Decalogue Tablets

The Decalogue Society of Lawyers &
The Arab American Bar Association of Illinois

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The Decalogue Society of Lawyers

TABLETS
Spring 2016

President's Column

As we move rapidly through this bar year, I would like to pause to thank my Executive Board and Board of Managers for their tremendous efforts. We have had exceptional programming and great events as a result of the efforts of our First Vice President Curtis Ross, and our Second Vice President Mitchell Goldberg, who chairs our Events Committee. The Decalogue CLE committee has created a superb collection of presentations this year on diverse topics with outstanding speakers. Our Social Action Committee has been extremely active as well, with Nichole Annes and Jessica Berger at the helm. Our Young Lawyers Committee has held several well-received events thanks to Melissa Gold and will continue its work under the leadership of Martin Gould and Lauren Cohen.

Of course, Michael Rothman and Bill Wigoda deserve accolades for leading our Antisemitism Committee in its diligent work to combat the BDS agenda, particularly on college campuses where BDS activists continue to push school leadership and fellow students to embrace their anti-Israel rhetoric and actions under the guise of free speech. Sharon Eiseman and the Editorial Board of Jamie Shapiro, Adam Sheppard and David Lipschutz have created, in the **Decalogue Tablets,** a top-notch publication. And our Financial Secretary Helen Bloch must be credited with achieving our best member retention campaign in recent years. Finally, I extend many thanks to our Executive Director, Aviva Patt, for being the centrifugal force that keeps us all on task.

This year has truly been a year of growth for our organization. We exceeded our expectations with regard to the Chanukah Event, where we honored Illinois Attorney General Lisa Madigan, Sheriff Tom Dart, Judge Sebastian Patti and Jenner and Block partner Debbie Berman as they each lit a candle to represent a specific moral imperative that underlies Judaism and the meaning of Chanukah. We also scored a huge success with the Reception Honoring the Judiciary which was held at Dentons, thanks to Gail Eisenberg, and have made significant progress toward establishing our long-term goals. The Strategic Planning Committee, headed by Joel Chupak, has been meeting regularly and Peter Tessler, Chair of our Technology Committee, has advised the Board that our vastly improved operational software system will be up and running by the end of the bar year. Finally, under the direction of Melissa Gold and through the Decalogue Foundation, we will establish the first ever Hon. Alan J. Greiman Scholarship Fund for the benefit of students attending the University of Illinois, College of Law. I am so honored to be your President and look forward to the months ahead!

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From the Judge's Side of the Bench

Missed Opportunities

By Justice Jesse G. Reyes[1]

A common refrain expressed by jurists, regardless of the forum where they preside, is that lawyers often do not answer the questions posed to them from the bench. In the words of the late Justice Antonin Scalia, a common mistake lawyers make in oral arguments is their "inability or unwillingness to answer a question. I'm always amazed at how many people fight you when you ask a question, how many won't give a 'yes' or 'no' answer." [2]

While some seasoned advocates welcome questions from the court, not all attorneys are as accepting of this aspect of advocacy; many view questions as an unnecessary burden to be shunned whenever possible. This article will attempt to provide some insight as to why lawyers should avoid side-stepping an inquiry from the court.

While an attorney may believe that not responding to a question from the bench on certain occasions is a sound tactic, lawyers are actually more likely to miss a golden opportunity to communicate directly with the court if they follow this strategy. Instead of considering oral arguments a hostile undertaking, the advocate should view a judge's question as a hand-delivered invitation to engage in a dialogue with the court.

As noted by former Justice John Harlan, "[an] oral argument gives an opportunity for interchange between court and counsel which the briefs do not give."[3] A question the court poses paves a path on which counsel may proceed to clarify any issues that remain unclear. When an advocate approaches an oral argument with this view in mind, the exchange can become an engaging exercise leading to an open discourse with the court. It is an opportunity counsel should not let pass. Furthermore, counsel should always be cognizant of the fact that not all questions are intended to undercut his or her position. The rationale or reason for asking the questions may be for an entirely different purpose.

Reason or Rationale

The reason or rationale behind a question will vary as much as the type of question posed. The advocate, therefore, should always remain attentive because the intent behind the question may not always be apparent. Counsel should also be aware that not all questions are aimed at the advocate behind the podium. Some questions may actually be aimed at another jurist on the bench. As Justice Ruth Bader Ginsburg stated, "sometimes we ask questions with persuasion of our colleagues in mind."[4] In this scenario, the members of the panel are speaking to each other. Therefore, counsel should stay attuned to the dialogue taking place between the members of the court, for this may prove to be both insightful and illuminating as to what the court may be thinking.

Since some courts do not discuss the cases before oral argument, questions posed during the argument may sometimes be used as a means for panel members to share their views with one another. Thus, listening to what is transpiring on the bench is as important as listening to your opponent's argument. To fully understand what is taking place during oral arguments, therefore, will require counsel to listen carefully to what is being said and to observe the members of the panel throughout the proceeding.

The tenor, tone, and temperature of the bench at times can be quite revealing. As a result, an attentive and alert advocate may be able to not only decipher the mindset of the bench but possibly determine the direction the court may be taking. Although there may be various reasons why a court asks certain questions as stated above, two of the most common rationales behind questions from the bench fall into two typical forms of exercises designed to be educational or exploratory.

Educational Exercise

The advocate should keep in mind that the court, in setting a matter for oral argument, is searching for something more than the information provided in the briefs. By having counsel appear before the bench, the panel is seeking to obtain answers to the court's concerns. One method utilized to accomplish this goal is to probe the lawyer's understanding of the case and knowledge of the law. Consequently, as noted by former Justice Byron R. White, "we treat lawyers as a resource rather than as orators."[5]

The parties participating in this process should keep in mind they are partaking in an educational exercise by which the court seeks to acquire additional information needed to render a decision. "Only through questioning does the judge learn more about the case than he knows already."[6] An effective oral argument not only serves to increase the court's understanding of the case but may clear up any possible misunderstanding the court may be harboring.

As former Justice Harry A. Blackmun suggested, "a good oralist can add a lot to a case and help us in our later analysis of what the case is all about. Many times confusion [in the brief] is clarified by what lawyers have to say."[7] Thus, oral arguments can serve an important role in clarifying the matter at hand. The question from the bench is the fuel that powers the educational exercise, which leads to dialogue with the court. How effective the advocate is in establishing and maintaining this discourse depends on how well counsel responds to the questions posed. Through this dialogue between counsel and the court, a collaborative effort develops, whereby a mutual understanding may occur as to the law and issues at hand. It is during this discussion that counsel and the court may collectively be employing the words of Isaiah, "Come now, and let us reason together."[8]

Exploratory Exercise

The advocate should also be mindful that in some instances the court's focus is not only on the matter before the bench. The court may be equally concerned with how its decision today may affect future cases. In exploring this terrain, the court may employ the use of the hypothetical question. With this form of questioning, the court is usually probing and testing the outer limits of what the parties are proposing. Thus, counsel must be prepared for a wide spectrum of hypothetical questions touching not only on his or her case but on a variety of unrelated facts and situations. While this landscape for the advocate may be fraught with pitfalls, it is nevertheless incumbent on counsel to take on the challenge and answer the hypothetical posed.

Consequently, advocates should not defer or delay in responding to a question. In doing so, the advocate may pass up the opportunity "to strike while the iron is hot," or worse yet, counsel may never be able to return to the question at all. Similarly, another cardinal sin is for counsel to respond to a question by stating, "I will get to that in a moment." Keep in mind that if a member of the panel asks a question at a particular point in the argument, it is because the jurist wants the answer then, not later. To paraphrase former Justice Robert Jackson, to delay meeting a question is improvident; to attempt evasion of it is fatal.[9]

Another common mistake advocates will make (particularly in the midst of responding to a hypothetical) is trying to pretend they know the answer. If you do not know the answer, simply admit it; the consequences to your case for not having an answer will probably be less severe than the damage to your credibility after getting caught. Candor toward the court is not only a professional responsibility, but there is nothing more damaging to your case than giving the court the impression that you are attempting to mislead them. Therefore, do not attempt to defend the indefensible. Most importantly, be willing to acknowledge the obvious weak points in your argument but do not neglect to weave into your response the strengths and positive considerations of your case.

Lastly, questions from the bench can at times become contentious. Some jurists employ tough questioning to test the soundness of a party's position. Counsel should, however, always remain calm, cool, and collected in attempting to persuade the court. To quote Thomas Jefferson, "nothing gives one person so much advantage over another as to remain always cool and unruffled under all circumstances."[10]

Similarly, if the bench is a "hot one," the questions may come fast and furiously without pause. While the barrage of questions often coming more than one at a time may frustrate your efforts to present your argument, do not show your frustration with the interruptions. Instead, strive to address all the questions posed. The most practical means of doing so is by addressing the most recent question first, returning to the previous question next and proceeding accordingly. Under this scenario, the formal and proper method of proceeding through the inquiries posed by the panel is by responding to the Chief or Presiding Justice's question first (if he or she asks one), followed by the question of the next most senior member of the court, and so on. Counsel's entree to this approach can be easily achieved by simply stating, "If I may answer the Chief/Presiding Justice's question first" or "the more senior justice's question first." The court will realize it has besieged you with a litany of questions and will appreciate your professional manner in responding to their inquiries.

