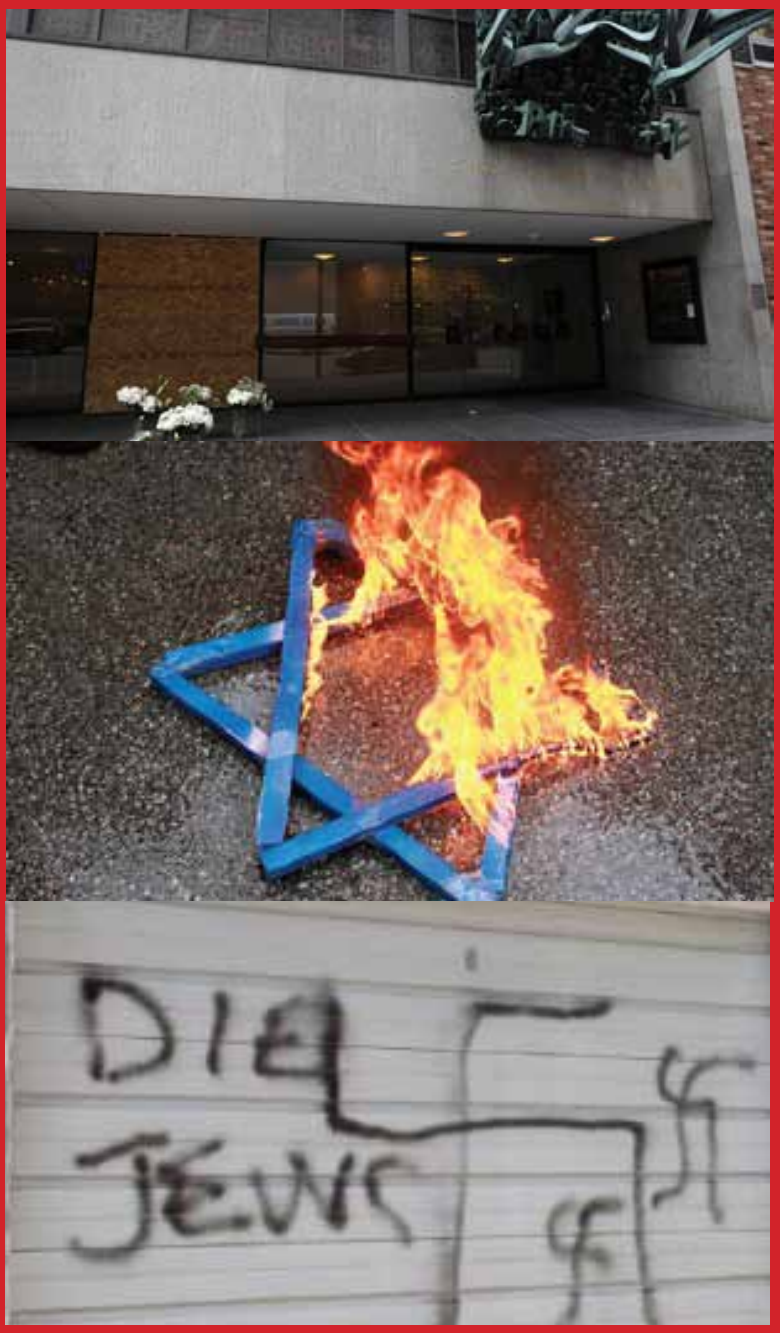
THE DECALOGUE TABLETS

Spring 2017



Fighting Anti-Semitism in a New Political Climate

The Decalogue Society of Lawyers

TABLETS
Spring 2017

President's Column

By Curtis Ross

It has been a great honor and privilege to serve The Decalogue Society of Lawyers as your President since last June. Decalogue works with many other organizations to fight anti-Semitism, to exercise our civil rights, to promote the practice of law, to provide legal education, and to help our members in their careers. We have many people who have dedicated their time and efforts to work on your behalf. We work with many other bar associations and other organizations in different areas and it is clear that Decalogue is considered to be elite among minority bar associations.

During recent months, the level of public discourse in our country and in many areas of the world has been declining. This has accelerated since the last Presidential election and has resulted in an Executive Order by the President of the United States excluding people with visas and green cards from seven predominantly Muslim countries. Recently I spoke in my capacity as President of Decalogue at a press conference at the Chicago Bar Association. Decalogue is one of the Sponsoring Organizations for Chicago Muslim and Arab American Organizations Unite to Address the Negative Effects of President Trump's Executive Order Banning Travel in the U.S. Decalogue is proud to work with other organizations to support the ideals in Decalogue's constitution. We support the rule of law and the separation of powers. I discussed the history of immigration quotas and restrictions against Jews during the 1930s and 1940s, and against Chinese, Japanese, and Africans during other periods.

We continue to see an increasing amount of anti-Semitism in our communities, in colleges and universities, in our neighborhoods, and around the world. Recently, the Loop Synagogue in our neighborhood was vandalized, leaving a broken window and stickers on the door with swastikas on them.

Decalogue has been vigilant in working on behalf of Jewish lawyers, students, and communities to support Jews and non-Jews threatened by anti-Semitism and racism. Anti-Semitism is now coming from both the left and right of the political spectrum. Jewish students are being attacked under the guise of the BDS movement, which stands for boycott, divest, and sanction against Israel. Although not every action of the BDS movement is anti-Semitic, taken as a whole, it is a great threat to Jews and the State of Israel because it helps establish a movement where anti-Semitism can flourish.

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From the Judge's Side of the Bench

My Dinner With Marty

By David W. Lipschutz

Whenever I converse with a judge in a friendly, non-litigious manner, I inevitably surrender to my star-struck awe and become unable to form coherent sentences. I have been practicing law for nearly seven years, so I am not exactly new to litigating cases in front of judges. I am also not new to talking with judges outside of court. I often speak with them informally while they are sitting on the bench, or I chat with them at social events. For example, I recall with particular fondness a discussion I had with Cook County Judge Dennis M. McGuire in an empty courtroom while waiting for my opposing counsel. We talked about my days as a 'model' (I was on the cover of a magazine advertising Christian-themed books…when I was nine years old).

To me, judges are celebrities; they are the equivalent of Brad Pitt, Kate Winslet, and Bruce Campbell. And there is none whom I would relish the opportunity to take out on a Platonic date more than Cook County Judge Martin "Marty" Paul Moltz. To Decalogue Tablets readers, you know him as an avid rollercoaster enthusiast. To all attorneys who practice in the Chicagoland area, you know him as the kind-hearted, mild-mannered, sartorially splendid judge who always has a smile on his face.

Being an editor for the Tablets has its perks. I can come up with an idea for a story, and if the other members of the committee approve, I get to run with it. My idea for a story was to take Judge Moltz out for dinner. To my shock and disbelief, the committee approved my suggestion (at my own expense of course). To my further shock and disbelief, when I asked the Judge out to dinner, he actually said "Yes"! I figured that he, like most sane individuals, would scoff at my unusual request. But because he agreed, he was stuck going out with me. I took Judge Moltz to one of my favorite restaurants, The Blind Faith Café (which is owned, coincidentally, by another David Lipschutz).

Throughout the evening, the Judge regaled me with tales of his time as an Assistant State's Attorney, as well as his subsequent position as an appellate prosecutor. He then gave me some fun facts and trivia about himself that are both ridiculous and amazing. Finally, he gave me a completely new perspective on what it's like to be a judge. Here are some highlights of the evening:

Did You Know…

…that Judge Moltz is a one-of-a-kind record breaker? He is the only trial court judge in history to have overturned a higher court's decision. For reference, see the Illinois Supreme Court's decision in LVNV v. Trice, 32 N.E.3d 554 (Ill. 2015), as well as its prior lower court's decisions. He also holds the record for most oral arguments made before an appellate court in the entire country – his record is over 1,300 times. According to the Judge, this feat will never be broken.

…he has presided over four different courtrooms in two different courthouses all in one day? As an avid sports fan, Judge Moltz proudly calls himself the utility infielder to Judge E. Kenneth Wright Jr., the Presiding Judge of the First Municipal District of Cook County. As a result, when the judge of a particular courtroom is out sick or unavailable, Judge Moltz is ordinarily called from the dugout to handle the courtroom's call. On one particular day, Judge Moltz began his morning handling criminal matters at the courthouse at Belmont and Western. He then headed over to the Daley Center and handled civil matters in three separate courtrooms. Judge Moltz ascribes himself to sports legend Sammy Esposito, whom he says was the best utility infielder in baseball history.

…his grandfather was the basis for the character of the Rabbi in the musical, Fiddler on the Roof? Is that not the craziest thing you have ever heard? Yet it's true. His grandfather was a well-respected rebbe and scholar in Eastern Europe who lived to be 110 years old. As a result, when the Judge's family went to the opening night premiere of the film version of *Fiddler on the Roof,* his mother knew what settings would be presented on screen before the locations were revealed to the audience. Furthermore, Judge Moltz once received his entire purchase for free at a clothing shop in New York City because the owners – a family of Orthodox Jewish rabbis – held his grandfather in such high regard.

…he was once mistaken by British nobility as the head coach of America's soccer team? While in England on a trip to ride rollercoasters (why else would someone fly across an ocean?), Judge Moltz went with one of his fellow rollercoaster aficionados to several upscale bars and restaurants. Naturally, the Judge was wearing his classic attire – a Coney Island Cyclone hat, a Coney Island Cyclone t-shirt, yellow shorts, yellow socks, and gym shoes. At their last stop, Judge Moltz and his colleague walked into a high end restaurant filled with men wearing tuxedos and women wearing elegant dresses. Not only that, but this restaurant was known for requiring reservations months in advance (for Chicagoans, think Next or Schwa). Although his fellow rollercoaster fanatic suggested they go elsewhere, Judge Moltz was not one to shy away from a challenging adventure. He confidently approached the maître d' and asked for a table. Without hesitation, the maître d' smiled pleasantly and led the Judge to a table. Instead of a table near the kitchen or the bathroom (as the Judge expected), they got the best table in the house. As the evening progressed, various members of royalty and parliament graciously approached Judge Moltz to wish him well. He had no idea why they were making such a big fuss–he was, after all, only a humble public servant from the City of Chicago. It was not until he was leaving when the Judge learned that the U.S. soccer team was in London and had just won a big match against England's soccer team. They thought Judge Moltz must be the head coach of the soccer team. After all, no one wearing such an outfit would bother coming to this restaurant unless they were a very important American.

…the word appellee is pronounced "apple-ee" and not "uh-pell-ee"? I have been saying it incorrectly for years.

…that I shared a piece of chocolate cake with a judge? Because I did!

It was a fantastic evening getting to know Judge Moltz. We shared a lovely meal, and the Judge shared wonderful stories. But what is crazier than one meal with Judge Moltz? How about three meals? How about three meals in less than 24 hours? By mere coincidence, I happened to have two other meals with the Judge the following day. Please do not be alarmed, though. I was invited to all three events.

As for me, I gained self-confidence in my communication skills with judges outside of the courtroom. I think Judge Moltz will agree that I barely babbled or made incoherent sentences with him. Things are certainly looking up.

David W. Lipschutz is an Associate Staff Attorney at Arnold Scott Harris, P.C. He is always happy to share a meal with a judge.

President's Column *(cont'd)*

Decalogue's Anti-Semitism Committee is working on and off college campuses to fight the BDS movement and anti-Semitism. We work with many other Jewish organizations including the Anti-Defamation League, Jewish Federation, the Louis D. Brandeis Center, Stand With Us, fraternities, sororities, and many other groups. We are trying to fill a void that only a group of lawyers can fill to support our people.

On November 10, 2016, I had the honor of speaking at the Illinois Supreme Court swearing-in ceremony for new lawyers. I got to speak alongside Illinois State Bar Association President Vincent Cornelius concerning the great value of bar membership to the practice of law. I spoke to approximately 3,000 people, including new attorneys and their families.

On September 15, 2016, Decalogue had a wonderful Merit Award Dinner honoring Israeli Supreme Court Justice Salim Joubran. I had the privilege of presenting him with the Decalogue's Merit Award, our highest honor. The event put on display the prestige that Decalogue continues to hold in the Jewish legal community. Also in attendance was the new Israel Consul General for the Midwest, Aviv Ezra. His presence was an additional honor to Decalogue, and has been followed up with additional interaction between the Israeli Consul and Decalogue.

This will be my last President's Message before I yield the gavel to my worthy successor, Mitchell Goldberg. I cannot tell you how much I have enjoyed my tenure as your President, and cannot thank you enough for bestowing that honor on me.

