jerusalem, Israel most of the year and we were there on October 7, 2023. As a result, I experienced many things for the first time in my life. It was the first time I was awakened in the morning by air raid sirens. Davening in synagogue was interrupted by the sirens. This was also a first. As a result, it was also the first time I finished my "catch-up" davening in an underground parking deck. We also used our *mamad* (safe room) for the first time for its original intended purpose.

There was so much uncertainty that Shabbat. No one knew what was happening, other than that we had been attacked by Hamas in the South and there were rumors of many killed and police stations overrun, etc. If only they had been mere rumors. People were scared.

We walk down to the Kotel every Shabbat afternoon. The afternoon of October 7 was the first time we walked down to the Kotel on Shabbat and saw almost no one else out and about. It was the first time that we walked through Mamilla Mall on our way to the Kotel and we were the only ones there! My husband kept expressing his doubts about the wisdom of our walking to the Kotel on that day. I insisted that if there was a real danger, someone — police, soldiers — someone would turn us around and tell us that we must go home. Unless we were told to go home by Israeli military, security, or police personnel, I was determined not to let the terrorists keep me from davening at the Kotel as I always do on Shabbat. It was the first time that we had been to the Kotel on a Shabbat Yom Tov afternoon and there was only one minyan! This was the first time that I can remember that the number of people outside on the Plaza could be counted on just two hands. While this was a bit unnerving, I also appreciated the ability to daven in such a quiet, uncrowded private atmosphere right up next to the Kotel.

I tried to post something every day on our family WhatsApp group to reassure our family in the U.S. that we were safe and to keep them up to date on what was happening around us in Jerusalem. What follows are many of those posts, many highly edited for the sake of brevity, clarity and privacy. I believe that this is probably the best way to give you, the reader, a sense of what it was like for us during those first days and weeks.

October 9, 2023
We are back from a funeral. We are OK. Israel is amazing. A request on social media went out for people to attend the funeral of a lone soldier who was killed defending the communities near Gaza. Hundreds of people showed up to honor him. The sirens went off in the middle of the funeral and all of us got down as close to the ground as possible with our hands over the backs of our heads as instructed. There was no pushing or panic. The siren went on quite a bit longer than the one earlier today. It ended and we received instruction to stay down until told to get up. And then we heard one "boom" after the other after the other-many "booms." Each one got louder than the last, sounding closer and closer…at one point as the "booms" got louder and sounded closer I thought that maybe I should say the Shema. But exactly just then the "booms" stopped, and we were told that it was safe to get back up. Some people left immediately afterwards but most of us stayed for the duration of the funeral. We all got up off the ground calmly and continued on. We were there to give honor to this 20-year-old hero and that is what we did despite the evil directed at us. (Only afterwards did the surreal nature of this hit me—laying down on the ground in a cemetery next to the graves of our young heroes to protect ourselves from enemy rockets. This was another first for us.)

Another illustration of amazing Israel: After the Home Front Command promulgated recommendations to stock up on certain foodstuffs, water, first aid supplies and other items necessary in an emergency, I went to the *makolet* (small grocery) on our block. It is really a small store and there were LOTS of people there all doing the same thing. No one was pushing, grabbing, or shouting. People were helping each other get what they needed. For example, one gentleman helped me get flavored water down from the top shelf that I could not reach. Everyone was kind, polite and smiled at each other. Although we are now in the midst of a full war, and so many tragic things have and are happening, the basic good and beauty of the Israeli people is shining forth.

October 10, 2023
We are hearing the rumble above of military aircraft every few minutes but can never spot them. They must be flying really high, but then again it is partly overcast. No sirens here since the funeral yesterday, BH.

October 11, 2023
It was another beautiful day in Jerusalem today. Thank G-d no sirens. Today many people who were evacuated from one of the communities near Gaza moved into the Dan Panorama Hotel just around the corner from us…. Mark and I helped to sort and pack donations of food, clothing, toys, and other necessities that so many people have donated for the displaced families and for the soldiers. Then we went to get hot dogs to make the ultimate comfort food for dinner—hot dogs and beans.

We started the day with a one-hour Ulpan Zoom session. Ulpan cannot be held normally now. In fact, no schools are open at all throughout the whole country. I really miss the class, I was learning so much being there 3 days per week, 4 ½ hours per day, and I really like our current teacher. Hoping we can get back to normal soon and that all the hostages and soldiers return to us alive and well!

October 15, 2023
All quiet in Jerusalem today, thank G-d. We went to a camping goods store today and purchased warm hats and fleece jackets for the soldiers stationed up north, and then brought them to the collection point at the Michael Levin Base for lone soldiers, near Mahane Yehudah (the shuk). The volunteers there were very happy to receive this donation and they told us that it was exactly what the soldiers were asking for. There were so many bags, boxes, and cases of things there that so many have been donating. Israelis are coming out in full support wanting to donate whatever we can to help our *chayalim* at this critical time.

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October 16, 2023
It is after midnight so here is a short recap of our day. We started with a full four-hour Ulpan on Zoom. We heard three big booms around 5-ish. Since we heard no sirens, they may have been sonic booms from IDF aircraft. Other than that, all has been quiet here. Now people are being evacuated here from the North as well because Hezbollah is making trouble up there. We are davening for the success and safety of all our soldiers!

October 17, 2023
It was another beautiful day. Temp in low 70s. We spent about four hours volunteering at the Michael Levin Base which is a resource center for lone soldiers. We did not know before we got there what we would be doing. It ended up that they needed the kitchen and bathrooms to be cleaned and the supply closets to be organized. So that is what we did. As we were leaving some guys came in with many cases of eggs and other food to cook for the soldiers—at least they now had a clean kitchen, but I bet volunteers tomorrow will have to clean it again! Also, Mark fixed a thing or two and Yehudah came to meet us there with WD-40. Afterwards, we went to the gluten-free falafel place for lunch on the way home. Things seem to be getting closer to normal now. Most stores have reopened in the center of town (Ben Yehudah and Yaffo). Many people are now out and about, not as many as normal, but enough that if you did not know otherwise that there was a war you wouldn't know. However, at the shuk, while there are some shops now open there are still many places closed, and noticeably and unusually so.