Influence and Impact

Counsel should also remember that his or her argument can not only impact the result of the case, but also influence the theory on which the court decides it. An interactive oral argument allows the parties and their counsel to participate in the decision making process and potentially influence the outcome of the litigation. Remember that this is an opportunity for counsel to highlight the law or the critical facts that the court should focus on when rendering a decision. Supreme Court Justice Ruth Bader Ginsburg describes oral argument as "an opportunity to face the decision-makers, to try to answer the questions that trouble the judges."[11] Thus, by participating in the process the advocate could possibly shape the decision to follow, thereby rendering a service to the client, the court, and to the community at large. By not responding to the question posed, counsel could quite possibly be missing out on such a golden opportunity.

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[1] Justice Jesse G. Reyes, is currently presiding justice of Fifth Division of the Illinois Appellate Court, First District

[2] Justice Antonin Scalia, Parade Magazine, September 14, 2008.

[3] John M. Harlan, *What Part Does the Oral Argument Play in the Conduct of an Appeal?, 41 Cornell L.Q. 6, 7, (1955).*

[4] The Honorable Ruth Bader Ginsburg, *Remarks on Appellate Advocacy,* 50 South Carolina Law Review, 567, 569 (1999).

[5] Justice Byron R. White, T*he Work of the Supreme Court: A Nuts and Bolts Description,* N.Y. St. B.J. 346, 383 (October, 1982).

[6] Richard A. Posner, *Judicial Opinions and Appellate Advocacy in Federal Courts - One Judge's Views*, University of Chicago Law School, Chicago Unbound, Journal Articles, 2013, p.21.

[7] Philippa Strum, *Change and Continuity on the Supreme Court: Conversations with Justice Harry A. Blackmun*, 34 U. Rich. L. Rev. 285, 298 (2000).

[8] Isaiah, 1:18.

[9] Robert H. Jackson, *Advocacy before the United States Supreme Court*, 37 Cornell L.Q. 1,5 (1951).

[10] Thomas Jefferson, *Master Thoughts of Thomas Jefferson 82* (Benjamin S. Catchings ed., 1907).

[11] Interviews with United States Supreme Court Justices: Justice Ruth Bader Ginsburg, 13 Scribes J. Legal Writing 133 (2010).

Case Law Update

Authenticating Facebook Communications

By Adam J. Sheppard

Authenticating printouts of Facebook communications presents special challenges. First, because anyone can establish a fictitious profile under any name, a mere printout of a post or message is insufficient to establish that it emanated from a particular person's account. *See Campbell v. State,* 382 S.W.3d 545, 550 (Tex. App. 2012); *Commonwealth v. Purdy,* 459 Mass. 442, 945 N.E.2d 372, 381 (2011)(message sent from Facebook account bearing defendant's name cannot be sufficiently authenticated without additional "confirming circumstances" indicating that defendant was the author). Second, because a person may gain access to another person's account – as may occur in cases involving domestic relationships – the mere fact that the account was password protected does not, in and of itself, establish authenticity. *See id.* However, by using the Illinois Rules of Evidence, practitioners can likely succeed in authenticating Facebook evidence.

The starting point for authenticating any evidence in Illinois is Illinois Rule of Evidence 901 – "Requirement of Authentication or Identification." The rule is modeled after Federal Rule of Evidence 901. The rule states: "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." IL.R.Ev.901(a)(1). This requirement is not a particularly high hurdle to overcome. A *prima facie* showing will suffice. Rule 901(b) illustrates ten non-exhaustive methods of authentication or identification. IL.R.Ev.901(b). Two of those methods – "witness testimony" and evidence of "distinctive characteristics and the like" – can readily be used to authenticate social media evidence. *See* IL.R.Ev.901(b)(1) & (b)(4).

Witness Testimony – Rule 901(b)(1)

Rule 901(b)(1) allows for authentication through testimony from a witness with "knowledge that a matter is what it is claimed to be." Testimony from a Facebook employee is not required. If a witness admits that a post came from his or her profile, and does not dispute its authenticity, the post may be admitted. See *In re Marriage of Miller*, 2015 IL App (2d) 140530, 40 N.E.3d 206 *appeal denied*, 39 N.E.3d 1002 (Ill. 2015)(ex-wife's "relationship status" on Facebook was authenticated when she conceded post appeared on her account and she did not deny making post).

When the account holder is unavailable to testify or denies making the post, practitioners must turn to other methods – outlined in Rule 901(b) – to authenticate the evidence.

"Distinctive Characteristics and the Like" – Rule 901(b)(4)

Under Illinois Rule of Evidence 901(b)(4), "Distinctive Characteristics and the Like," evidence may be authenticated through "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." Stated differently, evidence may be authenticated through circumstantial evidence. Three common forms of circumstantial evidence that can authenticate Facebook communications include: (1) evidence that the communication contained a distinctive speech pattern consistent with the purported author's; (2) evidence that the subject of the communication references a matter the author knew about; or (3) evidence that only the purported author had access to account in question. *See e.g. Griffin v. State*, 419 Md. 343, 358, 19 A.3d 415, 424 (2011); *Campbell*, 382 S.W.3d at 552.

"Metadata evidence" or "subscriber information" is also strong circumstantial evidence. See *Lorraine v. Markel Am. Ins. Co.,* 241 F.R.D. 534, 547 (D. Md. 2007). ["M]etadata shows the date, time and identity of the creator of an electronic record as well as all changes made to it." *Id.* Similarly "subscriber information" typically includes a customer's name and address, as well as the telephone number linked to the account and billing records. *See In re Applications of U.S. for Orders Pursuant to Title 18, U.S.Code Section 2703(d)*, 509 F. Supp. 2d 76, 77 (D. Mass. 2007). While metadata evidence or subscriber information does not conclusively establish that a particular person made a post – somebody could access another's computer – it is circumstantial evidence of such. See *Lorraine*, 241 F.R.D. at 547 (D. Md. 2007).

Metadata evidence or subscriber information is generally obtainable through a subpoena duces tecum served on Facebook. See https://www.facebook.com/help133221086752707. Additionally, federal precedent indicates that Facebook records are admissible as "self-authenticating" business records under Federal Rules of Evidence 902(11) and 803(6). *See United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014). Illinois Rules of Evidence 803(6) and 902(11) essentially mirror their federal counterparts.

Under Illinois Rule 902(11), a written certification from a custodian of records or other qualified person that the record "(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of these matters; (B) was kept in the course of the regularly conducted activity; and (C) was made by the regularly conducted activity as a regular practice," renders the records "self-authenticating." Under Rule 803(6), "records of regularly conducted activity" (business records) are an exception to the hearsay rule. See IL.R.Ev. 803(6). Thus, if Facebook records are certified pursuant to Rules 902(11) and 803(6), they may be admissible "self-authenticating" business records – i.e., live testimony from a Facebook employee is not required.

A note to practitioners: a party intending to offer a record under Rule 902(11) "must provide written notice of that intention to all adverse parties, and must make the record and certification available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them." *See* IL.R.Ev.902(11).

Conclusion

Social media evidence is increasingly common. Given technological advancements, hacking a Facebook account or creating a fictitious profile is not impossible. Accordingly, some might argue that the traditional rules of evidence do not adequately address social media evidence. For the time being, however, those rules must serve as guideposts to practitioners.

Adam Sheppard is a Decalogue Board of Managers member and serves on Decalogue's editorial board. Mr. Sheppard is also on the editorial board of the Chicago Bar Association and a director of the CBA/YLS Criminal Law Committee. He also serves on the federal defender panel for the Northern District of Illinois. Adam is a partner in Sheppard Law Firm, P.C., which concentrates in the defense of criminal cases.

Decalogue Chanukah Party

Decalogue members and friends gathered December 9, 2015 at Jenner& Block to celebrate the 4th night of Chanukah and to honor four outstanding individuals for their service to the legal community.

As Decalogue President Deidre Baumann and 2nd Vice-President Mitchell Goldberg lit the Chanukiah, our honorees lit special candles of freedom, justice, truth, and righteousness. Everyone enjoyed traditional potato latkes and not-so-traditional music from our own Howlin Wasserstrom and Hound Dog Horwitz while the wine and beeer flowed freely.

Tech Tips

Decalogue Upgrades Technology

By Peter Tessler, Technology Committee Chair

Over the next year, The Decalogue Society of Lawyers will be investing in substantial upgrading of our website and member software as we continue to strengthen and expand our organization and set of member benefits.

Our membership databases are being migrated to our new partner, DonorPerfect, recently chosen by a unanimous Board of Directors vote at the end of a lengthy process of 'vetting' available tech consultants. Over the past ten years, our data has been managed through some very laborious processes but DonorPerfect had provided us a solution that became truly transformative to Decalogue. Thus, the Decalogue Executive Director and Board had previous positive experience with DonorPerfect.