ADL and Merit Selection

By Hon. James A. Shapiro (ret.)

Late last year, the Anti-Defamation League passed a resolution supporting the merit selection of judges. ADL was concerned that the pressure of electoral politics can and does affect the fair and impartial administration of justice. For example, judges running in contested elections must obtain campaign contributions, often from the very lawyers who appear before them, creating at least the appearance of bias. In states that require judges to run for re-election, judges can feel pressured to make sentences unjustly harsh merely to please the electorate.

During the ADL debate, I spoke in favor of the resolution for an additional reason: prejudicial attitudes often make it difficult for judicial candidates with ethnic-sounding names to be elected in countywide races.

My own experience is a case in point. During my first judicial campaign, two Chicagoans told me, "Just what we need, another Jew judge." At a political event in Lemont, a band stood silent until a Jewish judicial candidate was introduced, at which point the band struck up Hava Negila to make sure the audience knew the candidate was Jewish.

A lawyer recently went to a prominent politician to try to get slated. The politician asked him what kind of name the lawyer's was. When the lawyer told him it was Jewish, the politician said, "Oh, I can't get a Jew elected."

Now, one's first reaction might be that the politician himself is anti-Semitic. However, it is more likely that he and other politicians merely recognize the latent anti-Semitism on the countywide judicial ballot (together with the ballots in most subcircuits) rather than suffer from anti-Semitism themselves.

Regrettably, voters who know nothing about the judicial candidates' credentials often reject those with Jewish and other ethnic-sounding names. This unfortunate reality produces a less diverse bench without regard to the competence, integrity, or credentials of the rejected candidates.

In addition to the undesirable effect of latent prejudice, voters simply do not have sufficient information about judicial candidates to make an informed decision. Exhibit A: a Cook County judicial candidate charged with felony official misconduct for impersonating a judge was recently elected with 95 percent of the vote.

For all of the above reasons, ADL has resolved to support efforts to promote judicial fairness and impartiality, including supporting constitutional amendments to change from judicial elections to other selection methods more likely to ensure judicial integrity. Such a constitutional amendment in Illinois is long overdue and should be enacted without delay.

James Shapiro is a retired judge, former President of Decalogue, and a Board Member of the Anti-Defamation League of Chicago.

The Alt-Right and the Future of Anti-Semitism

by Jonathan Lubin

WARNING: The following article contains offensive language, including but not limited to hate speech, which may offend some readers.

Recent improvements in technology have led to extraordinary changes in communication and access to information. Some of these advancements have also made it possible for those who would advance hatred to gain access to a previously unavailable audience. These advocates have succeeded in normalizing bigotry through a combination of vehicles, including two sites in particular (and various pretenders to their throne).

4chan.org, launched in 2003, does not require or even allow users to register in order to post. On 4chan's multiple message boards, users do not have any static identities, allowing posters to enjoy complete anonymity. 4chan's layout is rudimentary. It began as an image board but functions as message board, where posters respond to threads either with text, images, or both. When it was founded it had two boards: One was called /a/ and the other was /b/ (that is, 4chan.org/b/). /a/ was dedicated to Anime, or Japanese Animation. /b/ is simply called "Random." It is called that because posters are permitted to post virtually anything at all as long as the content is not actually illegal.

4chan has grown considerably since the modest days of its founding. Several boards have opened up since the binary days of /a/ and /b/, and they are organized by subject matter. For example, /pol/ (that is, 4chan.org/pol/) is dedicated to discussions and images related to politics. 4chan's /pol/ has a cousin, a parallel board on a competing website called 8chan (that is 8ch.net/pol). Many of the memes that surrogates of the Trump campaign borrowed during the election cycle were traced to 8chan's /pol/ board.

Note: As I type this, the top post on 4chan's /pol/ board is a poster, likely a troll, claiming that his mother is white, and his father is Mexican. The first response reads "We don't need to answer to you, taconigger." A rousing discussion ensued. At times, posters cite scientific studies, and write in complete, grammatically correct sentences. At other times, the posts more closely resemble gibberish than English.

It was on these image boards that the Alt-Right received much of its traction among millennials (defined by Time Magazine as those born between 1980 and 2000). And for those who were alarmed at how well-received President Trump's nativism has been, the acceptance of the Alt-Right among millennials ought to be a chief concern.

The Alt-Right has been called a racist "movement lurking in Reddit and 4chan threads… of right-wingers who openly argue that democracy is a joke" (Vox, Alt-Right, August 25, 2016). That is not a terribly helpful definition of the group that is credited with rocketing Donald Trump to the White House. But one thing those labels have accurately done is describe the modus operandi of this emerging political force. To the Alt-Right, there are no sacred cows, and the more sacred the old guard's sacred cows are, the more likely they are to become the target of an Alt-Right meme.
In this respect, the Alt-Right is purely a millennial phenomenon. millennials reject the neat choices that have been presented by their elders. What was assumed to be true in the past must now be proven ether through empirical evidence or by reasoned debate. Millennials are no smarter than their forebears. But they are much more skeptical.

Note: As I type this, 8chan's /pol/ board's top post is a post celebrating Donald Trump's executive order that purports to ban foreign governments from lobbying the US government. The first comment wonders whether AIPAC will be among the first victims of the policy. Another poster excitedly writes "Kike immigration has been banned as well," and links to a picture out of the movie Schindler's List of a young girl yelling "Goodbye Jews!"

4chan is currently ranked among the top 200 websites among American web-users according to Alexa (a service that ranks websites based upon internet traffic). Its /pol/ board has become a hub for the internet meme culture. Memes are catchphrases that have become ubiquitous across the internet. For example, most people who frequently use the internet are familiar with lolcats (pictures of adorable cats with explanatory texts written in infantile English), and rickrolling (a bait and switch in which a link to something advertised as awesome actually points to a YouTube video of Rick Astley's Never Gonna Give You Up). But memes have also been used by posters on 4chan, 8chan, and other similar sites, to project political messages. In other cases, memes are just meant to offend, with very little deeper meaning. For example, posters on 4chan were able to manipulate an internet poll to rename Mountain Dew so that the top name was "Hitler did nothing wrong." Of the names that made it to the top 10, that's the only name that's printable here.

Note: As I type this, the top post on /pol/ is a picture of the skyline of Dubai, with a taunt "This is what Islam has achieved and pol still hates us?" The response to that is largely predictable. One response is a photograph of hollowed out buildings in Aleppo, claiming that Dubai's success is based upon its access to oil. Though the rant is well-written, and even well sourced, it contains several gratuitous slurs against Muslims and Arabs.

This is where the anonymity of 4chan and 8chan becomes very important. The Alt-Right has been identified largely with what it rejects – political correctness, sensitivity, trigger warnings, etc. – rather than what it promotes. The salient feature of the Alt-Right is that it rejects societal norms against speech deemed politically incorrect. It therefore largely identified with Donald Trump's June 2015 presidential announcement speech in which he famously called Mexican immigrants rapists.

Note: As I write this, a post on 8chan/s /pol/ attempts to rally the troops, declaring, "MEME TRUMP INTO DECLARING ALL OUT WAR AGAINST ISRAEL FOR BEING A TERRORIST STATE. It's time to realize the true power of our meme magic. We're dealing with psychic warfare which ultimately determines the shape of reality around us." There are hundreds of responses, many of them positive.

If people are afraid to put their names and faces next to a political opinion, 4chan and 8chan give them the ability to give voice to their thoughts without concern towards retribution. Not long ago, this was possible only through the use of secret meetings. But secret meetings, by their very nature, cannot be advertised. Posting on 4chan is like shouting something in a public place. You might be drowned out by all of the other voices, but you aren't cowering in the shadows. Through 4chan, like-minded people who are either ashamed of their views, or are simply concerned about what airing their views would mean in their professional or academic environment, can meet and discuss.

The culture on 4chan is one of one-upsmanship. Words like "nigger" and "faggot" carry no currency at all, because they are so commonly used as to be rendered meaningless. (An archived discussion from /pol/ begins with the original poster asking whether there is a term for "nigger" that can be used to refer to "shitty whites, mexicans, whoever, while also excludes black people who are good members of society." Another user responds, "yes its called 'nigger'"). The edgier a post the better. Otherwise, what's the point of anonymity?

Anti-Semitism, therefore, is a common trope. In a world with no sacred cows, the question "is the holocaust being exploited to generate support for the State of Israel" is no more offensive than a question about whether the voting age should be lowered. (I found both questions on 4chan/s /pol/ while writing this).

As 4chan has gained in popularity, it has brought ideas that most of society finds reprehensible nearly into the mainstream. The Alt-Right has benefitted from the newfound freedom that sites like 4chan give their users to truly express themselves. In a world before 4chan, it would be hard to imagine a figure like Milo Yiannopoulos, a self-described "Chief Executive Triggerer" and "faggot," (and a frequent contributor to Breitbart, a Bannon/ Trump mouthpiece), becoming a celebrated figure in any corner of the galaxy, let alone among people who are willing to be seen in public. For many Millennials, however, the taboos have been eliminated. As Yiannopoulos himself explains, "The establishment has decided that the best way to fight the alt-right is to adopt a rhetoric that sounds exactly like that over-controlling teacher that everyone hates," while "the Alt-Right, on the other hand, are the Ferris Buellers of the internet, the merry likeable pranksters that everyone roots for." (Breitbart, How To Destroy the Alt-Right by Milo, September 19, 2016).

Note: As I type this, posters on /pol/ are arguing about whether Donald Trump can be trusted, based on the fact that his adult children have married Jews. One poster, coming to Trump's aid claimed that "my girlfriend is Jewish, but I also understand the reality that Jews - at 2% of the American population and 0.02% of the world population - exert an insanely disproportionate influence over our foreign and domestic policy, our media, and academia. I also recognize that jews have an unmatched in-group preference, and that jewish nepotism is both very real and very destructive. And I think Trump feels the same way." Another poster opined that Trump married his adult children to Jews so that he could deftly escape the claim that he's anti-Semitic: "The anti-jew allegations didn't stick because his two oldest are married off to kikes."

Speaking out against sites like 4chan, as some have done, makes about as much sense as protesting gravity. The site is not going anywhere. Exactly what makes it a breeding ground for hate is what makes it attractive to a millennial audience. It does not present a silver platter of acceptable opinions, but rather opens the debate floor to any thought or opinion, regardless how emotionally charged that thought would be in any other context. But understanding an up-and-coming movement's uncomfortable relationship with anti-Semitism gives us the means to fight it.

For one thing, the targets of the Alt-Right are a broad but disparate group, including immigrants, Muslims, feminists, and others. We lose the ability to fight anti-Semitism when we alienate potential allies. But we would also be wise to avoid the temptation to simply create a new political correctness. The newest generation of voters and statesmen eschews packaged answers to complex questions. To borrow an expression from Tom Woods, a libertarian media figure who has adopted a wait-and-see approach to our new president, there are no more 3x5 index card of allowable opinions. Attempts to censor or silence dissent are doomed to fail in the modern age. Technology has seen to that. What is left is to educate, with as broad a coalition as we can muster, and with as much love and reason as we can cultivate.

Jonathan Lubin is a civil rights lawyer and the Decalogue Society's Treasurer, Chair of the CLE Committee, and Co-Chair of the Judicial Evaluation and Amicus Curiae committees.

Do you want to write for the Tablets?

Email the editors by July 1 at

decaloguesociety@gmail.com

with your proposed topic for the Fall issue.

The Miracle Seder

By Justice Michael B. Hyman

Passover celebrates the Hebrews' emergence from degradation to freedom. Hundreds of generations later, survivors of the Holocaust also emerged from degradation to freedom. During the sorrowful years of the Nazi terror, observance of Passover was just about impossible. Yet, even then, even amid the implementation of the Final Solution, Jews secretly arranged Seders.

Largely unknown is the makeshift Seder held by Jewish slave laborers cleaning-up the aftermath of the destruction of the Warsaw Ghetto. The story of this Seder—a miracle Seder held under unimaginable conditions—deserves to be remembered and heralded. It remains a compelling expression of both the historical continuity of the Jewish people and the historical continuity of the Seder meal.

The story comes from the memoirs of Konrad Charmatz, a businessman and aspiring poet from Sosnowiec, Poland, who immigrated to Brazil after the war. His book, *Nightmares: Memoirs of the Years of Horror under Nazi Rule in Europe, 1939–1945* (Syracuse University Press, 2003) recounts the heroic struggle he endured to stay alive.