October 18, 2023
Hi everyone. Thankfully not much to report other than our distress at how quickly and uncritically so many news organizations all over the world reported as fact the unsubstantiated and unverified blood libel promoted by Hamas who less than two weeks ago were beheading babies! In what world can they be considered a credible source?! (This post was in response to the false reports that Israel had bombed a hospital.)

October 19, 2023
It was a beautiful day today! Went out to eat for lunch after our Ulpan session on Zoom. There was a very heavy police and IDF presence on Yafo Street…. on motorcycles, horses, cars and on foot.

October 24, 2023
More about the wonderful Israelis. This is a country where everyone wants to help. We must fight to get a chance to volunteer. Last night a friend tried to sign us both up to volunteer to prepare sandwiches for the soldiers. She went online as soon as it opened but by the time she hit enter all the spots were taken…. I heard of someone who put out a call on social media, she needed to find appropriate housing for 6000 people that had just been evacuated—-the response was so amazing that the whole process took only 45 minutes! To find housing for 6000 people! Israel is wonderfully amazing!

Also just want to let everyone know we will not be in Skokie from Nov. 1 to Nov. 9 as originally planned. Our flight has been cancelled. Please set up a Zoom link for the *upsherin* so we can participate virtually.

October 25, 2023
Everything is still quiet in Jerusalem, thank G-d. Yesterday was the first time since the war that we were able to go back in person to class for Ulpan. I felt almost as excited as I used to feel for the first day of school as a child. Afterwards, I went to SuperPharm (similar to Walgreens) to pick up a couple needed items. I went home — Yehudah was on the phone—SuperPharm had called him to tell him that my phone was left there. … So back I went. The manager who retrieved my phone for me from the store's safe was a young Arab Muslim woman. She was young enough to be one of my children but took a very motherly stance towards me when she handed the phone to me and told me in perfect English to be more careful!

October 27, 2023
Yesterday was a beautiful quiet day here in Jerusalem, thank G-d. All this quiet is a bit surreal however considering that not so far away missiles continue to be shot at Israeli villages, cities and towns including Tel Aviv. There is a small gluten-free restaurant across the street from our Ulpan. I went there yesterday to get a pastry, but it was closed. A handwritten sign in Hebrew on the door informed that the owners had to go to the war, and they look forward to coming back alive and well and victorious and serving their customers once again. I very much hope that they do soon!... Thank G-d still quiet, although a little bit ago I both heard and felt the roar of military aircraft — it sounded like they were going both north and west but everything echoes around here so it is hard to tell…

October 29, 2023
Everything is still quiet here in Jerusalem, thank G-d. Although not so much for our soldiers. The rabbi was given leave for Shabbat—he is stationed up north. He was wearing his normal Shabbat clothes and his rifle. On our walk to and from the Kotel yesterday we also saw a young woman in her Shabbat dress and rifle. There were many people carrying. The chief rabbis have both ruled that the situation is one of *pikuach nefesh* (saving life) and therefore anyone who is licensed and owns a weapon should carry it even to synagogue (in addition to the soldiers who must always keep their weapons with them) and that there must be at least one armed person for security at every synagogue throughout the country. The ground invasion has begun in full force.… We have been dismayed by the reports of large "pro-Palestinian" rallies worldwide which are really nothing more than anti-Semitic hate fests…. One such "protest" even took place in Skokie! So, while you in the US are worried about us here, we here in Israel are also worried about you. Stay safe everyone. Hamas unleashed a worldwide wave of hate on October 7. Israel is fighting for all of us right now.

October 30, 2023
We are back to Zoom for Ulpan, no one is quite sure why? Perhaps because now, Israel has put boots on the ground in Gaza?

The quiet here in Jerusalem has been broken. A terrorist stabbed and seriously wounded a police officer at one of the light rail stations earlier today.... And just 2 minutes ago we heard the air raid sirens from other areas of Jerusalem and then about 4 booms in the distance. The sirens in our part of Jerusalem did not sound. It is such a beautiful day, we are going to try to get out for a walk in the garden, so we can get out, yet stay close to shelter.…

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October 31, 2023
Thank G-d it is quiet in Jerusalem except for the frequent rumble of military aircraft. Today we volunteered at Yad Sarah, the largest volunteer organization in Israel with about 7000 volunteers normally.… It is a very large organization that helps the sick and injured and disabled in many various ways.… But now the volunteer force is impacted by the war just when the need for their services has increased due to the war. Today Mark and I cleaned a donated wheelchair to make it presentable and nice for whomever will be using it, it also needed a minor fix. I never knew there were so many pieces and parts to a wheelchair! They had a good radio station on, played both American and Israeli oldies but goodies (The Carpenters, Peter, Paul and Mary, etc.) The music, however, was frequently interrupted to let listeners know of the locations of rocket/missile attacks so those in affected areas would know to find shelter. Does the U.S. media report that Israel has been under constant rocket and missile attacks since October 7? Some have evaded the Iron Dome and there have been direct hits on buildings and people in places closer to Gaza than us—even in Tel Aviv.

November 2, 2023
So here is a quick note before sleep for the night. Attended Ulpan on Zoom for 4 hours…. I did most of the shopping for Shabbat, then went with friends to make a BBQ dinner for soldiers at one of the bases. They kept thanking us and we kept thanking them! All still quiet in Jerusalem, thank G-d. And the weather was beautiful with the high in the mid-70s. Good night.

November 5, 2023 (because of the urgent global travel warning…)
We ARE still planning on coming to Skokie on the 21st (for Thanksgiving). Since we need to transfer to United in Athens, we will be keeping abreast of the news to be sure that process will be as safe as can be expected. If a change in our plans is necessary, we will of course let you know.

November 6, 2023
I am happy that we are back in the classroom again for Ulpan. We have been moved from the fifth floor to the second floor. We had a drill today about what to do and where to go in case there are sirens. They showed us where the secured spaces are on the bottom floor and how to get to them.

The quiet was broken today in Jerusalem. A 20-year-old young woman, a soldier, was stabbed today near the Old City (on the other side of the city from us) by a 16-year-old Palestinian boy and she died a short time later of her wounds. One of my friends here knows the girl and her family.… She is devastated by the news. I am continuing to pray for the safety of all our brave soldiers and all the hostages…. Hope all is well with all of you.

November 8, 2023
So today a note about yesterday. It was another beautiful day. In the afternoon we volunteered at Yad Sarah, then went to buy disposable plates, cups, etc. for a BBQ at one of the army bases up North on Thursday that a group of us are making for the soldiers. Jerusalem was quiet.