The new application Decalogue has ordered will allow us to better understand your needs as members and how we can best support you as a professional. An example of the features we will soon be able to offer our membership is CLE tracking along with immediate access to your certificates when the ARDC reporting deadline looms for your part of the Alphabet.

In the coming months, we will tell you more about how our new member platform will improve Decalogue technological capabilities. One more improvement that we can share with you now is that our new website will go LIVE in the spring. The website will be mobile friendly with faster event and CLE registration processes and a completely upgraded and easily accessible member directory.

We can't wait to advise you of additional upgrades in coming issues of **The Tablets** and in our periodic email newsletters reporting current events and other news.

Cook County Sheriff Tom Dart, Jenner & Block Partner Debbie Berman, Illinois Attorney General Lisa Madigan, and Cook County Circuit Court Judge Sebastian Patti

A Unique Approach To Address Domestic Abusers And The Court System

By Viki Rivkin

Domestic abuse is a systematic pattern of power and control used by an individual for the sole purpose of manipulating that individual's partner in an intimate relationship. It is often a learned behavior and will escalate, especially when a survivor of domestic abuse tries to end the relationship. Survivors going through the divorce or child custody process often face a legal system that can also be manipulated by their abusers in order that the abusing partner can continue the pattern of power and control.

There are many predictable opportunities for abusers to use the family court system to further the abuse. Courts are not designed to recognize an abuser's deceptions and cognitive distortions, which often play out in arguments about visitation and custody. Understanding and identifying patterns of the abusers' unchanging, harmful behavior and false statements are crucial for an attorney representing survivors of domestic abuse.

When an attorney is representing a survivor of domestic abuse, it is important for that attorney to help the court see the abusive patterns of the perpetrator's behavior. Abusers often present well in public and appear reasonable. That public persona often makes it difficult for the attorney to negotiate or mediate with the abuser who will not compromise. The thought of having to share a child will lead many an abuser to tears, which can make the abuser seem more sympathetic to a judge determining custody. In order to maintain power and control, abusers will also file excessive motions and repeatedly meet with the guardians ad litem, parenting coordinators and child evaluators.

SHALVA, a Chicago area domestic abuse counseling agency, has established the Legal Liaison Program to empower clients to become informed participants in the legal process. The program provides education, information and referrals for SHALVA clients so they can work more effectively with their attorneys. The program also provides outreach and education to the legal community about domestic abuse. The Legal Liaison does not represent SHALVA clients or handle cases, but will assist SHALVA's clients in navigating the legal process by acting in concert with the attorney representing them which will, in turn, result in the court being better informed about the behaviors of the abuser.

SHALVA is a partner with Jewish United Fund in serving our community and this program is supported by the Jewish Women's Foundation of Metropolitan Chicago and the Adrienne Reiner Hochstadt Memorial Fund.

If you are a family law attorney interested in representing SHALVA clients or would like to learn more about this program, please call Viki Rivkin, SHALVA Outreach and Education Legal Liaison at (773) 583-4673.

Viki Rivkin is Outreach and Education Legal Liaison for SHALVA

Decalogue Society Holds Community Event In West Rogers Park For The Prevention Of Child Abuse

By Jonathan Lubin and Barry Goldberg

Child sexual abuse spans every culture and religion around the globe and, according to children's advocates and Jewish leaders, it can be particularly difficult for victims and families affected by abuse in tight-knit communities to speak up, seek help, or seek justice.

On Sunday, November 8, 2015, members of the Chicagoland Jewish Community came out to hear a line-up of extremely powerful speakers address this very important topic. The event was held at Congregation Ezras Israel of West Rogers Park, 7001 N. California Ave. and was cosponsored by Congregation Ezras Israel, the MR Bauer Foundation, and the DePaul University College of Law Center for Jewish Law & Judaic Studies (JLJS).

The well attended event was opened by Decalogue Second Vice President, Mitchell Goldberg, who emphasized the importance of this topic and thanked all those who made the event possible, including Decalogue Executive Director Aviva Patt. Goldberg also specifically thanked the individual panelists for their particular work in "educating the broader Jewish community about the dangers of child sexual abuse and the tools and services available to help victims and their families."

The event moderator was internationally renowned scholar, Professor Steven Resnicoff of DePaul University College of Law. Professor Resnicoff pointedly reminded the audience how every single person with actual knowledge of abuse has to protect the victims of abuse.

Speakers included Rabbi Yosef Blau, Director of Religious Guidance at Yeshiva University and a world-renowned Torah scholar, educator, and academic; Dr. Michael J. Salamon, a fellow of the American Psychological Association, founder and director of ADC Psychological Services in New York and an author and speaker on the subject of child sexual abuse; Sharon Kanter, Assistant Cook County State's Attorney; Detective Charles F. Hollendoner of the Chicago Police Department; and Mrs. Rena Gopin-Wolf, a victim of incest.

Led by an engaging moderator, each speaker delivered extremely important and powerful remarks regarding the importance of protecting children and victims of abuse.

Dr. Salamon offered statistics regarding abused children and shared his insights into the issues impacting victims, including community stigmas and the importance of reporting abuse. Mrs. Gopin-Wolf spoke movingly about her experiences as a victim, including dealing with the issues addressed by Dr. Salamon. Rabbi Blau spoke about the implications of reporting in light of Jewish law (Halacha), and emphasized the goal and duty of Jews to protect our children. Ms. Kanter and Det. Hollendoner demystified the process of investigations and prosecutions of these crimes and also identified the important services available to the community and to victims.

The various speakers provided valuable information regarding known statistics on incidents of abuse, including the extremely small percentage of abuse actually reported by victims and the high probabilities of such reports, when made, being later proven credible. Though the program moderators did acknowledge the difficulties relating to false accusations, the overarching theme of the event was simple – If you have information about abuse, you should report it. And because this message is so critical to communicate, the program planners elected to open the event to the public.

The program subject was very timely in light of recent news. In November 2015, a local Chicago orthodox rabbi was found guilty of criminal sexual assault of a minor and later sentenced to 8 years in prison in January 2016. Thus, we must be ever-vigilant and ready to provide support to those who report abuse.

How Lawyers And The Courts Apply Jewish Law And Muslim Law To Resolve Family Conflicts

By Curtis Ross

This past November, I was honored to take part in a Decalogue-hosted seminar on Jewish and Muslim Issues in Family Law which, to everyone's delight, was co-sponsored by the Muslim Bar Association of Chicago. Presenters regarding family law issues in the Muslim community and as applied in the U.S. legal system were Kamran Bajwa, head of the Middle East practice for Kirkland & Ellis, and Azam Nizamuddin, the President of the Muslim Bar Association. Experienced family law practitioners Candace Wayne and Decalogue First Vice-President Curtis Bennett Ross offered their viewpoints on how Jewish law and expressions of Jewish faith are reflected in the resolution of family law issues arising in Jewish marriages and families.

Both during and following the formal presentations, many attendees in the filled-to-capacity audience, including Hon. Grace Dickler, Presiding Judge of the Cook County Domestic Relations Division, participated in a wide ranging discussion which highlighted not only the differences in Jewish, Muslim, and secular law, but also the many similarities between Jewish and Muslim law as applied in particular contexts.

Topics included religious versus civil marriage and divorce and some of the requirements for religious marriage and divorce. Mr. Bajwa discussed the religious and moral-based teachings of Islam as a basis for divorce as well as for other areas of Islamic law. He explained how the American view of Sharia law is often inaccurate and does not account for how Sharia law varies based on different geographic regions and branches of Islam. Mr. Bajwa identified some of those differences.

Ms. Wayne discussed Jewish marriage and divorce and described the Jewish religious divorce process wherein a three member rabbinic tribunal called a Bet Din hears evidence from one or both members of the divorcing couple and then, if they agree, issues a Jewish bill of divorcement called a 'get'. The effect of the get is to release the parties from the 'Ketubah', a marriage contract that Jewish couples of the Orthodox branch or the more observant individuals in the Conservative branch of the religion enter into before they marry. The 'divorce' granted by the Bet Din is a religious document and ordinarily does not factor into the dissolution of marriage judgment granted by the court. However, neither the former husband nor the wife, if they strictly observe Jewish law, can remarry without a get—even if they can legally remarry in a civil ceremony.

As part of this segment of the program, the panel noted the Illinois Appellate Court case of *In Re the Marriage of GOLDMAN*, 196 Ill. App. 3d 785 (1990), which addresses the use of a Ketubah as a form of prenuptial agreement to require the parties to obtain a religious divorce. In reaching its decision affirming the trial court's order requiring the husband to obtain a get against his wishes, the Court reviewed the expert testimony and also looked to the intent of the parties as to whether there was a contract (there was), whether the language was too vague (it was not) and whether the agreement violated the establishment and free exercise clauses of the U. S. Constitution which, in accordance with two U.S. Supreme Court opinions *Wisconsin v. Yoder* (1972) and *Lemon v. Kurtzman* (1971), it did not.