The day before Passover 1944, "a few shadows," including Charmatz, concealed themselves in an empty storage closet. Two accomplices stayed watch outside. The men worked in the dark so not to attract attention. They rolled into matzo dough precious bits of flour they had painstakingly gathered. A fire was lit to heat a tin pan. "The flames under the pan cast a soft glow on our faces," wrote Charmatz. "We stood by the fire as if around an alter, each of us absorbed in the holiness of the preparation." Their act of religious devotion would have cost them their lives had the Nazis discovered them.

The next night, in Block 3 of the Warsaw camp, just 100 meters from the Ghetto ruins, Charmatz saw "a new act of Jewish holiness" materialize. Twentieth Century Hebrew slaves gathered around a tattered white sheet covering two boards that had been placed over boxes. A few *Hagadot* discovered in the debris were distributed. They men abstained from drinking non-kosher wine as not "to stain the holiness of the holiday."

"In every generation there arise those who want to destroy us," mourned an observant Slavic Jew who served as the leader. "*HaKadosh, Baruch Hu, Matzileinu M'yadam*." With hearts that must hope or break, the enslaved men repeated, "*HaKadosh, Baruch Hu, Matzileinu M'yadam*." (The Holy One, blessed be He, rescues us from their hands).

Everyone received "a piece of matzo the size of an olive." Then in unison, "with great intensity and tear-filled eyes," they men said, "'And we shall cry out for our God, the God of our fathers, and He will hear our voices and will see our troubles and our suffering and will save us.'"

"The world of the largest Jewish community in Europe lies in utter ruin," wrote Charmatz. "From Gesia Street 43 and 66 we smell the smoke of burning human flesh. Hell is aflame on all sides of us and is swallowing up the last remnants of Europe's Jewish community. Yet here, in the very midst of our sufferings, matzos are being baked and Passover eve, the time of our freedom, is being celebrated."

The Seder teaches that though we Jews have repeatedly come face to face with pure evil, torment, and atrocities, God has not forsaken our people. And, in turn, starved, beaten, sick, and mentally and physically exhausted Jews have not forsaken God, even risking their lives to partake in the Seder. In this simple, yet heart-piercing act of devotion, at the very place that Jews had courageously fought to their deaths against a ruthless, murderous empire, modern Hebrews understood the Passover story to be their story too.

This Passover Seder, when you utter, "*HaKadosh, Baruch Hu, Matzileinu M'yadam*," think about the miracle Seder, and its powerful message of Jewish resilience in the fog of unspeakable horrors. Today, particularly, as a renewed surge of anti-Semitism swells in the United States and throughout the world, we must arouse our Jewish resilience once more.

Do not be silent, again our survival is at stake.

Justice Michael B. Hyman, a former President of the Decalogue Society, sits on the First Appellate District. A version of this article appeared in a newsletter for members of the Illinois Judges Association in 2012.

Model Seder
Monday, April 3, 2017
12:00-1:30pm

The Decalogue Society of Lawyers and Jewish Judges Association of Illinois

will host members of the Cook County Bar Association, Illinois Judicial Council, and Asian American Bar Association at a Model Seder to explain the meaning of Passover and enjoy a light lunch based on the foods of the Seder Plate.

This event is free but space is extremely limited and registration is required at www.decaloguesociety.org

Love Thy Neighbor: An Interfaith Gathering Against Hate

By Michael A. Strom

Chicago Loop Synagogue was desecrated by cowardly anti-Semitic hate just after midnight on Saturday, February 4. One of the front windows was smashed, swastikas were pasted on another one. The windows were quickly replaced. More importantly, the community responded just as quickly. There was an immediate outpouring of support from people of vastly divergent faiths - undoubtedly including some with more doubt than faith.

Just four days later, on February 8, Jewish United Fund/Jewish Federation of Greater Chicago organized an event at Loop Synagogue dubbed "Love Thy Neighbor: An Interfaith Gathering Against Hate." The love was palpable. The event was a beautiful, moving and uplifting success. Loop Synagogue's new windows on Clark Street were filled with much appreciated notes of support and encouragement. A huge crowd filled every seat, stood in the aisles, plus some "standing room only" areas for those lacking seats.

The event itself underscored an important theme throughout: An attack on any of our respective groups is an attack on all of us. Amen. From the side of the bimah, the synagogue's beautiful stained glass wall was a great backdrop for the event.

The following speakers provided words of hope, faith, encouragement and solidarity across races, religions and cultures: Dr. Steven Nasatir (President, JUF/Jewish Federation); Bishop Sally Dych (United Methodist Church); Jenan Mohajir (Interfaith Youth Core); Pastor Chris Harris (Bright Star Church): Rev. Dr. Otis Moss III (Trinity United Church of Christ); Rabbi Michael Siegel (Anshe Emet Synagogue); David T. Brown (Chair, Jewish Community Relations Council); Lee Zoldan (Loop Synagogue President), and Emily Sweet (Executive Director, Jewish Community Relations Council) who did a fine job as MC. Every one of the speakers at the event spoke from the heart.

Over the past two years, the rise in ugly, loud and outspoken anti-Semitism prompted us to start a separate Anti-Semitism Committee within Decalogue Society. We have plenty of disagreements on how to fight anti-Semitic hatred. To me, the Love Thy Neighbor event showed what I have long believed: the best way to fight anti-Semitic hatred is by also fighting hatred against Arabs, Muslims, African-Americans, Christians, women and the LGBTQ community to name but a few. Our neighbors were there for us on February 8. If we are not there for our neighbors when they need us, we are losing the battle. We are going to need our friends, and they are going to need us.

Michael Strom is a former President of the Decalogue Society

Holocaust and U.S. Civil War - Same Difference

By Patrick John

The late South African freedom fighter Steve Biko once said that the greatest weapon the oppressor has is the mind of the oppressed.

This is the first thing that came to mind when President Trump's communication director Sean Spicer defended Trump's Holocaust remembrance speech (which omitted any specific reference to Jews or anti-semitism) by informing us that the speech was written with the assistance of one of Trump's Jewish aides. In the Black community, when a Black person acts as an apologist for White racism, we call the person an "Uncle Tom". I don't know if Jews have a similar term for a Jewish person who acts an apologist for anti-Semitism. But if not, now may be a good time for someone to come up with one.

As a Black person I try to be sensitive to the suffering of other groups. I know how the dominant White society attempts to minimize or deny racism against Blacks. Trump's Holocaust remembrance speech did exactly that to Jews. When pressed on the glaring omission of Jews or anti-Semitism from the speech, the Trump camp responded by calling such criticism "ridiculous", "pathetic", and "nitpicking". In other words, according to Trump, not only was his speech not Holocaust denial, but those it was were being unreasonable. Jews were being way too sensitive; seeing a problem where none really exists. I mean afterall, the Nazis didn't just kill Jews, they killed lots of other people too. So what's wrong with a vague statement condemning the killing of all innocent people?

I'll tell you what's wrong with it. Because to say that the Jews were just one of many groups that the Nazis killed is like saying that Blacks are just one of the many groups of people who were enslaved throughout human history. It's like comparing a paper cut to a slit wrist and referring to them both as "injuries".

I recall many years ago I got into an argument with a White southerner who insisted that the American civil war was not about slavery. It was about "states' rights". I asked him just what did the states want the right to do. He conceded that at the time of the civil war the southern states wanted the right to maintain slavery. But he hastily added that if there wasn't a civil war at that time, there would've eventually been a civil war over some other issue, but he felt the larger issue was "states' rights", not slavery per se. I asked him to give one example in human history when people voluntarily went to war, risked their lives, and killed some of the their own family members, for some amorphous abstract right. He couldn't give me an example. I told him that's because none exist, and his states rights argument was just an attempt to sanitize the South's ignoble motives.

Decades later comes the Holocaust--an attempt to systematically eliminate the Jewish people. And some would have us believe that two thirds of the World's Jews were killed coincidentally? Some Holocaust deniers come right out and lie to our faces by declaring boldly (and incorrectly) that the Holocaust never happened. Trump has taken a more subtle and nuanced approach. But it's subtly makes it all the more sinister. Like someone who throws a rock and hides his hand. Trump's statement coupled with his later defense of it, sends a clear message to anti-semites that they need not fear interference or condemnation from Trump.

Groups that are victims of discrimination, like Blacks and Jews, need to make sure that we don't fall prey to such gaslighting attempts. We must resist any urge to second guess ourselves. Dominant groups doesn't maintain dominance by being open and honest. Deception is one of the primary ways dominant groups control subordinate groups. Even though Trump will never admit it, we know that his Holocaust remembrance speech was tantamount to Holocaust denial. Let's stop trying to get him to admit it. Let's just make sure that we never let such gaslighting attempts cause us to question our truth. Remember, our oppressor's greatest weapon is our minds. Let's not give them that.

Patrick John is a Decalogue Board member, member of the Committee Against anti-Semitism, and a blogger for The Times of Israel. This column appeared on February 6 as "Don't Waste Your Time on Deniers."

Illinois Holocaust Museum Special Events

Intelligence Challenges in the 21st Century
Sunday, March 19, 2:00-3:00pm

Film & Discussion: The Eichmann Show
Sunday, April 2, 2:00-4:00pm

Lecture: The Investigation and Prosecution of Nazi and Genocide Criminals
Thursday, May 11, 6:30-8:00pm

www.ilholocaustmuseum.org/pages/programs/events/

Decalogue's Committee Against Anti-Semitism
meets on the 3rd Wednesday of the month at 5:30pm.

General issues of anti-Semitism, with particular focus on campus incidents and social media are discussed in the context of appropriate action by Decalogue. Continued outreach to college campuses, including AEPi Fraternities, is planned, on our own and in collaboration with Hillel, Brandeis Center, and other community partners.

Email decaloguesociety@gmail.com to receive meeting notices.

Letter to the Editor

I am writing in response to the article by Jonathan Lubin in the Fall 2016 Tablets, entitled "When Do Governmental Sanctions Against Companies That 'Boycott Israel' Stifle Our First Amendment Freedoms?"

Contrary to Mr. Lubin's presentation, the boycott Israel Movement ("BDS") is ***not*** aimed at legitimate goals like "promoting the equal treatment of Arab citizens of the State of Israel." Its goal is the destruction of Israel, as anyone who has heard its signature rant, "Free Palestine from the river to the sea," will recognize. Its strategies -- to delegitimize Israel, demonize Israel, apply double standards to its conduct -- are anti-Semitic under the standards applied by the United States government, as well as by major Jewish organizations. Thankfully, Professor Steven H. Resnicoff explains these points in more detail in his article "BDS and Its Harms," also in the Fall 2016 Tablets.

I am specifically writing to address an erroneous legal point in Mr. Lubin's article: his assertion that "included within the freedom of speech is the freedom to boycott." From this erroneous premise, Mr. Lubin posits a constitutional right to "boycott Israel, Israeli companies, or companies based out of illegal settlements."

Parenthetically, I should note, the United States government has never declared Jewish settlement beyond the green line (which would include the Jewish Quarter of the Old City of Jerusalem and Hebrew University on Mt. Scopus) to be illegal or unlawful, although it does oppose continued settlement activity. Under the Oslo Accords, the settlement issue is to be negotiated with the Palestinian Authority, and the Clinton parameters for resolution at the Camp David and Taba negotiations put the major settlement blocks -- which hold the overwhelming bulk of all settlers -- and the Jewish neighborhoods of East Jerusalem, in sovereign Israeli boundaries.

As to boycotts and the First Amendment, the precedent Mr. Lubin relies on for his constitutional "freedom to boycott" is *NAACP v. Clairborne Hardware*, 458 U.S. 886 (1982). However, *Clairborne Hardware* itself expressly recognizes that boycott activity can be curtailed or prohibited where it is directed to an unlawful goal. "The right of business entities to 'associate' to suppress competition may be curtailed. [Citation omitted.] Unfair trade practices may be restricted. Secondary boycotts and picketing by labor unions may be prohibited...." *Clairborne Hardware*, 458 U.S. at 912.

In fact, the United States has long had in place anti-boycott laws to counteract participation by individuals and companies located in the U.S. (and their foreign affiliates) in the Arab League boycott of

Israel. The 1977 amendments to the Export Administration Act and the Ribicoff Amendment to the Tax Reform Act of 1976 prohibit, *inter alia*, refusal to do business with Israel or with blacklisted companies, and provide imposition of fines and imprisonment as punishment for violation.