November 9, 2023
Hi everyone. So right now, I am in a car with four others on our way up north with a trunk full of food for about 50 soldiers. Yesterday after Ulpan, I went to the shuk to get all the produce for the salads. I was going to prep it all last night but went to sleep early instead because I wasn't feeling well at all. So this morning I prepped and put all the lettuce and veggies into Ziploc bags. I had to miss Ulpan as a result but hopefully didn't miss too much. Several of the students were planning on going to Rose Lubin's funeral instead (the young soldier I wrote about on November 6), so our teacher said today was going to be review only. We can't know where the base is that we are going to — they told us where to meet them at which point, we will need to transfer all the food and supplies and switch vehicles, and they will drive us the rest of the way. Should be interesting … will let you know….

(Later that same day)
So, after a nearly three-hour drive (there was a lot of traffic), we met at a gas station and in the end, there was no need to transfer to another vehicle, but we had to follow the military vehicle which was some sort of truck/jeep thing. It was already dark, and we were soon on an unmarked road. The GPS showed nothing of any use on the screen. Traveling to a secret army base was yet another first for me.

As we entered the secret base, we saw mortars, tanks, etc. This base was much smaller and more rustic than the one we were at last week. There were 40 men and 2 women stationed there. The men sleep in one large room on mats (not mattresses) on the floor, the women sleep in the smaller room, again just sleeping mats on the floor. All of them were reservists, so all were older than usual. One had a lot of gray in his beard. One is a rabbi with similar insignia as the commander of the unit. One has five children; the oldest is 18. One of the women had just graduated with her degree in architecture and was all set to start her new job with an architecture firm when the war began. She is also to be married in two weeks but now does not know when or where that will happen.

We had a fun time with the chayalim. They said it was the first real meal they have had in three weeks! We were so honored to be able to take care of them in this way. We saw two flares go up in the distance but thankfully everything was quiet. But at least one of the soldiers was discomfited by the "unusual" quiet. He said that he wondered why and appeared to be worried that this was "the quiet before the storm." (My words, not his, but paraphrasing the suspicion he expressed.)

When we left were told it would be easy to find our own way as there is only one way off the base. But we missed the turn somehow and went a distance on until we were blocked by a gate. We turned around, went back the way we came, and then made a wrong turn again. Finally we got on the phone with one of the guys on the base; he called us because he saw our headlights going in the wrong direction and guided us back to the base where we all laughed. (Considering everything that is going on we told him that we were very glad that he knew it was us!) This time he showed us very specifically where to go and we all got back safely! A real adventure!

We did take pictures with all the soldiers and their commander said it would be OK to send them but only on WhatsApp and only with location data removed. Since I don't know how to see if location data is removed, I will show the pictures to you all when we see you. Also, he said we can't tell anybody where we were, which is an easy instruction to follow because we have no idea where we were -- other than up north somewhere….

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Well, I think that this was the last entry posted before we returned to the States for Thanksgiving that might be of interest to anyone outside of our family group. We are back in Israel now and hoping and praying that we experience another Purim miracle during this month of Adar Beit. Happy Purim!

* * *

by Michael Traison

It was a Friday night, Shabbat, but also Simchat Torah in Israel. The hakafot took a very long time and I was impatient to get home to a delicious Shabbat/Yom Tov Friday night dinner. It was also October 6 so I was looking at the faces of many of my fellow shul members now dancing with Torah scrolls who, exactly 50 years before, were fighting in Sinai and Golan while I was a school teacher far away living in the safety of Canada.

I awoke early the next morning. I sat on the couch at 6:30 a.m. when the sirens began wailing. I wondered why Hamas wasted their resources on shooting rockets at my neighbors and me when Iron Dome would certainly intercept. And I kept reading. A few moments later I heard yet another siren. Something was happening but it could wait. It was Shabbat. No phones. No intrusions.

At 8 a.m. I walked two blocks to my synagogue. I was one of two or three who arrived early. This day the dancing would go on to 1:30 p.m. We looked at one another. Something was happening. We knew it couldn't be good. By 10 a.m. new people arrived. The rabbi said we should dance as always but we should tone it down. Something was happening. And slowly we learned something bad happened. But how bad could it be? Our army is the best. Our intelligence services are unequalled.

After shul I went with friends who invited me for Shabbat/Yom Tov lunch. We were aware something was happening. But how bad could it be? Our army is the best. Our intelligence services are unequalled.

As darkness descended and Havdalah divided the sanctity of Shabbat from the rest of the week, I turned on my phone and the cascade of calls and news awakened us to the unfolding tragedy. But it would be weeks later until what had happened sank in.

Each day and night sirens sounded. We took shelter. Sometimes in the bomb shelter but mostly in the hallway outside my door hoping to avoid the shrapnel.

Even then, it would be weeks before we understood.

International Women's Day

by The Decalogue Womxn's Committee

Each year in March we celebrate Women's History Month and, on March 8, International Women's Day. This year, however, our celebrations are tempered with the reality that 132 hostages at time of publication are still being held in Gaza, not all of them alive, and fourteen of whom are females. The hostages were kidnapped during the brutal terrorist acts of Hamas on October 7, in which Hamas murdered over 1,000 civilians and sexually assaulted girls and women before slaughtering them.

Yet despite the atrocities inflicted upon these girls and women, the conspicuous silence of many world leaders as well as international and local women's organizations questions and degrades their stated mission to champion women's rights. The selective response from such prominent organizations underscores a troubling inconsistency. If the mission is truly to support women universally, then dismissing the plight of the hostages subjected to such heinous acts by Hamas terrorists is not only a painful reminder of the vulnerabilities women have faced throughout history, but condones the sinister strategy of the weaponization of women as tools of war. Ignoring and discounting the testimony of released hostages about the sickening rapes they witnessed and endured, of doctors who examined deceased victims and survivors and found horrifying evidence of violent sexual assaults, of video footage and thousands of photos showing Hamas terrorists attacking female hostages, of confessions of Hamas terrorists, betrays the fundamental values these women's organizations claim to uphold of defending the dignity and security of women worldwide. Or are Jewish women, mothers, sisters, daughters, exempt from protection, undeserving of basic human rights? #MeToo_UNless_UR_A_Jew?