Also discussed was the Lieberman Clause, which has been used by Conservative Jews as part of their Ketubahs to require the parties to cooperate with one another in obtaining a get in case of divorce. Mr. Bajwa also discussed similar issues related to 'mahr' provisions being treated as or incorporated into prenuptial agreements. He offered an overview of contract principles, challenges to the Establishment Clause, and public policy as well as the Statute of Frauds.

The panelists' presentations and ensuing discussion revealed much similarity between Jewish and Muslim law reflected in the requirements for religious divorce found in premarital agreements written for couples with those different religious affiliations. As one can imagine, the panelists and attendees engaged in a lively discussion concerning how these and other marital conflicts are handled, depending on the faith of the couple and, for those of the Jewish faith, which branch of Judaism is involved. Some attendees offered brief scenarios from their own practices, from court cases familiar to many and even from their personal histories.

Based upon the sheer numbers that showed up, the interest generated by the subjects and the diverse perspectives that the accomplished speakers so ably expressed, the Decalogue CLE planners have to assume that co-sponsorship of our programs by diverse bar associations and our co-sponsorship of their programs is beneficial to many practitioners and thus a desirable goal for Decalogue. Kudos to Decalogue's CLE planning committee for presenting this program!

Decalogue Reception Honoring the Judiciary

Tuesday, February 23, 2016 at Dentons

(Photo credit: Frederic Eckhouse)
See our Facebook page for more photos

Dislike: Facebook, the Incitement of Violence, and the Law

By Gail Schnitzer Eisenberg[1]

Facebook is not just a social network; it's a social tool. It goes beyond providing a forum by using algorithms to connect ideas, products, and people to users who may be most interested.[2] Terrorists[3] have been utilizing Facebook's functionality to spread hate, recruit extremists, and encourage the recent wave of terror in Israel sometimes referred to as the Third or Knife Intifada.[4] In response, 20,000 Israeli citizens sued Facebook in New York state court last October.[5] Although the Plaintiffs' hearts are in the right place, the suit likely isn't.

Wired and generally unaffiliated Facebook users learn from detailed videos demonstrating how to properly stab Israelis,[6] view distorted political cartoons featuring Arabs encouraging the murder of religious Jews,[7] study graphic photographs of the murder of innocents, and read calls to arms from preachers[9] and Palestinian leaders.[10] These images stir up young peoples' anger and frustration.[11]

After often announcing their intentions on Facebook, these young terrorists use household items, perhaps most saliently knives, to attack Israelis.[12] As of February 10th, "30 people have been killed by terrorists (including a Palestinian), and 351 people injured" since September 2015.[13]

A day after filing suit, lead plaintiff Richard Lakin died of knife and bullet wounds suffered when two twenty-something Palestinian terrorists attacked his bus.[14] Hours after that attack, users posted a video re-enactment of the attack to celebrate and encourage similar acts.[15]

Facebook prohibits and may remove posts encouraging violence, direct threats, terrorism, and hate speech.[16] Users must agree to not post such content.[17] With billions of posts a day,[18] Facebook relies on users to report abuse of its community standards. Facebook then reviews the reported content for violations.[19]

It is unclear what this review process entails, and review decisions occasionally change.[21] For example, Facebook initially refused to remove a user page called "The Third Intifada," which was a call to terrorism in Israel, only to reverse course.[22] On the other hand, users were unable to share Bernard-Henri Lévy's *Things We Need to Stop Hearing About the 'Stabbing Intifada,'* and the article was removed from existing posts.[23] Lévy references the role of social media in inciting terrorism in Israel.[24] After the Simon Wiesenthal Center contacted Facebook, the article returned to walls and newsfeeds.[25]

Facebook is not alone as a forum for hate speech and terrorist recruitment. But some service providers are more responsive to removal requests than others.[26] The Israeli Foreign Ministry "reached out to Facebook, asking them to take down any posts that incite violence against innocent Israelis but Zuckerberg and Co. simply said that they have no interest in getting involved in content posted on their site."[27]

Thus the Shurat Hadin Israel Law Center,[28] through its myriad plaintiffs, now seeks an injunction requiring Facebook to "(a) immediately remove all pages, groups and posts containing incitement to murder Jews; (b) and to actively monitor its website for such incitement …; and (c) cease serving as match-maker between terrorists, terrorist organizations, and those who incite others to commit terror."[29] Plaintiffs allege Negligence,[30] Breach of Statutory Duty prohibiting publishing support for terrorist organizations or inciting terror,[31] and Vicarious Liability for terrorism based on Facebook's contracts with terrorist users under Israeli law.[32] Plaintiffs also allege Prima Facie Tort and Intentional Infliction of Emotional Distress[34] under New York law. They seek declaratory judgments that Facebook aids and abets terrorists by allowing them to use their algorithms to reach potential terrorists, conspired with terrorists through their Terms and Conditions to incite terror,[36] and is not protected by the Communications Decency Act[37] as a mere interactive computer service because it connects inflammatory messages with those most likely to respond with violence through its algorithms.[38]

Facebook moved to dismiss the suit on three grounds.[39] For one, Facebook argues that the Communications Decency Act requires the court to dismiss the suit.[40] That Act immunizes providers and users of interactive computer services from being treated as a publisher or speaker of third-party content.[41] Accordingly the statute bars "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions---such as deciding whether to publish, withdraw, postpone, or alter content."[42] Facebook's immunity will turn on whether its sophisticated algorithms that facilitate connections between terrorists transform it into a speaker or co-conspirator.

It is unlikely that Facebook's "matchmaking" function will be enough to overcome its immunity. Facebook points to a "virtually indistinguishable" case, *Klayman v. Zuckerberg*.[43] In that case, a pro se Plaintiff sued Facebook for negligence and assault based on Facebook's alleged delay in removing content "which called for Muslims to rise up and kill the Jewish people."[44] The court concluded that Facebook's decision to and when to remove content fell squarely into a publisher's functions protected by the CDA.[45] That court also rejected Plaintiff's argument based on any contractual agreement---namely the Statement of Rights and Responsibilities---between Facebook and the offending users.[46]

Klayman "allege[d] that Facebook collects data on its users and their activities, which it employs to make its advertising more profitable,"[47] alluding to the "algorithm" relied upon by the *Lakin* Plaintiffs. The court deemed that allegation "irrelevant to Klayman's theories of liability" because "Facebook could only collect such data about the Intifada pages after some third party had created the pages and their content."[48] That would seem to apply to the *Lakin* allegations, but there is no discussion about Facebook's matchmaking functions which ground the Plaintiffs' claims here.

(continued on page 15)

Facebook does actively direct inciting content to potential terrorists, just as it directs any content to parties its algorithm deems most likely to be interested. But this is unlikely enough to defeat CDA immunity. Courts have dismissed on CDA grounds suits based on the alleged manipulation of third-party content, for instance, to make negative business reviews more prominent on Yelp for companies that chose not to advertise with them.[49] And, analogously, a user who forwards offending third-party content to others has been deemed immunized by the CDA.[50] The CDA does not distinguish between "active" and "passive" users or services.[51]

The court may not reach the CDA issue because, as Facebook urges, the court may dismiss for lack of personal jurisdiction over Facebook (which is neither incorporated in nor headquartered in New York[52]) or for *forum non conveniens* (because the suit concerns non-New York residents[53] relating to injuries in Israel resulting from transactions abroad such that the potential witnesses and evidence are found elsewhere).[54] The forum does seem---at the least---strange considering Plaintiffs' reliance on Israeli law.

Even if the suit were legally successful, it is unlikely that it would be effective or workable. Removing inciting content would be like a game of whack-a-mole. As Foreign Ministry spokesman Emmanuel Nashon noted, "'for every film they remove, another one crops up.'"[55]

A finite crop of content would still prove difficult to manage. It would be difficult for Facebook to identify, and thereafter, remove, inciting content without infringing on free speech.[56] Under the *Brandenburg* test, inflammatory speech is protected by the First Amendment unless it is (1) directed to inciting, (2) and is likely to incite, (3) imminent lawless action.[57] Even express calls to arms may not meet the standard. In fact, the *Brandenburg* Court reversed a Klansman's conviction for advocating general violence against Jews, African Americans, and their supporters.[58]

Gruesome images might encourage a would-be terrorist to copy an act of terrorism, but it could also be news---important evidence of the violence that some choose to ignore. My newsfeed often features bloody photographs or videos of attacks in Israel posted by pro-Israel groups like StandWithUs. Under the *Brandenburg* test, the speaker must intend the imminent lawless action, something that would prove difficult since Facebook would be required to analyze and surmise intent. And what about the likeliness prong of the test? Would it need to remove any content that *could* incite *any* potential terrorist to act? Just a "reasonable terrorist" (Is there such a thing?)? The daunting nature of these inquires might lead Facebook to over-censor or chill speech from users who seek to maintain their accounts without being subjected to continual monitoring.