Clairborne Hardware does not speak to legislation that curtails or penalizes refusals to do business based on national origin, like the anti-BOS legislation being passed in many states. Instead, *Clairborne Hardware* dealt with a boycott of white merchants in Clairborne County, Mississippi, instituted at a meeting of a local leaders of the NAACP, to secure compliance by civic and business leaders with federal law governing equality and racial justice. There was no federal or state statute that prohibited the boycott or otherwise protected racial discrimination. Instead, the theory on which the Mississippi Supreme Court upheld a damage verdict against the boycott leaders was a civil conspiracy theory, focusing on the group's concerted conduct consisting of speech, non-violent picketing and peaceful assembly.

The United States Supreme Court reversed because the rule enunciated by the Mississippi Supreme Court amounted to a complete prohibition on First Amendment protected conduct (speech and assembly) directed toward a lawful end, vindication of Fourteenth Amendment rights. "Petitioners sought to vindicate rights of equality and of freedom that lie at the heart of the Fourteenth Amendment itself. The right of the States to regulate economic activity could not justify a complete prohibition against a non-violent, politically motived boycott to force governmental and economic changes and to effectuate rights guaranteed by the Constitution itself." *Clairborne Hardware*, 458 U.S. at 914. "In this case [*Clairborne Hardware*], however petitioners' ultimate objectives were unquestionably legitimate. The charge of illegality -- like the claim of constitutional protection -- derives from the means employed by the participants to achieve those goals. The use of speeches, marches, and threats of social ostracism cannot provide the basis for a damages award." *Clairborne Hardware*, 458 U.S. at 933.

Nothing in *Clairborne Hardware* limits the ability of a state to declare that companies which boycott based on national origin, including boycott of Israel, are disqualified from state business or pension investment . None of the anti-BOS legislation proposed or adopted prohibits individuals or entities from assembling, speaking, or peacefully demonstrating against Israel or advocating against purchase of Israeli goods. But entities that engage in an unlawful boycott are subject to the lawful consequences imposed by law.

The importance of anti-boycott laws directed t the BOS movement is that they declare policy. In economic terms, the BOS movement has had practically no impact on Israel. But it is important that the BDS movement be understood for what it is, an anti-Semitic movement aimed at the elimination of the Jewish state. Statements of public policy, through enactment of laws, are extremely powerful in establishing public understanding.

Robert B. Millner

A Lesson in Principles

By Robert Karton

In 1966, I was an Assistant State's Attorney in Cook County. George Lincoln Rockwell, the head of the American Nazi Party, was leading white power demonstrations around the country. Dr. Martin Luther King, Jr. was leading open housing demonstrations in Chicago. Richard Ogilvie was the Cook County Sheriff running for President of the Cook County Board. Sheriff Ogilvie, ever the good politician, saw an opportunity for good will and publicity. He publicly said he would arrest George Lincoln Rockwell "on sight."

Rockwell was no fool. He, together with an entourage from the press, went to Sheriff Ogilvie's office at the Daley Center. His timing was perfect. The Daley Center was open to the public, Sheriff Ogilvie's office was a public office, and Rockwell had never been barred from entry into the Daley Center or the Sheriff's office. Rockwell and his entourage went to the public area of the Sheriff's office and asked to see the Sheriff. A deputy told the Sheriff that someone wanted to see him. The Sheriff came out of his private office and went to see the man who wanted to see him. When the Sheriff arrived, Rockwell said, "I'm George Lincoln Rockwell; I understand you're looking for me." The Sheriff, true to his word, promptly arrested Rockwell and charged him with disorderly conduct, criminal trespass to property, and resisting arrest (interfering with a peace officer in the performance of his duty). All the charges were misdemeanors.

I was assigned to prosecute the case when it came to trial in 1967. By the time of the trial, Sheriff Ogilvie had been elected President of the County Board, a significant feat for a Republican in heavily Democratic Cook County. I felt there was insufficient evidence of a crime to prosecute Rockwell and recommended that the State's Attorney, an excellent lawyer and superb public servant, drop the charges. The State's attorney told me he could not do that because the case was too political with the complainant being the Republican President of the County Board and the State's Attorney being a Democrat. He told me that if didn't try the case a different ASA would do so. He told me to try the case; just put on the evidence and let the jury convict or acquit as it may.

A couple of months before trial two eminent jurists, both Jewish, told me I should "hang that SOB (Rockwell)." I explained the facts of the case and told them my opinion that the charges should be dropped. They told me, "It doesn't matter; he's a Nazi." I reminded both of them they had each lost family during the Holocaust just because they were Jewish. I asked how they, upholders of the law that they were, could now tell me to "hang the SOB just because he's a Nazi." I asked them, "What's the difference between murdering Jews just because they were Jewish and convicting a Nazi just because he's a Nazi?" They both repeated, "It's different; he's a Nazi."

Well, I tried the case. Rockwell was represented by competent counsel. I put the evidence before the jury just as I reported it above. To my regret, the jury, all of whom said during voir dire that they hadn't heard of Rockwell and could give him a fair trial, found Rockwell guilty on all counts.

I was extremely upset by the verdict. I thought that if a jury could convict Rockwell of a crime for being a Nazi, a jury could convict me of a crime for being a Jew. I decided I could no longer prosecute and leave a person's fate in the hands of a jury system that had gone wrong. My friends told me I was being overly sensitive. They said my fear could never come to pass in America. At the time I thought, in my heart of hearts, they were right. But I left the State's Attorney's Office anyway. I just couldn't bring myself to prosecute any more. My faith in the jury system had been too shaken.

This was long before the election of 2016. I'm not so sure any more in my heart of hearts that it couldn't happen in America.

Bob Karton is a business litigator, Decalogue board member, and former President of the Union League Club of Chicago.

Student Action

Start Networking Even When In Law School

By Helen Bloch, *Second Vice President*

On February 28, 2017, Chicago-Kent Decalogue students were treated to a presentation by Decalogue member Judge Renee Goldfarb on the importance of networking. Organized by the Decalogue student chapter president Andrew Fullett, a free kosher lunch was provided to the attendees. Judge Goldfarb underscored the importance of maintaining relationships, including those fostered when in school. In using her story as an example, Judge Goldfarb related that the relationships she made early in her career helped catapult her to become the Deputy in her former division in the State's Attorney's office. In addition, she discussed how her involvement with bar associations such as Decalogue as well as charitable organizations were fulfilling on both personal and professional levels. She enjoyed her extra-curricular involvement and helping those in need. Professionally it enabled her to meet many people, which is essential to becoming a judge. Decalogue President Curtis Ross explained our program to match students with judges seeking externs and law clerks. Decalogue is happy to provide law students with programming on their campuses - just like the event it hosted at Chicago-Kent. If you know a law student or a recent grad, get them in touch with Decalogue - membership has its benefits!

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Young Lawyers' Corner

Legally, Can President Trump Really "Send In The Feds" To Chicago?

By Martin D. Gould

On January 24, 2017, President Donald Trump warned that: "If Chicago doesn't fix the horrible 'carnage' going on, 228 shootings in 2017 with 42 killings (up 24% from 2016), [he] will send in the Feds!" Can we expect federal troops or the National Guard to enter Chicago streets any time soon? The short answer is no, but the President does have options – and some of them can help make a difference.

The U.S. Constitution outlines the specific powers that the federal government has, with the remainder being "reserved to the States respectively" pursuant to the Tenth Amendment. While the federal government has broad powers to regulate commerce among the States, its power over non-economic matters, including violent crime, is far more limited. Addressing local crime, including violent crimes, is typically reserved to the States and local municipalities, unless those crimes involve the trafficking of guns, racketeering, and crimes committed across state lines. In addition to the Tenth Amendment, the Posse Comitatus Act of 1878 also restricts the government's ability to use the U.S. military as a police force. The Act does allow for exceptions, however, sending federal troops to Chicago poses many legal obstacles that make such an option highly unlikely, if not illegal. Most importantly, using oppressive force to reduce crime will only create greater distrust between minority communities and law enforcement.

To assist in reducing Chicago's violence, President Trump could increase investigations and prosecutions of gangs by the FBI, DEA and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and other federal agencies operating in the City. The U.S. Attorney's Office can also increase the prosecution for gun crimes, including the trafficking of guns from Indiana to Chicago. But if President Trump really wants to help create long term solutions, he should stop making threats and start working to deliver on his campaign promise to bring jobs and industry back to the country, including the depressed areas of the City. President Trump can provide the City with much needed funding for education and jobs training. In January 2017, the Department of Justice (DOJ) released a report outlining the reforms needed for the Chicago Police Department which would help rebuild trust between the police and community and lead to greater accountability and more effective policing. President Trump can pick up where the DOJ left off and provide funding and resources to the Chicago Police Department so that it can adequately enact the DOJ's reforms, better train its officers, and hire new ones to keep our streets safe.

Marty Gould is a Decalogue Board member and Co-Chair of the Young Lawyers Committee.

Trumping Sexual Harassment Law?

By Gail Schnitzer Eisenberg

Donald Trump made headlines last fall for, among other things, his archaic stance on workplace sexual harassment. Trump was criticizing Fox News' Roger Ailes's accusers---noting that Ailes had promoted them so to complain now was "sad"—when a reporter asked him if his position would change if it had been his daughter, Ivanka, sexually harassed at work. "I would like to think she would find another career or find another company if that was the case," he responded.

Eric Trump expanded on his father's comments, contending that his sister was too "strong" and "powerful" to "allow herself to be subjected to" sexual harassment. He also criticized Ailes's accusers' use of the courts to vindicate their rights, arguing that such issues should be taken up with Human Resources.

Ivanka, for her part, responded to her family's controversial statements by calling any harassment "totally inexcusable." Ivanka echoed her brother's emphasis on internal reporting as the best method of resolution, noting that "if [harassment] transpires it needs to be reported and it needs to be dealt with on a company level." She continued:

> We have a very strong HR team at the Trump Organization, who is equipped to deal with these issues if they arise and you hope they never arise, you hope you have a culture in which they don't arise, but when they do it needs to be dealt with swiftly.

While the Trumps are by no means attorneys, their comments may have a "huge" impact on how both employers and employees view sexual assault in the workplace. The emphasis on internal complaints in the face of pervasive sexual harassment and a hostile work environment may leave a victim feeling like she/he has nowhere to turn. They may feel additional pressure to leave their positions rather than force legal compliance, which may be economically impossible for some. Victims may be more hesitant than they already are to come forward with complaints, thinking that they exuded a weakness that invited the abuse.

An employee is not immune because she is "strong" or "powerful" in Eric Trump's parlance. A 2012 study showed that "women in positions of power are significantly more likely to experience harassment in the workplace." This makes sense when we stop asking what women could have done to avoid harassment and start recognizing harassment is a tool men use to keep women in a subordinate position.

The decision to stand up to a harasser is rarely an easy one for employees. Ivanka Trump, for example, has written about the "reoccurring nightmare" of harassment on her father's construction sights when she worked for him during breaks from college. "It didn't much matter how I responded," she wrote. "If I ignored the inappropriate remarks, I might come across as weak. If I responded too harshly, I'd be a tightly wound witch." Her saving grace would come when someone would tell the harassers that she was the boss's daughter. This is an advantage most victims don't have.

Victims may further be dissuaded from filing complaints given the Trump administration's likely civil rights enforcement priorities. Beyond his words, Trump's opinion on the need to enforce civil rights measures is demonstrated by his nomination of Jeff Sessions to lead the Justice Department. Sessions famously would not characterize "grab[bing women] by the pussy" without their consent as sexual assault." And Trump and his companies have been accused of mistreating women in at least twenty lawsuits.

So what do our civil rights laws say about sexual harassment? Although Title VII of The Civil Rights Act of 1964 does not expressly refer to sexual harassment, unwelcome sexual conduct sexual is actionable as sex discrimination under Title VII when it "affects the plaintiff's conditions of employment." Doe v. Oberweis Dairy, 456 F.3d 704, 715 (7th Cir. 2006) (citing Burlington Northern & Santa Fe Ry. v. White, 126 S.Ct. 2405, 2411–12 (2006); Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 66–67 (1986)); see also 29 C.F.R. § 1604.11(a). "The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed." Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 80 (1998).

There are two types of sexual harassment discussed in the caselaw: (1) quid pro quo and (2) hostile environment. "Quid pro quo harassment" occurs when "submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual," 29 C.F.R § 1604.11(a)(2), such as hiring, firing, promotion, failure to promote, demotion, re0assignment, significant change in benefits, suspension, progressive discipline, or change in compensation. See Ellerth, 118 S. Ct. at 2268 and 2270; Faragher, 118 S. Ct. at 2284, 2291, and 2293. Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257, 2268 & 2270 (1998); Faragher v. City of Boca Raton, 118 S. Ct. 2275, 2284, 2291, & 2293 (1998).