After five months, 150 days, in captivity, the UN's envoy on sex crimes finally recognized that, "clear and convincing information that sexual violence including rape, sexualized torture, cruel, inhuman and degrading treatment" was committed and there are "reasonable grounds" to believe that such violence is ongoing against hostages held by Hamas in Gaza. Not a single hearing has been held, nor has the UN condemned Hamas, suggested sanctions, demanded the immediate release of the hostages, or even called for Hamas to present the hostages for medical examinations. Regardless of the failure of those claiming to protect girls and women to scream their outrage, flood their social media platforms with their disgust, or apply international pressure to denounce the brutality and support the immediate return of the hostages, we must continue to foster a collective commitment to equality and justice for ALL women that should be the foundation of any genuine women's rights movement. So, in honor of Women's History Month and International Women's Day, it is essential to maintain vigilance in using our voices to advocate for the girls and women who have suffered unimaginable horrors. Working tirelessly for their release is a matter of humanity. BRING THEM HOME: Liri Albag (18), Naama Levy (19), Karina Ariev (19), Agam Berger (19), Daniel Gilboa (19), Romi Gonen (23), Eden Yerushalmi (24), Noe Argamani (26), Arbel Yehud (28), Amit Ester Buskila (28), Doron Steinbrecher (30), Shiri Bibas (32), Carmel Gat (39), Judy Weinstein (70).

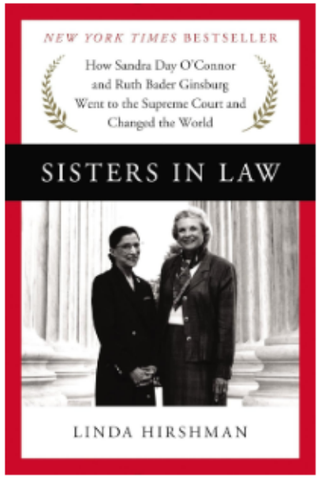
Decalogue Womxn's Committee Book Club

Wednesday, April 3. 2024, at 5pm

Cambria Hotel Lounge
32 W. Randolph 9th floor

Join us for the first meeting of the Womxn's Committee Book Club. The book we have chosen is *Sisters in Law* by Linda Hershman.

If you would like to be notified of committee meetings, please email us at decaloguesociety@gmail.com.



REGISTER HERE

Book Review: "While Justice Sleeps"

by Hon. Michael S. Jordan

Stacey Abrams. *While Justice Sleeps*: A Novel. New York: Doubleday, 2021.

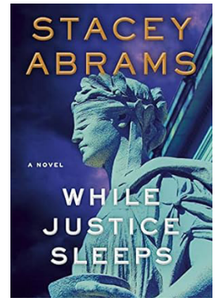
The prolific author, Stacey Abrams, is a Georgia legislator who rose to a lofty position serving as Democratic minority leader and state Democratic Party leader. In November 2020 she engineered the election of two United States senators, Rev. Raphael Warnock, a Black, and Jon Ossoff, a Jew, helping the Democrats in the U.S. Senate capture a majority and replace Kentucky Republican Senator Mitch McConnell with New York Democrat Senator Chuck Schumer as majority leader. She had run for governor of Georgia in 2018, but was unsuccessful in that election race.

Stacey Abrams had two bestselling books before this endeavor: *Our Time Is Now* and *Lead from the Outside* as well as 24 other books, fiction and non-fiction. She has shown repeatedly how a Black woman can be a positive force for change taking us in the right direction. Her own abilities are demonstrated in the many well-conceived and well-executed books she has written.

I choose to review this novel since it reflects our current political and legal environment where so much depends on the whims of the members of the Supreme Court and their not too well-hidden political agendas. The Court and its members, holding our fate in their hands in so many crucial cases, deserve our close attention and scrutiny. We deserve a better means to eliminate the possible corruption and bribery already shown regarding two of our justices being aided, if not supported, by donor billionaires. Until Trump offset the balance on our high court with his three appointments, for many years there had been a swing justice finding a middle common ground moderating the extremes. Now the Court is one-sided with the scales of justice tilted to the right.

This novel takes a fictional swing justice out of commission falling victim to a coma as the session of the Supreme Court is coming to an end. One particular case has been the catalyst for a series of unexplained events including murders. We find the antagonism growing between the sitting president, who is edging towards authoritarianism, and this swing justice before the justice's power fades into a lasting coma. As lawyers, we could merely focus on the need for a constitutional amendment and implementing legislation dealing with long-term disability of a justice, but here there are many more twists and turns to follow and ponder.

The protagonist in this book is one of the ailing justice's law clerks whom the justice has secretly (unknown to the clerk), named as his personal representative with health and legal powers of attorney rather than his estranged second wife or his only child, a son from his deceased first wife. His clerk is a brilliant, tenacious well-educated student of many areas of life in addition to the law, with a phenomenal memory. She comes with baggage, however, including a homeless drug-addicted mother who she finds on her doorstep whenever the mother needs money for a fix.



There is a trail of clues left by the master chess player — her mentor, the comatose justice who she hopes will guide her in understanding his wishes for her actions as his personal representative as she discovers many mysteries and issues surrounding him on the Court and in his personal life. We learn that within our government are many dedicated public servants at the highest levels and at the lowest levels in career positions, but we are also reminded that there are some totally evil and malevolent forces at the highest level with the power to subvert all civil norms of humanity and the ability and will to commit crimes from treason and murder to other lesser crimes and misdemeanors.

As we, the readers, race through the pages to "help" his clerk find the answers and learn what dire circumstances exist and who can protect good from evil, we are aroused to indignation and fear but hope to subdue the evil. Clearly, this book will be enjoyed as you try to find real life persons who fit the shoes of each actor. What would we as lawyers do if we were part of these events? Would we be compelled to breach legal or moral norms to protect the greater good or trust the rule of law and hope for the best? Read Abrams' novel and then ask what you would do.

Michael S. Jordan, Mediation & Arbitration Services, Glenview, 847-724-3502, Jordanms@comcast.net, is a retired judge and author of the book "Becoming a Judge: An Inside Story" available on Amazon. He has served as a mediator and arbitrator since leaving the bench in 1999.