The most reasonable thing to do when faced with hate speech and incitement is to monitor hate on the internet so that attacks may be prevented. Young extremists do us a favor by posting their intentions on Facebook and other websites.[59] We need to better utilize these confessions to stop terror before it occurs. In fact, the Israeli Foreign Ministry is developing software to identify problematic posts and has a special police force dedicated to those efforts.[60] Not every attack will be thwarted. However, after the fact, a user's connections and comments could be used to find co-conspirators or to prosecute offenders. Congress even contemplated such uses of inflammatory content when it passed the CDA.[61]

Ultimately, we may not "like" third-party content calling for the death of our Israeli brethren, but the court is unlikely to like this lawsuit and its failure may be for the best but may also provide guidance for future efforts to curb terrorists.

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[2] Compl. ¶¶ 30-50, *Richard Lakin v. Facebook, Inc.*, No. 12831/15 (Sup. Ct. N.Y. Cty. of Kings Oct. 26, 2015) (hereinafter "Compl."); see *generally* Will Oremus, *Who Controls Your Facebook Feed,* SLATE (Jan. 3, 2016), http://www.slate.com/articles/technology/cover_story/2016/01/how_facebook_s_news_feed_algorithm_works.html.

[3] This use of Facebook is not limited to Palestinians. Israelis also use social media to incite violence against Arabs. See, e.g., Alisa Odenheimer and Fadwa Hodali, *Israel Takes Aim at `Bin Laden Meets Zuckerberg' Amid Violence,* BLOOMBERG NEWS (Nov. 30, 2015 as updated Dec. 1, 2015), http://www.newsjs.com/url.php?p=http://www.bloomberg.com/news/articles/2015-11-30/israel-takes-aim-at-bin-laden-meets-zuckerberg-amid-violence.

[4] Compl. at ¶¶ 1-2, 16-19, 23-24, 26, 34 (recounting examples of terrorist attacks inspired by Facebook posts); see also Gil Hoffman, *Netanyahu: Palestinian incitement is 'Osama Bin Laden meets Mark Zuckerberg'*, THE JERUSALEM POST (Oct. 19, 2015), http://www.newsjs.com/url.php?p=http://www.jpost.com/Arab-Israeli-Conflict/Netanyahu-Palestinian-incitement-is-Osama-Bin-Laden-meets-Mark-Zuckerberg-427407 (quoting Israeli Prime Minister Benjamin Netanyahu ("What has been going on is due to the combination of the Internet and Islamist extremism…. It has been Osama Bin Laden meets [Facebook founder] Mark Zuckerberg.")

[5] Compl. at ¶¶ 1, 7 and Rider A (containing a 75-page list of additional plaintiffs).

[6] Comp. at ¶¶ 24, 34a; see also https://www.facebook.com/theisraelproject/videos/10154513451207316/ (last visited Feb. 14, 2016).

[7] Compl. at ¶¶ 24, 27 (containing examples); see also https://adaradotcom.files.wordpress.com/2015/08/cartoons-of-hate-in-palestinian-media-1.jpg.

[8] The Palestinian Authority daily, Al-Hayat Al-Jadida, published on October 2, 2015: Palestinian users of the social networks Facebook and Twitter posted pictures from the scene of the settlement Itamar operation (i.e., terror attack murder of Naama and Eitam Henkin in front of their four children) south of Nablus, the most significant being the picture of the killed woman settler and her husband, alongside expressions of joy over the operation which they described as 'heroic.' [Palestinian] citizens expressed their joy over this event. *The Social Media Intifada: Facebook, Twitter and YouTube Used Extensively for Promoting Violence Against Israelis,* THE ALGEMEINER (Oct. 8, 2015), http://www.algemeiner.com/2015/10/08/the-social-media-intifada-facebook-twitter-and-youtube-used-extensively-for-promoting-violence-against-israelis/

[9] See, e.g., *Hamas Preacher Waves Knife: "The Truth of Islam is Coming…Go Out… Attack,"* PALESTINIAN MEDIA WATCH (Oct. 9, 2015), http://palwatch.org/main.aspx?fi=472&doc_id=16036.

[10] Compl. at ¶ 19 ("a prominent member of the FatahCentral Committee … posted to his Facebook page a video showing armed fighters from the Al-Aqsa Martyrs' Brigade set to music encouraging listeners to give their lives for the Al-Aqsa Mosque. A few days later [he] posted … an explicit order to his followers and Facebook friends: '#let'scontinuetheattacks.'"); see also Itamar Marcus, *Abbas justifies violence and murder as "protection of holy sites,"* PALESTINIAN MEDIA WATCH (Oct. 11, 2015), http://palwatch.org/main.aspx?fi=157&doc_id=15845.

[11] Odenheimer and Hodali, supra note 3.

[12] Compl. at ¶ 13.

[13] *Wave of terror 2015/16,* ISRAEL MINISTRY OF FOREIGN AFFAIRS (Feb. 10, 2016), http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Wave-of-terror-October-2015.aspx (including a list of major terror attacks against Israelis since September 13, 2015).

[14] Paul Goldman and Cassandra Vinograd, *American Richard Lakin Dies After Jerusalem Bus Attack*, NBC NEWS (Oct. 27, 2015), http://www.nbcnews.com/news/world/american-richard-lakin-dies-after-jerusalem-bus-attack-n452036.

[15] Micah Lakin Avni, *The Facebook Intifada*, N.Y. TIMES (Nov. 3, 2015), http://www.nytimes.com/2015/11/03/opinion/the-facebook-intifada.html?smid=fb-share&_r=0; see Facebook of Islamic Bloc (Hamas), *Hamas Celebrates Jerusalem Bus Terror Attack that Killed 2 by Releasing a "Reenactment Video,"* PALESTINIAN MEDIA WATCH (Oct. 14, 2015), available at http://palwatch.org/main.aspx?fi=474&doc_id=15918.

[16] *Community Standards*, FACEBOOK, https://www.facebook.com/communitystandards (last visited Feb. 14, 2016).

[17] *Statement of Rights and Responsibilities* at ¶ 3.7, FACEBOOK (as revised Jan. 30, 2015), https://www.facebook.com/legal/terms.

[18] *The Top 20 Valuable Facebook Statistics*—Updated December 2015, ZEPHORIA DIGITAL MARKETING, https://zephoria.com/top-15-valuable-facebook-statistics/ (last visited Feb. 14, 2016).

[19] *Help Center, How to Report Things*, FACEBOOK, https://www.facebook.com/help/181495968648557?ref=community_standards (last visited Feb. 14, 2016).

[20] Community Standards, supra note 17.

[21] *Id.*

(Cont'd page 17)

Is The 'Safe Spaces' Movement A Genuine Threat To Academic Freedom?

By Jonathan Lubin

Perhaps you have followed news reports over the past year about the creation of 'Safe Spaces' on college campuses that school administrations are offering to students. The intent of the Safe Spaces (the concept of which has historic precedents in the women's movement of the sixties and seventies) is to provide solace and comfort to those seeking to avoid lectures and discussions about subjects that might provoke memories of traumatic experiences like rape or the loss of loved ones in violence. If so, then you know that the Safe Spaces 'Movement' has itself generated much debate, anger and general controversy regarding the role that institutions of higher learning play in the education of young adults who, at this time in their lives, are supposed to be engaged in inquiry and intellectual conflict. You may also have learned that this Movement has given rise to various forms of protest, also taking place on college campuses. Understandably, like many, you may ask "What is at risk in these processes?" and "Should we be worried about an erosion of academic freedom?"

The reaction to the "Safe Spaces" campaign, itself an offshoot (at least chronologically) of the #BlackLivesMatter campaign, was swift and furious. Allegations that the campaign was an attempt to coddle university students and protect them from "scary ideas", as a March 21, 2015 *New York Times* article characterized the concept and construction of 'safe spaces', and to attack the academic freedom of even slightly conservative voices if the words articulated are too upsetting, abounded and continue to abound. As movements tend to do, that opposition quickly adopted a mascot. Prof. Melissa Click, in a widely-publicized video, was seen preventing Tim Tai, a student reporter with a camera, from photographing a Safe Spaces protest of University of Missouri policies.

The face of the Safe Spaces movement, from the point of view of its detractors, became Melissa Click at her worst, angry and belligerent, preventing a reporter from doing the job he had a right to do under the First Amendment to our Constitution. That she was a professor in the Mizzou School of Journalism seemed to only aid in the piling-on that took place when the video went viral. For her part, she may be subject to criminal prosecution, and she has already resigned her appointment with the School of Journalism.

But is the face of the movement representative of the movement as a whole? Put another way, is the Safe Spaces movement an attack on academic freedom?