A Hostile Environment violates Title VII if it is "sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.'" Vinson, 477 U.S. at 67; accord Boss v. Castro, 816 F.3d 910, 920 (7th Cir. 2016). Either way, an employee need not "find another career or find another company" if she is subjected to sexual harassment in the workplace; she can vindicate her Title XII right to a workplace from discrimination. "Title VII affords employees the right to work in an environment free from discriminatory intimidation, ridicule, and insult." Vinson, 477 U.S. at 65.

In all cases, the sexual harassment must be unwelcome "in the sense that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive." Henson v. City of Dundee, 682 F.2d 897, 903 (11th Cir. 1982). Thus welcomeness is subjective but must be judged based on the available evidence.

Ivanka, for her part, claims to have a thick skin despite being haunted by harassment from decades ago. Ivanka's advice to victims should be taken in parts. "Learn to figure out when a hoot or a holler is indeed a form of harassment and when it's merely a good-natured tease that you can give back in kind," she advises. It is true that isolated offensive remarks do not constitute sexual harassment, Vinson, 477 U.S. at 67, but a victim should be warry about participating in the sexual conduct as it may undermine her assertion that the conduct was unwelcome.

Ivanka further excuses her harassers because she was working as a "young blonde" in the construction industry; "[i]t comes with the territory." While the trier of fact must consider how a reasonable person would react under similar circumstances in determining whether sexual harassment occurred, the reasonable person is not to fall victim to stereotyped notions of acceptable behavior. "In general, a woman does not forfeit her right to be free from sexual harassment by choosing to work in an atmosphere that has traditionally included vulgar, anti-female language."

Some of Ivanka's other advice may prove more useful. She advises readers concerned that she may be being harassed "confide in a female colleague and get her take. Or, approach the offending party directly, with an uninvolved coworker in tow, and say something like 'look, I know you're just messing around, but it makes me really uncomfortable, so I'd appreciate it if you find some other way to amuse yourself." Such actions can corroborate the victim's account and demonstrate that the harassers behavior was unwelcome, though a complaint or protest is not a necessary element of a claim. After all a victim may fear retaliation, which is itself prohibited under Title VII.

President Trump's advice to sexual harassment victims—that she find alternative employment—should be followed with caution. "The working conditions for constructive discharge must be even more egregious than the high standard for hostile work environment because an employee is expected to remain employed while seeking redress." Luckett v. Menasha Material Handling Corp., No. 01 C 8967, 2005 WL 2420398, at *12 (N.D. Ill. Sept. 29, 2005).

The Trumps' focus on internal complaints, on the other hand, has some foundation in the law. It is in a victim's best interest to make a contemporaneous complaint because it would not only lend credibility to the victim's account, but also to defeat an employer's likely defense that the employee failed to take advantage of the known, available avenues of redress. An employee's failure to do so can defeat a claim for constructive discharge, Vinson, 477 U.S. at 78 (Marshall, J. concurring), or block the employer from liability for the actions of non-supervisory employees, see generally Vance v. Ball State University, 133 S. Ct. 2434 (2013).

Ultimately, employees should not be getting their legal advice from Trump-family television pieces or books. That said, Trump's comments on sexual harassment may provide a window into how Trump's pro-business platform may translate into civil rights litigation.

Gail Schnitzer Eisenberg is a Decalogue Society Board member, Chair of the Legislative Committee and Co-Chair of the Amicus Curiae Committee. She is an associate at Stowell & Friedman, Ltd., where she represents employees in civil rights disputes. Read more about Gail in Chai-Lites on page 28. She can be reached at GEisenberg@sfltd.com.

The footnotes for this article are available on our website.

Immigration Ban Press Conference

On February 6, Decalogue joined our colleagues from the Arab American Bar Association and the Muslim Bar Association in condemning President Trump's immigration ban as irrational, discriminatory and unconstitutional, and his disparagement of a federal judge as an attack on the separation of powers.

"No one is bigger; no president, nobody, is bigger than the Constitution of the United States," declared Judge (ret.) William Haddad of the Arab American Bar Association.

Representatives of other bar associations and an array of Muslim and Arab American community and professional organizations also participated.

Read Decalogue President Curtis Ross' statement and view video of the press conference at our website www.decaloguesociety.org

Decalogue members (front row, l-r)
Michael Traison, President Curtis Ross, 1st Vice President Mitchell Goldberg

Jewish Holidays 2017

Holidays begin at sunset the previous day

March 12 Purim	September 21-22 Rosh Hashanah	October 12 Shmini Atzeret
April 11-18 Passover	September 30 Yom Kippur	October 13 Simchat Torah
May 31-June 1 Shavuot	October 5-6 Sukkot	December 13-20 Chanukah

Visit our website for fast days and festivals and details about activities and customs practiced on the various holidays.
www.decaloguesociety.org

Updates Regarding Mandatory Minimum Sentencing

By Adam J. Sheppard

A "mandatory minimum" refers to the minimum term of imprisonment that a judge must impose by virtue of a statute; that is, several statutes do not accord a judge discretion to impose a sentence below that which Congress prescribed. Mandatory minimums have long been controversial, primarily because they (a) tie a judge's hands; (b) are not tailored to an individual case or the individual; and (c) have significantly contributed to America's mass incarceration epidemic. The following is a look at some of the numbers on mass incarceration:

• **2.2 million:** The number of prisoners in the U.S. -- which has quadrupled from only 500,000 in 1980.

• **25 percent:** The share of the world's prisoners that are in the U.S., *even though we're only home to 5 percent of the world's population.*

• **60 percent:** The share of U.S. prisoners that are either African American or Latino. "About one in every 35 African American men, one in every 88 Latino men is serving time right now," President Obama said in an interview from 2015. "Among white men, that number is one in 214."

• **$80 billion:** The amount the U.S. spends each year to keep people incarcerated in America. By comparison, if $80 billion were available for use elsewhere, the U.S. could (a) provide universal preschool for every 3-4 year old in America; (b) double the salary of every high school teacher in America; (c) finance new roads, bridges, and airports; and (d) eliminate tuition at every one of the country's public colleges and universities.

See https://www.whitehouse.gov/blog/2015/07/15/president-obama-our-criminal-justice-system-isnt-smart-it-should-be (last visited 2/24/17).

Federal Government's Approach

Former Attorney General Eric Holder and President Obama had strongly advocated for reforming mandatory minimum sentences for non-violent drug offenders. The issue has gained bi-partisan support. In 2015, Senators Mike Lee (R-UT) and Richard Durbin (D-IL) and Representatives Raul Labrador (R-ID) and Bobby Scott (D-VA) co-sponsored the Smarter Sentencing Act (S.502 / H.R. 920). The bill is still pending. If passed, the bill will reduce certain 20-year, 10-year, and 5-year mandatory minimum drug sentences to 10, 5, and 2 years, respectively. Additionally, the bill will slightly expand a defendant's eligibility for "safety valve" relief in drug cases. (The "safety valve" provision, 18 U.S.C. § 3553(f), allows a defendant with no more than one prior criminal point to escape a mandatory minimum sentence if other conditions are present). Currently, the drug safety valve applies only to offenders who have no more than one criminal history point. The proposed amended safety-value would allow drug offenders who have three or fewer criminal history points to qualify for safety-valve relief.

Despite bi-partisan support for sentencing reform in Congress, early signs suggest that the current administration does not support sentencing reform. Attorney General Jefferson Beauregard Sessions III said this of the Smarter Sentencing Act:

> "The Senate bill would drastically reduce mandatory minimum drug sentences for all drug traffickers, even those who are armed and traffic in dangerous drugs like heroin, and provide for the early release of dangerous drug felons currently incarcerated in federal prison."

Families Against Mandatory Minimums ("FAMM") characterized that statement as "false." FAMM noted that the bill "does not reduce all mandatory minimum drug sentences[,] and it allows but does not require courts to release some prisoners early." See http://famm.org/justifact/jeff-sessions/.

At the State Level

Many states, including Illinois, are implementing their own criminal justice reforms. Pursuant to an executive order from Governor Rauner, The Illinois State Commission on Criminal Justice and Sentencing Reform presented 27 suggested reforms in December. The Commission recommended providing judges greater discretion to impose probation for certain offenses and amending certain mandatory sentences or sentencing enhancements. See http://www.icjia.org/cjreform2015/pdf/CJSR_Final_Report_Dec_2016.pdf. In January, 2017, the Massachusetts Sentencing Commission voted to recommend abolition of mandatory minimum sentences for all crimes except murder. http://commonwealthmagazine.org/criminal-justice/sentencing-commission-backs-repeal-of-mandatory-minimums/. On February 21, 2017, the Florida Senate Criminal Justice Committee voted unanimously for SB 290, which would end minimum mandatory sentences for certain nonviolent drug offenses. See http://www.miamiherald.com/news/politics-government/state-politics/article134127879.html. Nearly half of all states have taken part in similar policy reviews pursuant to a federally-funded program known as the Justice Reinvestment Initiative (implemented by the Office of Justice Programs). See https://www.bja.gov/programs/justicereinvestment/index.html.

Summary

Reform of mandatory minimum laws is a crucial component in addressing America's mass incarceration problem. Several states have already implemented such reforms. On a national level, whether there is truly enough bi-partisan support for repeal of mandatory minimums remains to be seen. Until that time, activists and practitioners must continue to diligently challenge mandatory minimum sentencing schemes.

Adam Sheppard is an officer of the Decalogue Society and serves on its editorial board. He is a partner at Sheppard Law Firm, P.C. which concentrates in defense of criminal cases. He is a member of the Federal Bar Association, Federal Trial Bar, and serves as a "panel" attorney in U.S. District Court pursuant to the Criminal Justice Act.

What Does the Second Amendment Really Mean?

By Mitchell Goldberg

The Second Amendment is a dominating and divisive issue in today's political discourse. The 2008 and 2010 Supreme Court decisions in *District of Columbia v. Heller* and *McDonald v. Chicago*, which struck down handgun bans as unconstitutional, have inflamed this discussion. Further, in light of mass shootings around the country in recent years, we have been inundated with demands for either limitations on gun ownership or limitations on government interference with gun ownership by private citizens. Statistics on gun ownership and gun crimes are constantly thrown at us, as is often emotionally charged rhetoric advancing one position or another. Yet, proponents and opponents of gun ownership in the United States rarely discuss, in a detailed fashion, the Constitutional framework or historical legal understanding governing the Second Amendment or its application to the states through incorporation in the Fourteenth Amendment's Due Process Clause. This article will briefly attempt to do so.

The text of the Second Amendment, as ratified by the States and authenticated by Thomas Jefferson, then-Secretary of State, reads: "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." Gun control advocates give significant attention to the "well regulated militia" wording. The general idea offered by such advocates is summed up in a 2012 New Yorker article called "So You Think You Know the Second Amendment?" That article argues (i) that the Second Amendment is divided into two clauses (the "militia clause" and the "bear arms clause") and (ii) that the "militia clause" trumps the "bear arms clause" because the Second Amendment merely "conferred on state militias a right to bear arms—but did not give individuals a right to own or carry a weapon." (See, e.g., http://www.newyorker.com/news/daily-comment/so-you-think-you-know-the-second-amendment.) Proponents of this argument seek to convince the public that the framers of the Constitution never intended to give the people an individual right to keep and bear arms.

Gun-rights advocates, perhaps not surprisingly, take the opposite approach, focusing on the "keep and bear arms" portion of the Second Amendment. Often the "well regulated militia" portion of the Amendment is deemphasized or ignored in arguments that the Constitution prohibits the government from regulating or even establishing reasonable limits on civilians having unfettered access to high-tech, military-grade ordnance. (*See e.g.*, Matt MacBradaigh, "Gun Control Myth: The Second Amendment Makes Clear Guns Aren't Just For the Military," PolicyMic, The Brenner Brief, The Bell Towers, Vocativ and Tavern Keepers, January 28, 2013.)

These respective positions are actually helpful in framing several important questions about the Second Amendment, namely:

(1) What does the term "militia" mean in the context of the Constitution and in the minds of the framers?
(2) Did the framers intend to give the right to "keep and bear" arms to individuals? And
(3) Having answered the first two questions, can the Second Amendment be broken into two clauses?

This article will attempt to answer each of these questions succinctly.

A. The Definition of the Word "Militia"

As discussed above, one of the main points of contention in the arguments surrounding the right of individual citizens to "keep and bear arms" is the use of the term "well organized militia." Most of these arguments assume definitions – often diametrically opposed to those their opponents use – such that discussions quickly break down as those of differing views start talking over each other. For example, some argue that the "well organized militia" is the U.S. Army or National Guard. (*See e.g.* David McGrath, "NRA version of 2nd Amendment lacks Common Sense," Chicago Tribune Publishing, June 5, 2015.) As with all discourse, establishing a common definition is necessary to facilitate rational discussion. So we will start with defining the term "militia" as used in the Constitution.