SAVE THE DATE!
Tuesday, May 14, 2024

VANGUARD AWARDS

Union League Club of Chicago
11:30pm Reception
12:00pm Luncheon

Join us at Decalogue's table to honor the
Jewish United Fund
for their pro bono service and other contributions to the legal community

Watch your email for more informaton

Life at First Breath: Abortion Rights and Judaism

by Gail Schnitzer Eisenberg

On February 17, 2024, the Alabama Supreme Court held that frozen embryos could be considered children under a state law permitting suits for damages for wrongful death of a minor child.[1] Ala. Code § 6-5-391. The decision overtly injected a non-Jewish conception (pun intended) of embryonic personhood in interpreting the state constitution's "Sanctity of Unborn Life" provision.[2] The concurrence has no issue citing pages of Christian theologians and thinkers in concluding "that each human being, from the moment of conception, is made in the image of God, created by Him to reflect His likeness." [3]

Just a week before, Jews across the world read the Torah portion *Mishpatim* ("ordinances"). While many of the ordinances described in the Torah portion sometimes referred to as the "covenant code" were extremely topical, one such ordinance had gotten significant press in the year since *Roe v. Wade*, 410 U.S. 113 (1973), was overturned by *Dobbs v. Jackson Women's Health*, 587 U.S. 215 (2022),[4] which stripped American women of federal protections for abortion. Exodus 21:22-23 states:

> Should men quarrel and hit a pregnant woman, and she miscarries but there is no fatality, he shall surely be punished, when the woman's husband makes demands of him, and he shall give [restitution] according to the judges' [orders]. But if there is a fatality, you shall give a life for a life.[5]

Setting aside the overt misogyny as merely recognizing the social truths of the day, these two verses are commonly considered the foundation of Judaism's approach to reproductive health, rights and justice. Accordingly, individuals and communities across the world gathered the weekend of February 9 and 10 to celebrate "Repro Shabbat" and the Jewish values it honors.[6]

The key to understanding verses 22-23 is in the contrast. The first line notes that restitution, or a monetary fine, are required to compensate a family for causing a woman to miscarry. The second line, however, requires capital punishment "if there is a fatality."[7] In juxtaposition it is clear that the Torah does not consider a fetus a person as there is no "fatality" in the case of fetal miscarriage.[8]

So when, then, does Judaism believe life begins? Clearly *not* at conception, which conflicts with the abortion bans in 14 U.S. states.[9]

The rabbis of the Talmud and beyond considered a fertilized egg "mere fluid" until the 40th day *after* conception.[10] Perhaps this was a practical recognition of the prevalence of early pregnancy loss. With the benefit of model medical knowledge, for those who know they are pregnant, about 10-20% end in miscarriage with about 80% occurring in the first trimester.[11] What they could not have known is that this period largely tracks the progression of the egg from zygote to blastocyst to embryo.[12] Interestingly the average person only becomes aware they are pregnant between 5 and 6 weeks gestation when the physiological impacts of the pregnancy begin.[13] For reference, two states now ban abortion at six weeks after the person's last menstruation, approximately 4 weeks after conception: Georgia and South Carolina (although Iowa and Ohio tried).[14]

After the 40th day, the fetus is generally considered a part of the mother, not a separate entity. As Rashi noted, until the fetus breathes its first breath, thus "entering the atmosphere of the world," it is not to be considered a living person or soul, *nefesh*.[15] Accordingly, the Talmud clearly instructs that "If a woman is having difficulty giving birth and her life is in danger, the fetus may be removed surgically, because her life takes precedence over the unborn fetus."[16] That is, there are times when abortion is required to effectuate the Jewish imperative of *pikuach nefesh*, saving a life.

It seems relevant to note here that death rates are 62% higher in abortion-restricted states.[17] This is partially because 39% of the counties in those states are "maternity care deserts," meaning there is limited or no access to maternity health care such as ob/gyn, hospital, or birth centers with obstetric care or certified midwives. Those states also are less likely to have expanded Medicaid, meaning individuals begin their pregnancy at a worse state of health, increasing the potential for complications. Of course the maternal mortality statistics are worse for women of color: Black women are 3 times more likely to die in pregnancy or childbirth than white women in the United States.[18] The infant mortality statistics are similarly concerning given *pikuach nefesh*: infant and perinatal mortality rates were also up in such states: 6.2 deaths per 1,000 births in abortion-restriction states, compared with 4.8 per 1,000 in abortion-access states.[19] *Mishpatim*, do note, also contains the injunction against "oppressing" the stranger and the less fortunate - a reminder that the marginalized in our society are particularly impacted by poverty and other harms.

Turning back to the rabbis of yore, there is rabbinic consensus that abortion is permitted if the mother's life is in danger. And pregnancy in itself is a dangerous experience.[21] "The risk of death associated with childbirth is approximately 14 times higher than that with abortion."[22] My experience is illustrative after I developed acute preeclampsia and went into preterm labor at 34 weeks gestation after a so-called "boring" pregnancy, requiring an emergency c-section to prevent stroke. The U.S. maternal death rate is more than ten times the estimated rates of other high-income countries.[22]

Conservative and Reform authorities recognize such danger to "include 'indirect' threats to the mothers' well-being" such as pain, discomfort, mental health, and familial considerations. After all, 59% of those who have abortions are already parents.[23] The late Sephardic Chief Rabbi of Israel from 1939 to 1953, Ben Zion Uziel, held that abortions were permitted when they were in the best interests of the mother, even if not crucial to her health. Accordingly, "Israel State legislation, the Criminal Law Amendment (Interruption of Pregnancy) of 31 January 1977 increased the circumstances under which abortions could be legally performed. It permitted abortions if the continuation of the pregnancy was likely to endanger the woman's life or cause her physical or mental harm, if the woman was under the age of marriage or over 40 years of age, if the pregnancy resulted from a sexual offence, incest or extramarital sexual intercourse, or if the child was likely to have a physical impairment."[24]

Today, many rabbis approve of abortion in cases where there is a considerable likelihood that the child would be born with a serious birth defect, often rooted in Jewish principle of *din rodef*, or self-defense.

(continued on next page)

Life at First Breath: Abortion Rights and Judaism *(cont'd)*

The National Council for Jewish Women notes:

> The Talmud (Yevamot 87b) teaches that silence is consent. "Not oppressing" is no longer enough in a society that is already set up to oppress, that already does oppress. In order to create a world in which those who are marginalized in our society are not wronged, we must take active steps to fight for a more just world, alongside them.[25]

Accordingly, many Jews are challenging abortion bans and other reproductive regulation of IVF, contraception, and egg freezing, as violating their religious rights and imposing sectarian theology.