It certainly seemed that way to *The Economist*, a center-right publication that, on November 14, 2015, published a column decrying the handling of a controversy that erupted in October and November of 2015 at Yale University. According to the column and other accounts, faculty member Erika Christakis wrote a response to the request (labeled by some news sources as a 'directive') of Yale's Intercultural Affairs Committee that students avoid wearing Halloween costumes symbolizing cultural appropriation or misrepresentation like turbans, war paint, feathered headdresses, and blackface or redface. She argued that such a request seemed contrary to the principles of free speech. In the ensuing backlash – which involved several issues, her e-mail among them – hundreds of students and faculty members protested the school's apparent insensitivity to racial diversity.

The facts that the protests also centered around the naming of a campus building after a once prominent slave owner, that allegations surfaced of a non-white woman being turned away from a frat party, and that several other complaints regarding the treatment of minority students were made did not appear in articles decrying the assault on academic freedom. Critics focused, instead, on the effect that the protests had on Prof. Christakis, a respected professor of child development and psychology: she recently announced that she had chosen to not continue teaching at Yale, starting in the spring semester.

It is easy to see why many would be upset at that unfortunate result. As Christakis' "controversial" e-mail stated: "American universities were once a safe space not only for maturation but also for a certain regressive, or even transgressive, experience; increasingly, it seems, they have become places of censure and prohibition." She explained herself in a later e-mail to *The Washington Post*: "I worry that the current climate at Yale is not, in my view, conducive to the civil dialogue and open inquiry required to solve our urgent societal problems." Many progressive activists agree.

For example, Rania Khalek, a prominent Palestinian activist in Chicago, lamented (in an interview with Fredrik Deboer) that the left was "in denial" regarding its flirtations with censorship. Her comments seemed to echo the famous concurrence of Justice Louis Brandeis that order could not be exalted at the cost of liberty, and that the remedy to be applied to evil speech should be "more speech, not enforced silence." *Whitney v. California*, 274 U.S. 357 (1927), concurring opinion. Censorship, even of offensive speech, is a sword that cuts both ways. As a human rights activist, Ms. Khalek has witnessed censorship of her ideas in the form of specious complaints of anti-Semitism, and even attempts by attorneys and activists to silence pro-Palestinian protests.

In April, 2013, the Department of Education rejected claims by some pro-Israel activists that protests at the University of California – Berkeley campus created a hostile environment for Jewish students. The Department ruled that the protests, which included mock checkpoints designed to imitate Israeli military checkpoints in the occupied West Bank, were "expression on matters of public concern" and that "exposure to such robust and discordant expressions, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience." In other words, the attempt at turning the entirety of UC Berkeley into a Safe Space was an attempt to undercut the First Amendment, and to limit academic freedom.

Attempts at reigning in expression by requiring "civility" are similarly problematic from this perspective. When Dr. Steven Salaita was offered a teaching position in the American Indian Studies Program at the University of Illinois at Urbana-Champaign, many of his would-be colleagues at the University celebrated the fact that his unique scholarship "would elevate [American Indian Studies] and convey Illinois' commitment to maintaining a leading academic program." In the summer of 2014, mere months before he was slated to begin teaching, Salaita took to twitter to protest the war in Gaza. His tweets included statements like "if you're defending #Israel right now you're an awful human being," and "#IsraeliIndependenceEquals sustenance of European eugenic logic made famous by Hitler." His offer to teach was rescinded.

Few would defend the civility of his statements: they were patently uncivil. But there is no civility exception to the First Amendment. As Magistrate Judge Wayne Brazil wrote:

"the requirement "to be civil to one another" and the directive to eschew behaviors that are not consistent with "good citizenship" reasonably can be understood as prohibiting the kind of communication that it is necessary to use to convey the full emotional power with which a speaker embraces her ideas or the intensity and richness of the feelings that attach her to her cause. *College Republicans at San Francisco State University v. Reed*, 523 F.Supp.2d 1003 (N.D. Cal. 2007).

For Salaita's part, the University of Illinois is paying him $875,000 to settle the lawsuit he brought against the University for violating his First Amendment freedom. Academic freedom in public universities, like gravity, isn't just a good idea; it's the law.

In Yiddish, sensitivity falls under the rather broad rubric of "mentshlechkeit." Mentshlechkeit can also be rendered "humanity." It is incumbent upon those in institutions of higher learning to be humane, or sensitive, in their treatment of others. But the price of forcing one or another version of that sensitivity on the student body—and the faculty—may be too high. To state it differently, attempting to create a Safe Space for one group of students by censoring the political speech of other students and faculty does not create a nurturing environment for learning, which requires that all ideas, even those abhorrent to some or many of us, be given space for expression. True education can only be sought in institutions that foster intellectual inquiry and that respect academic freedom and the freedom of speech.

Facebook Footnotes *(cont'd)*

[22] Abraham Foxman, *Hate on the Internet: A Call for Transparency and Leadership,* Speech at the ADL Annual Meeting (Nov. 3, 2011), available at http://www.adl.org/combating-hate/cyber-safety/c/hate-on-the-internet-speech-foxman.html#.Vr-5PbQrLcs.
[23] *Pro-Israel Article by French Philosopher Bernard Henri Lévy Disappears from Facebook*, THE ALGEMEINER (Oct. 25, 2015), http://www.algemeiner.com/2015/10/25/pro-israel-article-by-french-philosopher-bernard-henri-levy-disappears-from-facebook/.
[24] Bernard-Henri Lévy, *Things We Need to Stop Hearing About the 'Stabbing Intifada,'* THE ALGEMEINER (Oct. 21, 2015), http://www.algemeiner.com/2015/10/21/bernard-henri-levy-things-we-need-to-stop-hearing-about-the-stabbing-intifada/..
[25] *Pro-Israel Article by French Philosopher Bernard-Henri Lévy Returns to Facebook After Disappearing* (UPDATE), THE ALGEMEINER (Oct. 26, 2015, 2:00 pm), http://www.algemeiner.com/2015/10/25/pro-israel-article-by-french-philosopher-bernard-henri-levy-disappears-from-facebook/
[26] *The Social Media Intifada,* supra note 8 (discussing YouTube's responsiveness to requests to remove).
[27] Doni Kandel, *Mark Zuckerberg: An American Jewish Tragedy,* COMMUNITIES DIGITAL NEWS (Dec. 13, 2015), http://www.commdiginews.com/featured/mark-zuckerberg-an-american-jewish-tragedy-53783/#UGOHaCqkfx4L73dq.99.
[28] An Israeli organization fighting terrorism through litigation. *About Us,* SHURAT HADIN ISRAEL LAW CENTER, http://israellawcenter.org/about/ (last visited Feb. 15, 2016).
[29] Compl. at ¶¶ 141-147.
[30] Compl. at ¶¶ 58-72.
[31] Compl. at ¶¶ 73-87.
[32] Comp. at ¶¶ 88-97.
[33] Compl. at ¶¶ 98-105.
[34] Compl. at ¶¶ 106-111.
[35] Compl. at ¶¶ 112-117.
[36] Compl. at ¶¶ 118-126.
[37] 47 U.S.C. § 230(c)(1).
[38] Compl. at ¶¶ 127-140.
[39] Motion to Dismiss, *Lakin v. Facebook, Inc.*, No. 012831/2015 (N.Y. Sup. Ct. Jan. 14, 2016), Mot. No. 001 (hereinafter "Mot. to Dismiss").
[40] Mot. to Dismiss at 6-14.
[41] 47 U.S.C. § 230(c)(1).
[42] *Shaiamili v. Real Estate Grp. of N.Y., Inc.*, 17 N.Y.3d 281, 289 (2011) (internal quotation omitted).
[43] Mot. to Dismiss at 1.
[44] 753 F.3d 1354, 1355 (D.C. Cir. 2014), cert. denied, 135 S. Ct. 680, 190 L. Ed. 2d 391 (2014).
[45] *Id.* at 1358-59 (citing cases).
[46] *Id.* at 1359-60 (D.C. Cir.).
[47] *Id.* at 1358.
[48] *Id.*
[49] *Levitt v. Yelp! Inc.,* No. C-10-1321 EMC, 2011 WL 5079526, at *5 (N.D. Cal. Oct. 26, 2011) *aff'd,* 765 F.3d 1123, 1129 (9th Cir. 2014) (concluding that the business owners failed to state a claim and thus not addressing the CDA defense).
[50] *See Barrett v. Rosenthal,* 146 P.3d 510 (Cal. 2006).
[51] *Id.* at 529.
[52] Mot. to Dismiss at 14-17.
[53] Lakin was born and raised in the Boston area but moved to Israel in 1984. Compl. at ¶ 4. The Complaint does not allege that his son, also a plaintiff, resides in New York, *id.* at ¶ 6, and a search of Whitepages.com does not yield a New York resident named Micah Lakin Avni. "The remaining plaintiffs are 20,000 citizens of Israel." *Id.* at ¶ 7.
[54] Mot. to Dismiss at 19-22.
[55] *The Social Media Intifada*, supra note 8.
[56] Jay Michaelson, *A Lawsuit Cannot Stop the 'Facebook Intifada.' You Might,* Forward (Nov.4, 2015), http://forward.com/opinion/323953/the-pro-israel-lawsuit-against-facebook-wont-work-heres-what-might/.
[57] *Brandenburg v. Ohio,* 395 U.S. 444, 447 (1969).
[58] *Id.* at 446-47.
[59] Compl. at ¶ 26; see, e.g., Itamar Marcus and Nan Jacques Zilberdik, *Terrorist murderer's motivation echoes PA incitement*, PALESTINIAN MEDIA WATCH (Oct. 4, 2015), http://palwatch.org/main.aspx?fi=157&doc_id=15783.
[60] Odenheimer and Hodali, *supra* note 3.
[61] Congress stated its policy "to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer." § 230(b)(5).