1. Why the term "well regulated Militia" cannot refer to the U.S. Army or National Guard

A well-established principle in Constitutional analysis is that the document must be read in its entirety. Accordingly, the Second Amendment, as it currently exists, must be framed in the context of the rest of the Constitution. This exercise can help us eliminate potential erroneous definitions of the term.

Article I, Section 8 sets forth the enumerated powers of Congress, which include the power "To raise and support Armies..." Separately, it authorizes Congress "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel invasions" and "To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States." Further, Article II, Section 2, setting forth the powers of the President, states "The President shall be Commander in Chief of the Army and Navy, and of the Militia of the several States, when called into the actual Service of the United States…" In differentiating the terms Army from Militia, on its face the Second Amendment cannot mean the army. It must mean something else. But under that plain language, the powers of Congress and the President were limited to only those parts of the "Militia" that would be called to national service (which includes states' National Guard forces – designed to be called up into national service). Therefore, the Constitution contemplates that the "Militia" is something greater than and different from the National Guard (which definitionally are those elements called into service of the United States.) Thus the term "Militia" refers to something other than the Army and National Guard.

Separately, the 14th Amendment necessarily seems to remove the term "well organized Militia" from applying to official state militias. Though long debated, the Supreme Court settled incorporation of the Second Amendment to the states through the 14th Amendment in *McDonald v. City of Chicago* (2010). The entire basis of the "incorporation doctrine," which successive Courts have used to apply various amendments in the Bill of Rights to the states, is derived from either the due process or privileges and immunities clauses of the 14th Amendment. And though successive Courts used "selective incorporation" to identify limits on states in interfering with these rights, if the "right to keep and bear arms" is a right of citizens, it too should properly apply to the states. If states cannot abridge the "right of the people to keep and bear arms," then, definitionally, the term "militia" cannot be satisfied with the mere existence of state militias. Accordingly, it must mean something else.

2. How the term "Militia" was popularly understood at the time of the Constitution

Historians dislike interposing of modern beliefs or ideas into the past. The tendency of some to do this is often referred to as the "Flintstone Fallacy" – after the popular cartoon which placed modern concepts in a pre-historic context. Just because people today tend to refer to the term "militia" as an institution of government does not make it so. Therefore, an exploration into the historical use of the term is important. And in this, it is key to understanding that our founders, who were citizens of the Crown of the British Empire, were legal students of British concepts – including that of the term "militia."

From at least the enactment of the English Bill of Rights in 1689 and continuing through the Revolutionary War period, the British Empire (a) maintained a large navy as the first line of defense of the Empire; (b) maintained a standing Army and various standing colonial Militias (including in each American colony) for defensive deterrence and to fight foreign wars; and (c) relied on informal civilian militias to provide additional domestic defense and to preserve domestic order.

The British Empire maintained various "official military" forts (e.g., Fort Carillon/Ticonderoga, Fort Niagara, Fort William Henry, etc.) for use by the standing Army and official colonial Militias in North America, under the ostensible control of local authorities, to protect the frontiers of its Colonial territories. However, of necessity, it also permitted local settler militias to be formed to defend local communities from actual or perceived threats. Examples of privately-built local forts constructed on individual homesteads (e.g., Prickett's Fort (West Virginia), Nutter Fort (Virginia), Light's Fort (Pennsylvania), etc.) are simply too numerous to list in this article.

Indeed, in 1766 (ten years before the Declaration of Independence), Justice William Blackstone specifically referenced this factual history when setting forth the common law definition of the term "militia," which he stated was an "auxiliary right of the individual, supporting the natural rights of self-defense, resistance to oppression, and the civic duty, to act in concert with his neighbors in defense of the state." (Blackstone, J., Commentaries on the Laws of England, Page139, Book the First, Chapter the First, London, 1766. (Emphasis added.) In 1774 (just before the American Revolution), the Colony of Virginia alone was speckled with literally hundreds of civilian militia forts, palisades, blockhouses, and stations where families would gather in times of danger. These civilian militia forts would be stocked with supplies and food that could last weeks and would be defended by civilian militiamen – able-bodied men – armed with muskets and other weapons (in several cases, some privately-owned cannons).

This legal and popular understanding of the term "Militia" was the one known to the likes of James Madison and the other framers, as they drafted the Constitution. Indeed, the debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators, show plainly enough that the term Militia comprised nothing less than all males physically capable of acting in concert for the common defense. Indeed, Alexander Hamilton, in his Federalist Paper No. 29, Concerning the Militia (New York 1788), specifically clarified that the phrase "a well regulated militia" meant something totally different than that of a "standing army" since "standing armies are dangerous to liberty" but "militias" consist of "citizens … who stand ready to defend their own rights and those of their fellow-citizens," and a "well-regulated militia" consists of an "excellent body of well-trained militia, ready to take the field" who would "be, little, if at all, inferior to [a standing army] in discipline" if such standing army was ever used by the State to try to take away the liberties of its citizens. Additionally, James Madison, in his Federalist Paper No. 46, *The Influence of the State and Federal Governments Compared (New York 1788)*, pointed out that the American people should not fear threats of force by an army regulated by Congress precisely because of the right of the citizenry to form militias by keeping and bearing arms and joining together in common defense: "The highest number to which, according to the best computation, a standing army can be carried in any country, does not exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms. This proportion would not yield, in the United States, an army of more than twenty-five or thirty thousand men. To these would be opposed **a militia amounting to near half a million of citizens with arms in their hands,** officered by men chosen from among themselves, fighting for their common liberties…" *(Id.)* **"Besides the advantage of being armed, which the Americans possess over the people of almost every other nation**, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of." *(Id.)* "Let us not insult the free and gallant citizens of America with the suspicion, that they would be less able to defend the rights of which they would be in actual possession, than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors." *(Id.)* Or, as the U.S. Supreme Court, citing to Blackstone's Commentaries, Adam Smith's Wealth of Nations, and Osgood's The American Colonies in the 17th Century, defined a militia as "A body of citizens enrolled for military discipline." *See United States v. Miller*, 307 U.S. 174 (1939). But of critical importance is the understanding that "ordinarily, when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time." *Id.*

Based on the above, it is clear that the word "militia" likely refers to the common-law definition of "militia" set forth by Justice Blackstone – which, as stated, was all private individuals capable of forming groups that would gather together for self-defense.

B. The Right to Keep and Bear Arms is an Individual Right

Now that we have a working definition of the term "Militia" as popularly understood at the time of the drafting of the Constitution, we turn to whether the right stated in the Second Amendment – to keep and bear arms – is a "communal right" or an "individual right." To do this, we should look at these rights in the context of the other rights identified in the Constitution.

The entirety of the Constitution, it is understood, arises from the principles enunciated in our nation's founding document, the Declaration of Independence, in which Thomas Jefferson adopted, as a basis of our government's right to exist, the principles of the social contract:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. - That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed… (Emphasis added.)

As John Locke stated in his Second Treatise on Government, every just society exists based on a "social contract" where each man (citizen) surrenders certain freedoms (e.g., the freedom to take the property or happiness of others by overpowering and/or killing them - as animals do in their natural state) in exchange for the expectancy that others cannot do the same to them. Under this social contract, the purpose of government is to protect all of its citizens impartially – preserving certain inalienable rights (life, liberty, property, etc.) while preventing each man from acting as his own judge, jury, and executioner.

With this lens, historians and jurists understand the purpose of the Bill of Rights was to expound on the above principles and to set forth explicit language in their goal of limiting government interference with the preexisting inalienable rights of the kind recognized in this country's founding document – the Declaration of Independence.

(continued on page 22)

Second Amendment *(cont'd)*

Indeed, the Supreme Court, when it took up the issue of the District of Columbia's handgun ban in *Heller*, engaged in a textual analysis of the words "right of the people," as used in the Second Amendment, to determine that it must apply to individual (rather than collective) rights. As the *Heller* Court observed, those identical words – "right of the People" - are used in other Bill of Rights Amendments that the Supreme Court has previously and unequivocally defined as individual rights: In the First Amendment's Assembly-and-Petition Clause the term is used as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the *right of the people* peaceably to assemble, and to petition the Government for a redress of grievances. (Emphasis added.)

And the Fourth Amendment's Search-and-Seizure Clause states:

The *right of the people* to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Emphasis added.)

Thus, the *Heller* Court's determination that the identical language as used in the Second Amendment should also refer to individual rights is hardly baseless or absurd. Further, the *Heller* Court was certainly not the originator of the concept of the right to bear arms as an individual right.

The historical analysis above about privately owned citizen forts shows that Common Law presumed a right to bear arms. This extends back to at least the English Bill of Rights in 1689, which explicitly refers to an individual's right to be armed when it reversed King James II's presumably illegal disarmament of protestants, explicitly granting them the right to "Arms for their Defence suitable to their Conditions and as allowed by Law."

Moreover, a review of antebellum American case law shows a plethora of state and federal decisions all recognizing an individual right to be armed. *See, e.g., Nunn v. State of Georgia* (1 Ga. (1 Kel.) 243 (1846) (Georgia Supreme Court deeming state ban on individual gun ownership unconstitutional as Second Amendment violation.) The Supreme Court even addressed the issue, in dicta, in the infamous decision of *Dred Scott v. Sandford*, 60 U.S. 393 (1857). There, the Court reasoned that if it held individual African Americans were entitled to all the rights and benefits under the Bill of Rights, it would be forced to hold them entitled to "the full liberty of speech in public and in private upon all subjects upon which [every other] citizen might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went."

The Court recognized this individual right more explicitly in *U.S. v. Cruickshank*, 92 U.S. 542 (1876) ("'This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second amendment declares that it shall not be infringed…"). Indeed, for over a century, the Supreme Court has recognized that "the law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the 'Bill of Rights,' were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had, from time immemorial, been subject to certain well recognized exceptions arising from the necessities of the case." *Robertson v. Baldwin,* 165 U.S. 275 (1897).

Given the above, stating anything approaching what periodicals like the New Yorker assert (e.g., that "the amendment conferred on state militias a right to bear arms—but did not give individuals a right to own or carry a weapon.") is simply unsupported by the factual and legal history of the Second Amendment.

C. In the Context of the Above, The Words "Well Regulated Militia" Do Not Trump the Right to Keep and Bear Arms

Taking the above in its entirety, attempts to break down the Second Amendment into separate clauses is erroneous. Using (i) the historically understood term "Militia" (defined by Blackstone as all citizens capable of service), (ii) recognition that the right to keep and bear arms is an inherent right pre-existing the Constitution; and (iii) the context of the use of "Militia" in Articles I and II of the Constitution, the Second Amendment's intent becomes clear: Though the Congress and the President have authority to call up the citizenry in the service of this country (e.g. selective service, the draft, etc…), the government cannot interfere with groups of private citizens from banding together in times of danger.

Even if the clauses could be broken down, the "keep and bear arms" clause would trump the "militia" clause. In the context of the Second Amendment, the "militia" clause is merely an explanatory reason for the "keep and bear arms" clause. It does not make sense for the reason to trump the rule. It only makes sense the other way around. If "the right of the people to keep and bear arms" were truly ambiguous, as the above discussion is intended to refute, the militia clause might resolve the ambiguity. But there is no ambiguity. The plain meaning of "people" having the right to keep and bear arms means individual people, not merely some collective group of people.

Indeed, events about a dozen years ago, when Hurricane Katrina devastated the U.S. Gulf Coast, illustrate the proper intent of the Second Amendment. At that time, civil society simply broke down. Law enforcement officers had either abandoned their posts or were unable to cope with the devastation. Further, neither state nor federal forces were able to easily access those communities that were devastated. And citizens were left victims of those law-breakers with guns. Indeed, for the days following the hurricane, stores were looted, homes were robbed, and people were beaten by groups of armed thugs brandishing weapons. The only people who stood any chance of not being victims were those lawfully armed. And they exercised the true intent of the Second Amendment: to band together with their neighbors for mutual protection.