In Florida, a congregation filed a lawsuit challenging the state's law, which does have exceptions to save a mother's life, prevent serious injury, or if the fetus has a fatal abnormality but not for rape, incest, or human trafficking. Not trying to hide the imposition of Christian doctrine, Florida Governor Ron DeSantis signed the bill at an evangelical church.

In Missouri, five rabbis are suing to challenge Missouri's law with the support of the National Council of Jewish Women and the Jewish Community Relations Council of St. Louis for violating the separation of church and state as protected by the state constitution. Jewish women are similarly challenging Kentucky's abortion ban based on religious liberty protections in the state constitution based on the Jewish view on when life begins. Those plaintiffs are also using the state's Religious Freedom Restoration Act, which provides that the government "shall not substantially burden a person's freedom of religion" unless it proves a compelling interest and uses "the least restrictive means" to do so.

A group called Hoosier Jews for Choice challenged Indiana's abortion ban as violating their religious freedom.[26] The lawsuit utilities Indiana's Religious Freedom Restoration Act and contends that the new abortion ban would violate Jewish teaching that "a fetus attains the status of a living person only at birth" and that "Jewish law stresses the necessity of protecting the life and physical and mental health of the mother prior to birth as the fetus is not yet deemed to be a person." It also cites theological teachings allowing abortion in at least some circumstances by Islamic, Episcopal, Unitarian Universalist, and Pagan faiths. On December 2, 2022, the court granted an injunction blocking the implementation of the ban on grounds of religious freedom. In December 2023, the Indiana appellate court heard arguments on the state's appeal, which remains pending. The Solicitor General based his arguments again on Christian belief in fetal personhood.

Here at home in Illinois, as a Jew, I stand in solidarity with the many women fleeing their states in order to effectuate their decisions about their bodies, health, and families. As we also read in *Mishpatim*, we must welcome the stranger because we were once strangers in a strange land. As Justice Ruth Bader Ginsburg noted in her dissent in *Gonzales v. Carhart*, "[L]egal challenges to undue restrictions on abortion procedures do not seek to vindicate some generalized notion of privacy; rather, they center on a woman's autonomy to determine her life's course, and thus to enjoy equal citizenship stature."[27] It's not just a matter of individual autonomy, but as we now see, a matter of religious freedom.

Gail Schnitzer Eisenberg is the head of the employment practice at Loftus & Eisenberg, Ltd. MyEmployeeAdvocate.com. She co-chairs the Legislative Committee of the Decalogue Society of Lawyers.

[1] LePage v. Center for Reprod. Med., No. SC-2022-2024, 2024 Ala. LEXIS 60 at 11 (Feb. 16, 2024), https://static01.nyt.com/newsgraphics/documenttools/4b56014daa6dda84/a039b1d9-full.pdf.
[2] Ala. Const. Art. I, § 36.06(b) (2022): Alabama "acknowledges, declares, and affirms that it is the public policy of this state to ensure the protection of the rights of the unborn child in all manners and measures lawful and appropriate."
[3] LePage, 2024 Ala. LEXIS 60 at 48.
[4] The LePage decision cites Dobbs throughout as recognizing "the unborn…as living persons with rights and interests."
[5] Exodus 21:22-23.
[6] Nat'l Council of Jewish Women, Repro Shabbat 2024, https://www.jewsforabortionaccess.org/repro-shabbat-2024 (last visited Mar. 8, 2024)
[7] See also Exodus 21:12 ("He that smiteth a man, so that he dieth, shall surely be put to death.")
[8] Immanuel Jakobovits, Jewish Views on Abortion, in Jewish Bioethics 139 (Fred Rosner & J. David Bleich 1979).
[9] Tracking Abortion Bans Across the Country, N.Y. Times (Jan. 8, 2024), https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html (Idaho, North Dakota, South Dakota, Montana, Oklahoma, Texas, Arkansas, Missouri, Louisiana, Indiana, Kentucky, Tennessee, Mississippi, Alabama, West Virginia).
[10] Babylonian Talmud, Yevamot 69b.
[11] March of Dimes, Miscarriage (Feb. 2023), https://www.marchofdimes.org/find-support/topics/miscarriage-loss-grief/miscarriage.
[12] Cleveland Clinic, Fetal Development (Mar. 3, 2023), https://my.clevelandclinic.org/health/articles/7247-fetal-development-stages-of-growth.
[13] Amy M. Branum & Katherine A. Ahrens, Trends in Timing of Pregnancy Awareness Among US Women, 21 Maternal & Child Health J. 715 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5269518/.
[14] Tracking Abortion Bans, supra note 9.
[15] This is consistent with other Torah portions that emphasize the connection between breath and life. See, e.g., Genesis 2:7 ("God formed the man from the dust of the earth and breathed into his nostrils the breath of life and the man became a living nefesh").
[16] Shulchan Arukh, Choshen Mishpat 425:2.
[17] Jacqueline Howard, Maternal and Infant Death Rates are Higher in States That Ban or Restrict Abortion, Report Says, CNN (Dec. 16, 2022), https://www.cnn.com/2022/12/14/health/maternal-infant-death-abortion-access/index.html.
[18] Donna L. Hoyert, Maternal Mortality Rates in the United States, 2021, NCHS Health E-Stats (2023), https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2021/maternal-mortality-rates-2021.htm.
[19] Id.
[20] Adebayo Adesomo, Pregnancy Is Far More Dangerous Than Abortion, Sci. Am. (May 30, 2022), https://www.scientificamerican.com/article/pregnancy-is-far-more-dangerous-to-women-than-abortion/.
[21] Elizabeth G. Raymond & David A. Grimes, The Comparative Safety of Legal Induced Abortion and Childbirth in the United States, 219 (2 Pt. 1) Obstetrics & Gynecology 215 (2012), https://pubmed.ncbi.nlm.nih.gov/22270271/.
[22] Selena Simmons-Duffin & Carmel Wroth, Maternal Deaths in the U.S. Spiked in 2021, CDC Reports, NPR (Mar. 16, 2023), https://www.npr.org/sections/health-shots/2023/03/16/1163786037/maternal-deaths-in-the-u-s-spiked-in-2021-cdc-reports; Asima Ahmad, America Has the Highest Maternal Mortality Rate Among Developed Nations – and It's on the Rise. Here's Why We Are Facing a Pregnancy Health Crisis, Fortune (May 14, 2023), https://fortune.com/2023/05/14/america-highest-maternal-mortality-rate-among-developed-nationsand-rise-pregnancy-health-crisis-asima-ahmad/.
[23] Ahmad, supra note 22.
[24] Joseph G. Schenker, The Beginning of Human Life, 25 J. Assisted Repro. & Genetics 271 (2008), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2582082/.
[25] Nat'l Council of Jewish Women, Sermon Talking Points 6 (2024), https://static1.squarespace.com/static/62a874c9150c8e5bb63a5fd1/t/63dbdf16251ff724a91d0f98/1675353885565/Sermon+Talking+Points+2023.pdf.
[26] Complaint, Anonymous Plaintiff 1 v. Individual Members of the Med. Licensing Bd., No. 49D01-2209-PL-031056 (Dec. 2, 2022), https://www.aclu-in.org/sites/default/files/field_documents/complaint_to_file.pdf.
[27] Gonzales v. Carhart, 127 S. Ct. 1610, 1641 (2007) (Ginsburg, J., dissenting).