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Student Action

The Problem Of Violence In Israel: A Panel Of Informed Speakers Tackles The Issue

By Michelle Milstein

This past fall, the Decalogue Society and MELSA co-sponsored a panel discussion about the current wave of violence in Israel. The panel included Steven Dishler from JUF, Richard Goldwasser from J Street, and Ahmad A-Dajani, a student at The John Marshall Law School who has his Masters of Science in Conflict Prevention and Peacebuilding from the University of Durham, United Kingdom. The three speakers offered different perspectives on the current issues surrounding the Middle East Conflict.

The panel began by discussing the current wave of violent attacks occurring in Israel and the belief held by some that Israel is trying to change the status quo on the Temple Mount counterbalanced by a belief that the status quo will not change. The panel also debated the issue of a two-state solution. Richard Goldwasser believes that Israel's unilateral withdrawal from both the Gaza and the West Bank was damaging, a view with which Steven Dishler disagreed. Ahmad brought up an interesting point about a lack of leadership from both sides. He stated, from an academic point of view, that Abbas is not an effective leader and when his people do not see him produce the results they want, they take action into their own hands. He also noted that Netanyahu is very hard and does not allow Abbas to gain negotiation skills. He believes that the first step in solving the conflict lies in the leadership of each side.

Finally, the lack of education on both sides was considered. Each side has its own narrative but neither side is well-informed about the other side's narrative. The key to coexistence of the two states is for each to learn and respect the other's story.

During the question and answer session, I inquired about the criticism of Israeli passing a law that makes it easier for citizens to obtain guns even though they are not trained to use them. Ahmad stated that allowing citizens access to guns to thwart attacks on innocent citizens invites them to take the law into their own hands. Both Richard Goldwasser and Steven Dishler agreed that is true, but noted that citizens do need to protect themselves and should be allowed to do so. The last question pertained to the upcoming election. A student asked which U. S. Presidential candidate would be the best person to help resolve this conflict. The panel noted that President Bill Clinton came the closest to having a peace deal signed but ran out of time. For this reason, the panel believed the best Presidential candidate would be Hilary Clinton as she could finish what her husband started.

Michelle Milstein is President of the John Marshall Law School Chapter of Decalogue.

Young Lawyers' Corner

Questions about the Young Lawyers Division (YLD)?
Email the NEW Decalogue Young Lawyers Division Co-Chairs Marty Gould (mgould@rblaw.net) & Lauren Cohen (laurencohen8@gmail.com).

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YLD EVENTS
• Our February 11, 2016, YLD Winter Social @ Pearl Tavern was a huge success. Thank you to all who attended!
• Stay tune for announcements of upcoming events.

Chai-Lites

A Busy, Diverse, Inventive And Well-Honored Judiciary:

On July 4, 2015, **Judge Ilana Diamond Rovner** was honored with the Great Immigrant Award by Carnegie Corporation.

Justice Jesse G. Reyes was elected Presiding Justice of the Fifth Division of the Illinois Appellate Court's First District and will be awarded The John Marshall Law School Alumni Association prestigious Diversity Award at the Freedom Award Dinner on 5/12/16 at the Hilton Chicago, 720 S. Michigan Avenue.

Past President **Justice Michael Hyman** will be honored at the CBA Vanguard Awards Luncheon being held on April 20, 2016 at the Standard Club.

Judge Mike Panter (ret) has been working at ADR since October and has conducted close to sixty mediations. He has also presented at a number of bar and judicial meetings and is thankful for the very kind words from Justice Robert Gordon at the annual meeting.

Welcome To New Family Additions: And The Boys Outnumber The Girls In This Round!

Kvelling is in order for the first grandchild: Past President **Michael Strom** and his wife Sherry are basking in the news of the birth of grandson Theodore "Teddy" Patrick Hibbs to their daughter Shayna and her husband Alex. Mazel Tov to the proud new parents!

Barry Sheppard is celebrating a new granddaughter, and **Adam Sheppard** a niece, Juliette Chaimson, who was born on February 4, 2016.

Judge Moshe Jacobius welcomed a grandson in November, celebrating with his daughter and her family in Israel.

Mazel Tov is extended to former Board member **Sarah Levy** on the birth of her first child, Adam Harrison Levy, on October 2, 2015.

And we say 'Mazel Tov' to Board Member and Legislative Committee Chair **Gail Schnitzer Eisenberg** on the birth of her son, Hunter Mason Eisenberg, on October 10, 2015.

Members Moving Up, Moving On, Being Recognized And Speaking:

On February 23, Board member **Sharon Eiseman** served on a panel addressing challenges new attorneys face in choosing a particular career direction. That panel—with a second one on community service options—constituted the final program in a series sponsored by the newly formed Women's Leadership Institute of the Women's Bar Association of Illinois, an initiative of WBAI President, the Hon. Jessica O'Brien. Despite her judicial schedule and her presidential commitments, Judge O'Brien managed to find time to join Sharon's panel. The focus of the panelists was on offering guidance to women attorneys in the early stages of their careers on how to recognize, cultivate and pursue opportunities that unexpectedly arise, how to evaluate whether taking a new career direction—or even a particular position—will help advance one's goals, and how to find ways to enhance both personal satisfaction and one's resume.

In the professional arena, **Gail Schnitzer Eisenberg** has been named the 2016 Chairperson of the Young Lawyers Group of the Trades, Industries, and Professionals Division of the Jewish United Fund/Jewish Federation of Metropolitan Chicago. She was also recognized by SuperLawyers and Chicago Magazine as a 2016 Rising Star in Class Action Litigation.

Board Member **Melissa F. Gold** is now an Assistant Corporation Counsel with the City of Chicago, Department of Law - Federal Civil Rights Litigation Division.

Board member **Barry R. Horwitz** of Greenberg, Traurig LLP was honored on December 8, 2015 by the Legal Assistance Foundation (formerly the Legal Assistance Foundation of Metropolitan Chicago) with the Ambassador of the Year Award for his contributions to raising LAF's profile in the community.

Charles Krugel was quoted in Business News Daily's 1/14/16 Article—"You're Being Sued: A Guide to Handling a Business Lawsuit," and in Industry Week's 1/20/16 Article "Should Employers Treat Employees Like Family?" Also, this year Charles is scheduled for a series of four presentations at Chicago's City Hall. These focused, practical programs will cover various human resources, and labor and employment law issues confronting businesses.

The John Marshall Law School trial advocacy team, co-coached by Board Member **David W. Lipschutz**, competed in and won The National Animal Law Closing Argument Competition at Harvard Law School. This is the third year Lipschutz has coached for this competition and the third year he has helped the school garner a national championship. Lipschutz also competed in and won the competition when he was a law student—he has been told—as he cannot remember a time so long ago!

Board member **Michael H. Traison** has joined the corporate restructuring and creditor's rights practice of Sugar Felsenthal Grais & Hammer LLP ("SFGH") as a partner. Michael has been a pillar in the global restructuring community for the past 35 years—during which time he has represented debtors, creditors, creditors' committees and asset purchasers in deals throughout the United States and around the world.

Spot-Lite in the Chai-Lites

Hon. Grace Dickler, Presiding Judge of Domestic Relations in Cook County, was the subject of an important feature story in the Chicago Tribune applauding her efforts to preside over divorce proceedings for a unique population: 'The Incarcerated'. Previously, the court system could not accommodate prisoners who wished to obtain divorces because those individuals could not be present in the courtroom. Now, however, with the use of video teleconferencing via large screens, Judge Dickler can 'enter' the prisoner's space while the prisoner simultaneously views the Judge in her robe—and the two can interact about the circumstances for that particular prisoner. Often, the prisoner simply wants closure through the divorce, along with the return of personal items, and on occasion, the prisoner is seeking help to connect with his or her children who may believe their parent is dead. Judge Dickler noted that helping prisoners maintain connections with family while imprisoned and after their release can contribute to the success of their re-entry into society.

2016 Vanguard Awards Luncheon

Wednesday, April 20, 2016

11:30am - 1:30pm

Standard Club

320 S Plymouth, Chicago

Join Decalogue as we honor our Past President

Justice Michael B. Hyman

and

Hon. William J. Haddad (ARABA)

Hon. Jessica Arong O'Brien (AABA) (AS)

Leslie Richards-Yellen (BWLA)

Standish E. Willis (CCBA)

Will Thomas *(posthumous)*(LAGBAC)

Jayne Reardon (WBAI)

more to be announced!