Conclusion

The phrase "well regulated militia" in the Second Amendment cannot be interpreted to mean the same thing as the army or National Guard (which constitutes only those portions of the Militia referenced in Articles I and II of the Constitution, called forth into the "actual service of the United States"). It is also separate from state militaries. Rather, along with the rest of the Bill of Rights, the Second Amendment sets forth restrictions on governmental interference with personal liberties. This "right" to keep and bear arms in the Second Amendment uses the same language as two other deeply held "a fortiori" rights that rest with individuals. The language of the Second Amendment is not mere surplusage (an abhorrent proposition under ordinary rules of construction). And the term was commonly understood to refer to all persons capable of defending themselves, their communities, their states, and their country.

This is not to say that there is a very appropriate discussion regarding whether and to what extent Congress (or the States) can regulate or establish reasonable limits on the Second Amendment, subject to similar heightened scrutiny tests that would be applied to other inalienable rights set forth in the Bill of Rights. Moreover, as *Heller* suggests, certain weapons of war may even be outside the scope of Second Amendment protection. With its October 2015 decision in *Shew v. Malloy*, the Second Circuit entered this discussion, applying heightened scrutiny to New York and Connecticut statutes enacted after the December 2012 Newtown school shootings to ban certain types of semi-automatic weapons and large-capacity ammunition magazines. In *Shew*, the Second Circuit upheld the core elements of the each statute while also striking down a provision of the New York law regulating load limits and a specific provision of the Connecticut law prohibiting a specific kind of non-semiautomatic weapon as unconstitutionally infringing upon the Second Amendment.

The Fourth Circuit joined this discussion in *Kolbe v. Hogan*, 813 F.3d 160 (4th Cir. 2016), where a divided panel applied strict scrutiny in analyzing a challenge to Maryland's bans on "assault weapons" and large-capacity magazines. This was recently vacated by an *en banc* panel of the 4th Circuit, which held such devices are outside of Second Amendment protections. Nonetheless, the *en banc* Fourth Circuit still applied intermediate scrutiny in upholding Maryland's ban. Until the U.S. Supreme Court chooses to step into the fray (having declined to take up *Shew)*, the analyses of the Second and Fourth Circuits may instruct a more constructive national conversation that will focus on narrowly tailored gun control restrictions that could survive heightened scrutiny, rather than the kinds of blanket bans struck down in *Heller and McDonald*. And such a conversation is needed. After all, no rationally prudent person can deny the tremendous degree to which technology has transformed firearms (into vastly more efficient and easier to use weapons) over the past two centuries However, the factual and legal history of the Second Amendment also prevents those same rationally prudent persons from denying the automatic corollary – namely, that there has always been a fundamental individual right to own and carry firearms, subject to reasonable restrictions.

Mitchell Goldberg is Decalogue's 1st Vice President.

Decalogue To Assist Members Grow Their Practices

By Helen Bloch

Kol Yisrael Arevim Zeh Bazeh- the Talmud in Shevuot 39a concludes with this Aramaic phrase that means all of Israel are responsible for one another. Decalogue takes this message to heart. Our Board continues to find ways in which we can help our fellow members flourish professionally. This year in particular we have come up with innovative programming to bring members together.

One such event took place on November 17th. It was a members-only elite networking lunch that paired practitioners with their fellow members of differing practice areas and then in a final round of networking sat members of similar practice areas together. The goal was threefold: 1) to refer business to one another; 2) to get to know one another and to become familiar with the practice areas of fellow members who we might see at various events; and 3) to assist our fellow members with solutions to challenges that we may have encountered previously.

Decalogue is planning monthly socials at local establishments to offer opportunities for our members to mix and mingle with one another. In May we are co-sponsoring an event with the Women's Bar Association to learn from an expert on increasing business opportunities through LinkedIn.

We are here to serve our members. Please share ideas with us that you may have for increasing business opportunities for our members. And, if you have any time to spare, please join our events committee. If we do not help one another who will!

Helen Bloch is 2nd Vice President of Decalogue

2017 Vanguard Awards
Thursday, April 6, 11:30am

Honoring
Michael C. Aguhar
Chicago Legal Clinic
Susana Darwin
Justice Robert E. Gordon
David Herrera
Hon. Patricia Brown Holmes (Ret.)
Sana'a Hussien
Andrea Kramer
Sang-yul Lee
James D. Montgomery
National Immigrant Justice Center
Tony Shu
Sufyan Sohel
Adrian Vukovich

Tickets $70 at www.decaloguesociety.org

Did you know that member-to-member referrals are one of the benefits of your Decalogue membership?

Here's our latest success story:

"Former Decalogue President Joel Chupack recently referred a federal criminal investigation to another former Decalogue President, James A. Shapiro, a former federal prosecutor. Pursuant to ethical guidelines, a referral fee was paid. So far, the representation has been very successful, with the avoidance of the client waiving his Fifth and Sixth Amendment rights by speaking to federal agents without counsel."

Welcome New Members!

Audrey Allen
Aaron Barkoff
Aggie Baumert
Pamela Brown
Eric Chesser
Stuart Clarke
Jeffrey Michael Cohen
Joseph Lawrence Cohen
John Crabbs
Thomas Maloney Cushing
Steven Daglas
Bradley Dlatt
Alexander Maxwell Dobkin
Jay Dolgin
Elena Duarte
Sidney Ezra
Benjamin Feilich
Stephen Jason Feldman
Taylor Feldman
Emily Catherine Fishman
Beth Fox
Melissa Fox
Naomi Frisch
Jennifer Gilbert
Jonathan Goldberg
Aaron Wolf Kaminsky Goldman
Howard Goldrich
Zachary Greening
Jill Greenwald
Robin Grinnalds
David Grosby
Tyler Gurss
Beverly Halloran
Joel Hellman
Malka Rachel Hirsch
Saleemah Jones
Magdalena Josipovic
Jessica Jurevis
Aliza Kaliski
Joanna Kluzowska
Robert Korenkiewicz
Milner Laura
Alex Levin
Maura Levine
Denise Loiterstein
Michael Margolies
Aaron J. Massie
Ben Moss
Jeremy Neil
Jeremy Nevel
Eddie Obissi
Joe Okon
Mitchell Paglia
Sarah Diane Peaceman
Zac Pestine
Jeremy Posner
Sean J. Powell
Bruce Heimann Ratain
Berton Ring
Dan Robot
Pamela Saindon
Jody Schneiderman
Michael Sciaccotta
Olga Sheinman
Talia Shifrin
Rachel Shirley
Warren Silver
Michelle Silverthorn
Darren Smith
Lawrence A. Stein
Thomasin Sternberg
Sagar Thakkar
Marly Tristano
Linda Ellen Unger
Alex Vicari
Michael Weil
Shaina Wolfe

Are you looking to renew your Decalogue membership or join as a new member,
but you are just not sure what types of memberships we offer?
Well, here are our different membership options and one will be right for you.

You can renew or sign up for an individual membership,
for either one, two or three years at a time. ($140, $240, $360).

A discounted rate of $60 is available for young lawyers (up to 4 years after admission),
retired lawyers, and lawyers who live and practice outside of the metro Chicago area.

A firm membership is only $1000/year and can include as many individual attorneys
within the same firm as the firm designates.

**Lastly, we have a new membership category for those who want to prepay now
for a lifetime membership. If you are interested in becoming a Life member,
the cost is $3600 (which can be paid in up to 3 installments)
and you will be a member for the rest of your life; life members will also get a nice plaque
to commemorate your membership and dedication to Decalogue.**

So what are you waiting for? Join or renew already! www.decaloguesociety.org

2016 Chanukah Party




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What Does Decalogue Do?

The Decalogue Society of Lawyers is the oldest Jewish Bar Association in the country, founded in 1937 to advance and improve the law, the legal profession, and the administration of justice; to foster friendly relations among its members, and between its members and other members of the bar, the courts, and the public; to maintain vigilance against public practices that are antisocial or discriminatory; and many other noble purposes.

But what have we achieved?

Decalogue Programs

Campus Anti-Semitism Program
Campus support program to offer legal advice to students harassed because of their Jewish identity or pro-Israel activities.

Law School Scholarships
At 6 Chicago schools and the University of Illinois, and a fellowship at Hebrew University in Jerusalem, through the Decalogue Foundation.

Continuing Legal Education Series
Including special seminars on legal issues of importance to the Jewish community:

- The Intersection of Jewish and Secular Law
- Mezuzahs in Condominiums
- "Jewish Clause" in Inheritance
- Jewish Divorce
- Domestic Violence in the Jewish Community
- Child Sexual Abuse in the Jewish Community
- Sex Trafficking in the Jewish Community
- Hate Crimes Legislation
- Religious Conscience Laws
- US-Iran Sanctions
- Fighting Terrorism in the Courtroom
- Israel's Right to Self Defense
- Who Owns the Water in the Middle East?

Cross-Cultural Programming

- Attorneys of Faith Seminar
- Jewish and Muslim Issues in Family Law
- Tisha B'Av/Ramadan Break Fast
- Jewish and Arab-American Women in Law

Decalogue Successes

Participated in an appeal before the Illinois Appellate Court First District challenging the propriety of a "Jewish Joke" during closing arguments.

Participated in an appeal before the US Court of Appeals affirming the right of a Jewish family to have an American court hear their claim against a US corporation for property siezed in Egypt.

Participated in an appeal before the US Court of Appeals to ensure the right of Jews to afix mezuzot on their doors in condominium buildings.

Advocated for mulicultural sensitivity training for Cook County judges after a Jewish attorney was held in contempt for failing to appear at an emergency hearing on Yom Kippur.

Advocated for equal services for Jewish students taking the ACT, LSAT, and MPRE tests on Sunday.

Supported students at Loyola University protesting student government's passage of a BDS resolution without proper notice.

Convinced the Chicago Park District to reschedule summer program registration that was only on Shabbat and Yom Tov.

Pressured Chicago police to upgrade anti-Semitic tagging of garages in West Rogers Park as a hate crime.

Sounds good? Join now or renew your dues in May. See page 24 for more information

Chai-Lites

News About Busy Members Coming, Going, Celebrating, Being Recognized, Continuing To Volunteer, Acquiring More Titles And Running And Running To The Office And Sometimes Even For Office! You Should Be In Our Next Tablets!

In January of 2018, **David Lipschutz**, a Decalogue Board member and *Tablets* Co-Editor, will be directing the play, *Speech & Debate*, with Brown Paper Box Co. David is a company member and Board President of Brown Paper Box Co. In his 'side' acting career, perhaps David has found the perfect outlet for the stresses lawyering can bring—dramatic expression! For more information about the play, please visit brownpaperbox.org. And…it is not too early to enter this event in your 2018 calendar to insure you don't miss it!

Schoenberg Finkel Newman & Rosenberg, LLC elected **Adam Glazer** as its Managing Partner. With deep roots in Chicago, Schoenberg Finkel is a general service firm emphasizing the development of long-standing relationships with its clients, ranging from public corporations to entrepreneurial individuals. We wish Adam well as he takes on such a substantial role in the future development of the firm. Perhaps, if he becomes stressed along the way, he might consider auditioning for a role in one of David's plays.

Once again, Justice **Jesse G. Reyes** of our Illinois Appellate Court's First District has been recognized for his contributions to the judiciary and the profession in general. This time he received a special award and was the keynote speaker at the Secretary of State's 2016 Celebration of National Hispanic Heritage Month. Other facts of interest about Justice Reyes's career are that he will observe his 20th anniversary of service on the bench in December of 2017—and that he was the first Justice of Hispanic heritage to be elected to the Illinois Appellate Court where he has now served over four years, having celebrated his fourth anniversary last November.

And the clock on this Board member's judicial career has just started ticking: Hon. **Myron F. Mackoff** was recently appointed to the position of Judge of the Cook County Circuit Court assigned to the Domestic Relations Division. We congratulate him on this honor and wish him well in such an important chapter of his legal career.

The Decalogue Board voted to sign on again, for the new year of 2017, as a Bar Partner of the Women Everywhere: Partners in Service Project, co-founded in 1999 by Board Member **Sharon Eiseman** when she was the WBAI President. Annually, Women Everywhere sponsors two major projects: an Education Day Project (on April 27 and 28 this year) at various Cook County courthouses for female students who are high school seniors, and Volunteer Service Day during the last week in May. As a Bar Partner, the Decalogue, through its Board members and its general membership, will participate in providing services to various NFP agencies that serve victims of domestic violence and sexual assault and women and their families who are struggling to survive on limited resources. We are hopeful that Decalogue's dedicated Social Action Co-Chairs **Jessica Berger** and **Nicole Annes** will again, this year, assist in effectively coordinating agency assignments for our members who volunteer.

No surprise: member **Charles Krugel** continues to be a darling of lawyer/law firm and business news publications. Specifically, Gwen Moran from *Fast Company* (January 18, 2017) and Nicole Fallon Taylor from Business News Daily (January 14, 2017) noted that Charles was quoted in articles entitled The Right Way To Fire Someone, and You're Being Sued: A Guide to Handling a Business Lawsuit.