Chai-Lites

by Sharon L. Eiseman

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

Decalogue's Solidarity Awards, co-sponsored with CCBA, BWLA, BMLA, IJC, and JJAI was held on January 21 at the famous Bronzeville art center and event venue, Gallery Guichard, It was a lovely afternoon, full of sunshine and goodwill as we happily mingled among the crowd, which consisted of DSL members, several of the awardees, and members of other bar groups. Judging from the sheer enthusiasm of the attendees, the gallery was a great choice for this annual event. Thanks to Decalogue Board member **Judge Pamela Saindon** for bringing us to this wonderful venue. Those who were honored that day for promoting solidarity between the Jewish and African-American communities in the fight against racism, antisemitism, and intolerance were **Justice Joy Cunningham, Judge Neil Cohen, James Montgomery**, and **Alan Solow**.

One of our most popular events, the **Annual Judicial Reception**, took place recently, on February 28, and was generously hosted by and at the Law Office of Hinshaw & Culbertson. As always, the room was packed with members of the Judiciary and DSL members, as well as friends of both groups, and obviously, an enjoyable time was had by all throughout the evening. Decalogue members served as volunteer bartenders, those for the first shift being yours truly and **Michelle Milstein**, followed by **Robert Blinick** and **Robert Schwartz** as the relief team. Now, of course, the four of us know who drinks what alcohol and how much, but we promise to keep these secrets well-buried!

Here is a post from Lawyers In the Classroom about a recent presentation by **Judge James Shapiro** and **Retired Judge Michael Strom** (both Past Presidents of Decalogue) at Lovett Elementary School. Lovett is a neighborhood CPS school on Chicago's West Side that is not a charter, magnet, or private school, yet can boast a population of gifted, very involved, and inquisitive teens. On their visit to Lovett, these two jurists discussed several 1st Amendment free speech issues with the group of rapt students, including exceptions where certain areas can be regulated or prohibited without violating constitutional constraints. This is Judge Strom's third year working with Ms. Cherita Brown's 7th/8th grade classes, and his experience with her has allowed her to show her own dedication as an informed and committed educator. Click here for more information about the Lawyers in the Classroom Project.

Decalogue 1st Vice President **Joel Bruckman** was recently quoted in a publication by *Claims Litigation Management* regarding a BIPA insurance opinion from the 1st District that puts Illinois state courts at odds with the 7th Circuit Court of Appeals.

DSL Board member **Alon Stein** has been re-elected for another term as an officer for the Advocates Society for the year 2024-2025. He will be the Historian and the Chair of the CLE Committee. In that role Alon has been organizing the Continuing Legal Education programming for the Advocates Society.

Tania K. Harvey, founding partner of The Law Office of Tania K. Harvey, has been elected as Collaborative Divorce Illinois' 2024 Board President. The Board and professionals at CDI are committed to the collaborative divorce process. This process is a values-driven model for divorce and an alternative to traditional litigation. The client centered approach helps families divorce with dignity and respect and elicits beneficial results for everyone involved.

Kudos to **Erin Wilson,** DSL Financial Secretary and Chair of our Membership Committee, who recently celebrated the five-year anniversary of the founding of her own law firm: The Law Office of Erin M. Wilson LLC, located in Chicago on Michigan Ave. Striking out on one's own is always a reflection of courage, and Erin is no exception. We all wish her longevity in this endeavor—and, of course, clients lining up at her door!

As a representative of the Decalogue Foundation and its Law Student Scholarship Project, and at the request of the Foundation's President, Robert Matanky, DF Board Member **Sharon Eiseman** attended the Annual 'Celebration Of Scholarships' Luncheon hosted by Northwestern's Pritzker School of Law on February 23, which event recognizes the generosity of various law groups in their granting of such scholarships which make it possible for students of limited means to fulfill their dream of becoming a lawyer. The event was both inspiring and empowering for all attendees as we heard stories from leaders in the law who had to overcome barriers to reach their goals, including racial and ethnic injustices along their paths.

The Illinois Judges Association honored Decalogue past president **Judge Martin Moltz** with the SeymourAward in December.

As the founder of the Women Everywhere Project in 1999 when she was the President of the Women's Bar Association of Illinois (WBAI), **Sharon Eiseman** was pleased to be present at this organization's 25 Year Celebration which took place on February 28 in the Courtroom of the Cook County Circuit Court's Chief Judge Timothy Evans. It was an honor to have Judge Evans serve as the host of this historic Event, given his immense contribution over many years of his time and the time and energy of all of the Judges under his oversight who have been able to open their courtrooms in the Daley Center on 'Education Day' to Cook County public high school students so those groups can, during their routine court calls, observe the proceedings and stay afterwards to ask questions of the lawyers and the Judges. Through such an in-person process, those students learn about why the cases proceeded in the particular manner that they witnessed, and what roles the Judges and the Attorneys at trial play. Similar WE visits and interactions between court personnel and local high school students have taken place at the DV and Criminal Courts, and courts in some of our outlying districts such as Bridgeview.