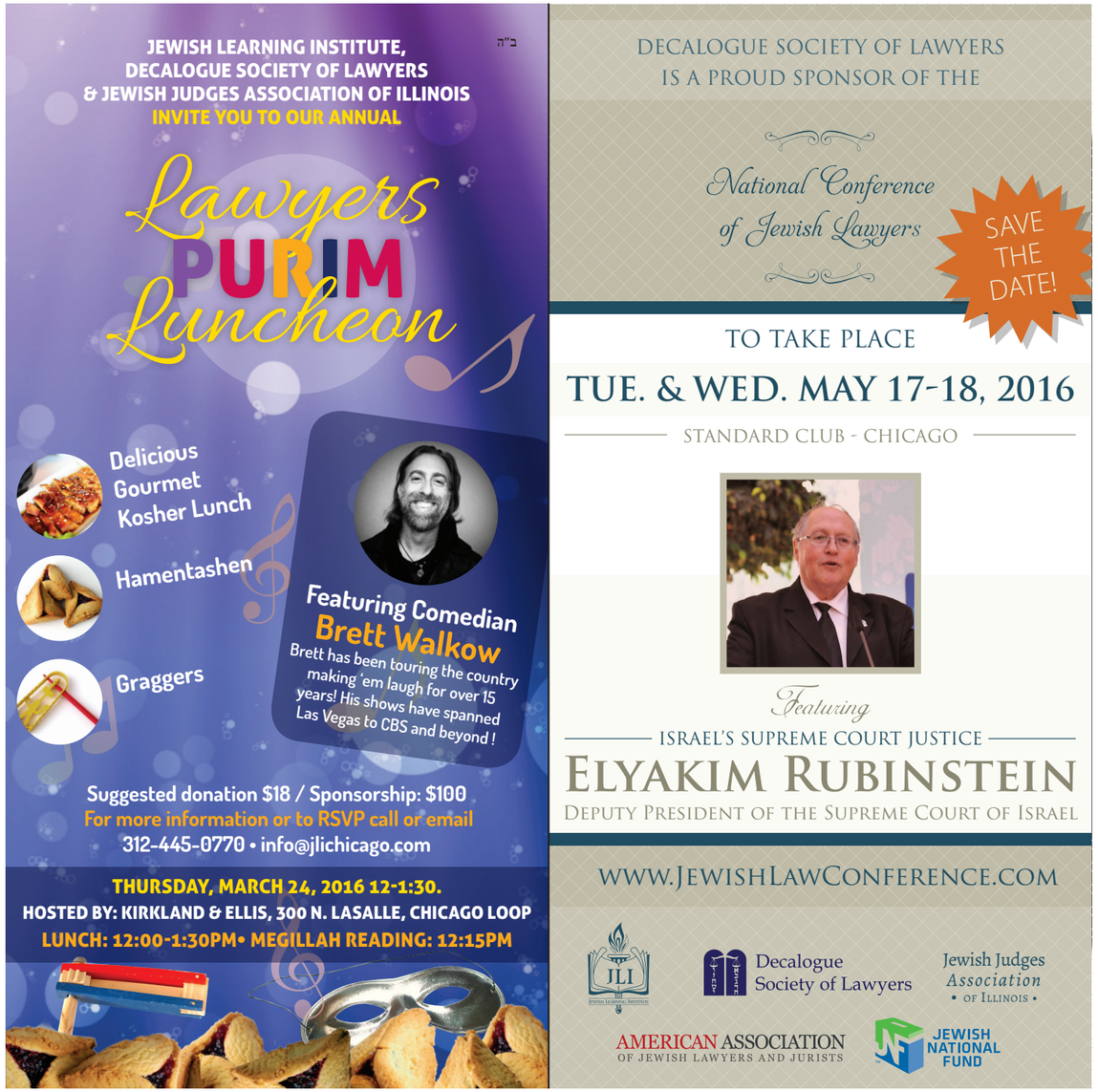
Tickets $70

order online at

www.decaloguesociety.org

Welcome New Members!

Aggie Baumert	***Zachary Greening***	***Joshua Richards***
Janice Berman	***Robin Grinnalds***	***Natalie Rogozinsky***
Roni Cohen	***Ethan Holland***	***Adam Rogozinsky***
Xingyue Duan	***Jonathan Ingram***	***Pamela Saindon***
Elliott Englander	***Barbara Kantrow***	***Steve Schmall***
Daniel Epstein	***Mathew Kerbis***	***Loren Seidner***
Lindsay Foye	***Rebecca Lederhausen***	***Jeffrey Shapiro***
Brain Gaylord-Toscana Cervello	***Jordan Matyas***	***Madeleine Tick***
Jonathan Goldberg	***Michelle Milstein***	***Linda Unger***
Matthew Gordon	***Mitchell Paglia***	***Candace Wayne***
Jack Gould	***Michael Pomeranz***	***Lindsey Weltman***



Calendar

PURIM - Wednesday, March 23 sunset-Thursday, March 24, sunset

Thursday, March 24, 12:00-1:30pm
Lawyers' Purim Luncheon
Co-sponsored by Decalogue, Jewish Learning Institute & Jewish Judges Association
Kirkland & Ellis, 300 N LaSalle, Chicago
$18 RSVP: 312-445-0770 or info@jlichicago.com

Wednesday, March 30, 12:15-1:15pm
CLE: Dealing With Difficult Clients II
Speaker: Charles Silverman
134 N LaSalle Room 775
1 hour MCLE credit *(professional responsibility credits pending)*
Registration is required www.decalogueso ciety.org

Thursday, April 7, 5:30-7:30pm
Decalogue and the Arab American Bar Association
Celebrate Women in the Legal Profession
John Marshall Law School, 304 S State, Chicago
For more information, see page 8
Reservations for this free event are required: www.decaloguesociety.org

Sunday, April 10, Time TBA
Social Action Mitzvah Project
Packing Pesach meals at Maot Chitim
Watch your email for more information

Wednesday, April 13, 11:30am-1:30pm
CLE: Ethics Update
Speaker: Wendy Muchman, *ARDC Director of Litigation*
John Marshall Law School, 315 S Plymouth, Chicago
2 hours Professional Responsibility Credits pending
Registration is required www.decaloguesociety.org

Monday, April 18, 12:00-1:00pm
Decalogue Board Meeting
134 N LaSalle, Room 775, Chicago

Tuesday, April 19, 12:00-1:30pm
Model Seder with Cook Cook County Bar Association, Illinois Judicial Council and Jewish Judges Association of Illinois
Watch your email for more information

Wednesday, April 20, 11:30am-1:30pm
CBA Vanguard Awards
Decalogue is a co-sponsor and we are honoring Justice Michael Hyman
See page 20 for details
Tickets $70 www.decaloguesociety.org

PASSOVER - Friday, April 22, sunset-Saturday, April 30, sunset

Wednesday, May 4, 12:15-1:15pm
CLE: The Art and Science of Remediating Burnout in Lawyering
Speaker: Alice Virgil, *Lawyers Assistance Program*
134 N LaSalle Room 775
1 hour MCLE credit *(professional responsibility credits pending)*
Registration is required www.decaloguesociety.org

Wednesday, May 11, 12:15-1:15pm
CLE: Criminal Law and the Constitution
Speaker: Donna Makowski
134 N LaSalle Room 775
1 hour MCLE credit
Registration is required www.decaloguesociety.org

Tuesday, May 17, 12:00-1:00pm
Decalogue Board Meeting
134 N LaSalle, Room 775, Chicago

Tuesday & Wednesday, May 17-18
National Conference of Jewish Lawyers
Co-sponsored by Jewish Learning Institute, Decalogue, Jewish Judges Association, and American Association of Jewish Lawyers and Jurists
Standard Club, Chicago
Info@jlichicago.com

Wednesday, May 25, 12:15-1:15pm
CLE: Intersection of Religious and Secular Law II
Speaker: Jonathan Lubin
134 N LaSalle Room 775
1 hour MCLE credit
Registration is required www.decaloguesociety.org

Tuesday, June 7, 5:30-7:30pm
JUF TIP Dinner
Guest Speaker: Robert S. Mueller III, Former FBI Director
email decaloguesociety@gmail.com for more details

SHAVUOT, Saturday, June 11, sunset-Monday, June 13 sunset
The office will be closed on Monday, June 13

Friday, June 17
Women Everywhere Project
Watch your email for more information

Wednesday, June 29, 5:15-8:30pm
Decalogue Annual Meeting & Installation
Hyatt Regency Chicago

SAVE THE DATE

Wednesday, June 29, 2016

Decalogue Annual Meeting & Installation

PESACH MITZVAH PROJECT
Sunday, April 10, 2016

We need a good team of Decalogue members (and friends) to pack Passover meals at Maot Chitim

We don't have a time slot yet, but it will be in the morning, so please mark it on your calendar now and watch your email for more details

The Decalogue Society of Lawyers
134 North LaSalle Ste 1430
Chicago IL 60602

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