We owe SuperThanks to the SuperLawyers project for recognizing the talents of a number of our Board members and Decalogue members. The following were named 2017 Rising Stars: **Nicole Annes** (in tax law); and **Adam Sheppard** (in criminal defense), both of whom serve on the DSL Board. The following were named Super Lawyers: Decalogue's First Vice President **Mitchell B. Goldberg** (in securities litigation); and members **Steven Elrod** (in land use and zoning); and **Mark Karno** (in personal injury). If you were selected for one or both of these categories or similar ones but are not identified right here, it is because you did NOT let us know! If you don't speak for yourself, then you may not be noticed as our budget is too modest for us to hire a sleuth.

Another Illinois Rising Star for 2017—and similarly noted by Chicago Magazine—is Board member **Gail Schnitzer Eisenberg**, selected for her work in employment litigation, and she was also recognized by Leading Lawyers Magazine as a 2017 Emerging Lawyer in employee-side employment law. After spending several years at the Denton law firm, Gail left to join Stowell & Friedman, Ltd. in October of 2016 as an associate. At her new firm, Gail is practicing in an area of law near and dear to her heart as well as appropriate for her legal skills and training: representing employees in civil rights disputes related to discrimination, sexual harassment, retaliation, and unequal pay based on protected status. We trust Gail has found her 'calling' and we wish her well in this new endeavor.

And more about **Gail Eisenberg** because she apparently doesn't sleep or eat much (no time for either): Gail was reappointed to a second term as Chairperson of the Young Lawyers Group of the Trades, Industries, and Professionals Division of the JUF/Jewish Federation of Metropolitan Chicago. AND she has been slated by the New Trier Citizens League as a candidate for New Trier Township Trustee in the April 4th 'non-partisan' election.

As an initiative of Decalogue's Anti-Semitism Committee, Rising Star Super Lawyer **Adam Sheppard** will be lecturing at Northwestern University in April on student rights in school disciplinary proceedings.

Second Vice-President **Helen B. Bloch** is scheduled to speak on April 25th to the Illinois chapter of NELA, the National Employment Lawyers Association. Helen will address the intersection between workers' compensation and employment law. Given the gravitas of NELA in the employment law community, being asked to share one's knowledge on such a critical subject is indeed an honor and it also reflects the Association's confidence in the value of Helen's insights.

For those of you who have followed **Chuck Aron's** marathon career of running marathons, you will be delighted as all of us are that the Chicago Area Runners Association recently announced Chuck Aron as the recipient of this year's CARA Lifetime Achievement Award! Chuck's influence on CARA and the Chicago running community at-large has been immense and to this day still continues through his fundraising efforts, active participation in the CARA Runners' Choice Circuit and his long time status as a group leader for CARA Training Programs. If we could only keep up with this Decalogue member, we'd join him on his next run—or perhaps we will wait until he slows down.

Past President **Joel Chupack** has once again churned out a well-written, useful practice guidance in his recently published article "Do Good Fences Make Good Neighbors?" that appeared in the February 2017 issue of the ISBA's Real Property Newsletter. Maybe, for our benefit, he deserves a regularly dedicated space for a Tablets column.

Board member **Patrick John** is now a blogger at *The Times of Israel,* an American Israeli on-line newspaper launched in 2012. His first post "Black Christian anti-Semitism: A Sad Irony" appeared in the January 23 edition of that news publication. Patrick's most recent blogpost, on Holocaust Denial, a subject of continuing relevance but also of recent urgency, is reprinted in this edition of the Tablets.

Past President and still active 'ex-officio' Board member **Deidre Baumann** joins others from Decalogue in continuing to educate her peers in the law. On February 10, Deidre was a speaker on the topic of "The Public Duty Rule in Illinois after *Coleman v. East Joliet Fire Department*" at ITLA's Seminar on "Complex Litigation and Civil Liability". And yet another Past President and still active Board member to add to the list of talented CLE presenters is **James Shapiro** whose well-received presentation at a Decalogue program was on "Entrapment: Are You Predisposed?"

SPOTLIGHT on long-time Member, the **Hon. Arthur L. Berman**:

Art Berman has been an attorney since 1958. He was—and possibly remains—one of Illinois' longest-serving legislators. He was a State Representative in the Illinois House for eight years, from 1968 to 1976, and a State Senator for 23 years, from 1976 to 2000, thus crossing the Millennium divide while in Office! Art has also been a devoted BOARD member of the Jewish Federation, the Anti-Defamation League, Israel Bonds, AIPAC and Emanuel Congregation, obviously and ironically never getting BORED all these decades. As for the Decalogue Society Board: being omnipresent for more years than any of us can remember and in attendance at every Board meeting, he was, a few years ago, declared Parliamentarian for Life of the DSL—and we make him work hard for his modest salary of a few occasional cookies.

We applaud Art for his lengthy record of public service and remind him to stay strong and healthy and to keep playing tennis. If he follows our advice, he will be able to stay on the Board and keep us in compliance with Robert's Rules of Order, or more precisely, Art's Rules of Order!

Joelle's Restaurant Review: The Good, the Bad, and the Ugly

By Joelle Shabat
Decalogue Board Member

For those of us who eat only kosher meat, our restaurant options throughout the Chicagoland area are somewhat limited. While Taboun Grill and Milt's Barbeque for the Perplexed are standby favorites, my husband, Victor, and I were quite excited when we learned that a new kosher establishment would be opening close to our East Rogers Park abode – particularly an Argentinian steakhouse – called **Evita's Kosher Argentinian Steakhouse**. While eager to try it out, we bore the cost of eating at a "gourmet" kosher establishment in mind, and waited until a special occasion arose – in this case, Victor's 35th birthday. We went to the steakhouse during its soft opening phase.

The Good
For an appetizer, we ordered the costillias a la cerveza, which is a stout and herb braised soft short rib. This was the most enjoyable part of the meal. The stout tenderized the meat, which made the frequently tough kosher meat soft and enjoyable. The serving provided a sufficiently generous portion for sharing. The meat was rich, flavorful, and soft. Although the plate was without much decoration or garnish and, therefore, lacked some aesthetic value, we thought this was permissible during the soft opening phase.

The Bad
Unfortunately, we should have just stopped at the appetizer. For our entrees, we ordered the costillar al horno and bife tropical. The costillar was two braised long ribs with the chef's signature sauce (at that time, there was no garlic and red pepper rice served with the dish). The ribs were okay. However, there were no side accompaniments and no garnish accompanying this dish. It was "just the beef" which, while sometimes wonderful, is more disappointing when the dish lacks excitement. The taste of the meat did not evolve and change over the course of the meal, leaving you with a monotonous and unadventurous flavor.

The bife tropical consisted of portions of beef ancho steak in a torta frita bowl with a mango and cilantro reduction served with patacones and criolla sauce. The meat was served in unwieldy tough chunks. The person attempting to enjoy the dish couldn't just pick up a piece with a fork and eat it because of its inconsistent knife cuts. Once wrangled, the meat itself was extremely tough to chew—simultaneously oily and dry.

In terms of its flavor, the "tropical" nature of this meat tasted worse than a premade stir fry sauce for sale at the Evanston Jewel. The "mango" element of freshness you were hoping for tasted like sappy sugary sweetness and was nothing like authentic and refreshing mango. The taco shell the beef arrived in tasted like a hybrid of cardboard and fried air, while the patacones on the side were inedible—somewhat reminiscent of Styrofoam noodles masquerading as processed hunks of corn meal with inedible plantains on the side. Neither entrée had any garnish or side accompaniments. There was nary a vegetable in the house.

The Ugly
Evita's Kosher Argentinian Steakhouse does not have a liquor license – or, at least, it did not have one during the soft opening phase – and there were no adult beverage accompaniments. While dear friends of mine with an excellent wine cellar appreciate this feature, those of us who are less fortunate would appreciate some type of beverage to wash all of this down. At the time, there were also no dessert options, leaving us disappointed with the meal and unable to blow out any sort of birthday candles.

The Bottom Line
All in all, this rather lackluster meal cost us close to the same amount of money we typically budget to host guests for the High Holidays without nearly as much fun and enjoyment. While we have not returned since the restaurant's soft opening, I am hopeful that these setbacks have been improved, and that customers are leaving satisfied and full.

Calendar

Monday, March 13, 12:00-2:00pm
JLI Purim Party *(co-sponsored by Decalogue)*
Dentons, 233 S Wacker
Tickets $18
RSVP required to info@jlichicago.com

Wednesday, March 15, 12:15pm-1:15pm
CLE: Mediation Q&A
Speaker: Hon. Jerome M. Orbach (ret.)
134 N LaSalle Rm 775
1 hour Professional Responsibility credits pending
Register at www.decaloguesociety.org/services/legal-education

Thursday, March 16, 12:0pm-1:30pm
Study in the Loop with Rabbi Vernon Kurtz
134 N LaSalle Ste 1430
RSVP: Lennie Kaye 847-432-8900x221

Monday, March 20, 5:30pm
Decalogue Events Committee
134 N LaSalle Ste 1430

Wednesday, March 22, 12:15pm-1:15pm
CLE: Family Law IMD
Speaker: Judge Grace Dickler
134 N LaSalle Rm 775
Register at www.decaloguesociety.org/services/legal-education

Wednesday, March 22, 5:30-7:00pm
Decalogue Social
188 W Randolph, Chicago

Monday, March 27, 7:30pm-9:00pm
CLE: Social Media: Do The Laws Adequately Protect Our Kids?
See Page 13 for details

Sunday, April 2, Time TBA
Pesach Mitzvah Project with Maot Chitim
We will deliver meals to a senior home in Chicago
Watch your email for details

Monday, April 3, 12:00-1:30pm
Decalogue Model Seder
33 N LaSalle, Vault Room
This event is free but space is very limited and registration is required at www.decaloguesociety.org

Thursday, April 6, 11:30am
Vanguard Awards
Honoring Justice Robert Gordon (and others)
Standard Club, 320 S Plymouth
$70 Buy tickets through www.decaloguesociety.org

Wednesday, April 26, 5:30-7:00pm
Decalogue Social
188 W Randolph, Chicago

Wednesday, April 26, 11:30am-1:30pm
CLE: 2017 Ethics Update
Speaker: Wendy Muchman, ARDC Director of Litigation
Location: ISBA Mutual, 20 S Clark Ste 800
2 hours Professional Responsibility credits pending
Register at www.decaloguesociety.org/services/legal-education

Tuesday, May 2, 5:30-7:30pm
Mitzvah Project at Uptown Cafe
We will serve meals to the needy in our community
Watch your email for details

Wednesday, May 10, 12:15pm-1:15pm
CLE: Burnout in Lawyering II
Speaker: Alice Virgil, M.A., L.C.S.W.
134 N LaSalle Rm 775
1 hour Professional Responsibility credits pending
Register at www.decaloguesociety.org/services/legal-education

Thursday, May 11, 6pm
JUF TIP Dinner
Guest Speaker: Jeffrey Toobin, author and CNN analyst
Hyatt Regency Chicago
Contact Deidre Baumann 312-804-9889 to reserve a spot at Decalogue's table

Thursday, May 18, 11:30am-1:30pm
CLE: Unrepresented Litigants
Speakers: Judge Deborah J. Gubin & Prof. Clifford Scott-Rudnick
John Marshall Law School, 315 S Plymouth, Chicago
1.5 hours Professional Responsibility Credits pending
Register at www.decaloguesociety.org/services/legal-education

Monday, May 22, 5:30-7:00pm
LinkedIn Marketing for Lawyers
Speaker: JD Gershbein
Location TBA. Co-sponsored with Women's Bar Association
Watch your email for details.

Wednesday, May 24, 12:15pm-1:15pm
CLE: Service & Process
Speaker: Joel Chupack
134 N LaSalle Rm 775
Register at www.decaloguesociety.org/services/legal-education

Wednesday, May 24, 5:30-7:00pm
Decalogue Social
188 W Randolph, Chicago

Wednesday, June 28, 5:15-8:30pm
Decalogue Annual Awards Dinner & Installation
Union League Club of Chicago, 65 W Jackson
Watch your email for ticket information

The Decalogue Committee Against anti-Semitism meets the 3rd Wednesday of each month. See page 11 for more information.

The Decalogue Society of Lawyers
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The Decalogue Tablets is published semi-annually by The Decalogue Society of Lawyers, Inc.

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Deadline: Monday, August 14, 2017