Several of our finest Decalogue Judges were present for the Anniversary Celebration including **Hon. Megan Goldish**, **Hon. Myron Mackoff, Hon. Martin Moltz, Hon. Lori Rosen, Hon. James Shapiro,** and **Hon. Michael Strom.** My apology to those I may have missed.

(continued on next page)

Chai-Lites *(cont'd)*

In the midst of all the ways our members get involved in meaningful projects that reflect our reach and relevance to our various communities of shared CLE programming and other presentations, we also have wonderful news to report about exciting developments in the lives of our members' families.

Hon. James Shapiro, Past President of Decalogue, was promoted to the status of a grandfather as he and the rest of his family welcomed Ari Xingyu Gao Shapiro, son of Kevin Shapiro and Barbara Gao Shapiro, into the world on December 10, 2023.

On February 14 of this year, Decalogue Recording Secretary **Kim Pressling** and husband Joe Curtis welcomed son Judah Pressling Curtis into the world. This lucky guy will join his two sisters, Eden and Hannah, as he creates further excitement for the household.

In Memoriam - Ralph Ruebner

Rabbi and Professor Ralph Ruebner was born to German Jewish refugees in British Mandatory Palestine in 1944. They moved to Chicago shortly before his bar mitzvah. He was one of the earliest graduates of the University of Illinois at Chicago, earned his law degree at the Washington College of Law, American University in 1969, and was admitted to the Illinois Bar in that same year. He served as the head of the Elgin and Chicago Offices of the State Appellate Defender as Deputy State Defender and represented hundreds of indigent prisoners on their appeals including representation before the Illinois Supreme Court and the United States Supreme Court. He joined the Decalogue Society of Lawyers in 1978 and was elected to the Board of Managers just a few years later. He served on the faculty of the John Marshall Law School from 1982 until 2015 as a Professor of Law and for the last seven years as Associate Dean for Academic Affairs. He was honored by the student body as Professor of the Year several times and authored and co-authored a number of law books and dozens of scholarly articles in the fields of evidence, criminal procedure, human rights, and the rights of older persons.

Ralph was proudly Jewish. Three of his grandparents and a number of other relatives were murdered in the Holocaust. He knew firsthand the experience of refugees, the consequences of antisemitism, and the vital importance of the State of Israel. He took an active role in the Decalogue Society to fight anti-Semitism, defend Jews in need, and support the State of Israel.

When the Decalogue Society spearheaded a nationwide fight for the ABA to withhold accreditation from the Oral Roberts Law School, Ralph drafted amicus curiae briefs. His support of the efforts led by past president, Daniel Hoseman, was recognized in 1983 when he received our Society's Intra-Society Award. He was also particularly involved with past president, Bertram D. Meyers, in the struggle for Soviet Jewry. He fought discrimination and antisemitism with a passion. Ralph remained active on the Decalogue Society Board for four decades and steadfastly refused nominations which would have put him on the path to become president of our Society. In hindsight, that refusal benefitted our Society. It allowed Ralph to focus on continuing to use the law to fight against anti-Semitism and discrimination. When Nazis threatened to march, Ralph was among those members who volunteered to represent any protestors who might be arrested. He always had a smile on his face and was a good friend to many.

Over the years, his dedication to the Decalogue Society of Lawyers was recognized with numerous awards and citations, including the 1990 Presidential Citation, the 1993 Hebrew University Fellowship Award, the 1998 Presidential Citation, the 2010 Decalogue Society Award, the 2015 Founder's Award, and the 2019 Building Bridges Award. Along the way, Ralph served as president of Ezra-Habonim Congregation and HIAS Chicago. After he retired from John Marshall Law School he achieved another dream by becoming ordained as a rabbi.

He leaves behind his loving wife Evie, three children, four grandchildren, his brother, nieces, nephews, and many friends. His contributions made a difference to our Society, more than a generation of law students, the Jewish community and those many thousands of people on whose behalf he advocated.

May his memory serve as our blessing.

Welcome New Members!

Rachel Ablin
Nikki Baim
Karyn Lisa Bass Ehler
Nathan Benditzson
Elka Blonder
Margaret Scanlan Brown
Julian Caruso
Valerie Ceaser
Rachel A. Chernoff
Debbie Cohen
Kat Delgado
Rivanda Doss Beal
Melanie Fairman
David I. Fein
Justin Frumm
Mollie Goldfarb
Anthony B. Gordon
Max Gordon
Oren Graupe
Arielle Haase
Labeeb Haddad
Owen Hoepfner
Jacob Kaplan
Erin Kravchick
Daniel Kravets
Gary Lawson
Aaron Foster Levine
Cody Marshall
Jessica C. Mashall
Jessica Abigail Matz
Tene McCoy Cummings
Elan Phillip Modilevsky
Joseph A. Morris
Alan Pearlman
Sophie Raimi
Jennifer Robinson
Elana Rosenfeld
Hannah Saed
Nicholas David Seidel
Renata D. Stiehl
Michael Strauss
Rena Marie Van Tine
Lily Bette Warren
Michael Weil
Charles Zuo

Thank You to Our Members Who Gave Above and Beyond

Life Members: Howard Ankin, David Lipschutz, David Olshansky

Firm Members: Rubin & Machado Ltd., TR Law Offices LLC

Sustaining Members

Maryam Ahmad
Kevin B. Apter
Theodore L. Banks
Robert K Blinick
Adam E. Bossov
Neil H. Cohen
Richard M Colombik
Donna L. Cooper
Stephen G. Daday
Steven R. Decker
Morton Denlow
Deidre M. Dyer
Sharon Lynne Eiseman
Roger G. Fein
Charles Perez Golbert
Richard P. Goldenhersh
Megan E. Goldish
Robert P Groszek
Pat Charles Heery
Kenneth A. Henry
Patrick Dankwa John
Robert W. Kaufman
Robert D. Kreisman
Charles A. Krugel
David P. Leibowitz
Jessica C. Mashall
Mary Alice Melchor
Mary L. Mikva
Krista S. Peterson
Jill Rose Quinn
Leslie J. Rosen
Edward M. Rubin
Stephanie Rubin
Mara S. Ruff
Andrea M. Schleifer
Jody L. Schneiderman
Jeffrey A. Schulkin
Mary Sevandal Cohen
Robert A. Shipley
Alan Sohn
Renata D. Stiehl
Michael Strauss
Neal B. Strom
Scott W. Tzinberg
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