

THE DECALOGUE TABLETS

Merit Selection?

Should Judges be Elected or Appointed?

Perspectives in Response to the
Brennan Center for Justice
Recommendations

Spring 2019



smart (smärt) *adj.*

1. Possessing acumen.
2. Quick or prompt in action, as persons.
3. Intelligent, or able to think and understand quickly in difficult situations.
4. Expected to win and be successful: *smart money*.

[*syn.* able, astute, intelligent, keen, knowledgeable, perceptive, wise]

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President's Column

By Jonathan D. Lubin



The Torah refers to the Hebrew month of Nissan as the first month of the year. Rosh Hashanah falls out in the seventh month. Pesach—Passover—is the central holiday of the first month. In the mind of the Jewish mystics, this first month parallels our infancy—just as the last month of the year parallels our maturity. Pesach, the holiday that celebrates the birth of the Jewish people through their collective salvation from Egyptian slavery, is perhaps the Jewish holiday with the most rules; and if rules aren't enough, many communities have stringent customs that augment the already complex rules. Young people need guidance and rules, even (and, truly, especially) when they don't understand the rules and their purpose.

In that sense, Pesach is the exact opposite of Purim, the holiday that we celebrate in the early Spring which dominates Adar, the last month of the Hebrew calendar. Purim is all festive. It celebrates the heroic efforts of Esther and Mordechai, who independently came to an understanding of how to manipulate the evil king Ahasuerus in order to save the Jewish people. G-d is ever present in the Pesach narrative. His name is not mentioned once in the Book of Esther. The young Jewish people needed G-d's ever-present guidance. Esther and Mordechai were competent to act on their own.

The juxtaposition of these two days, one month apart, teaches us that even at the height of our maturity (even, for example, 80 plus years after the founding of this society), we must always humbly recognize that we have a lot to learn. As president, I have learned a good deal.

Since June, the Decalogue Society has been busy—really busy. As I reported in the Fall Tablets, we've begun a new tradition of holding low-key social activities with other bar associations on a nearly monthly basis. From the get-go, these events have been very popular. We've attracted a good mix of the usual suspects, and folks whom I otherwise may not have met, from the Decalogue side; and it goes without saying that it has given our membership the opportunity to meet people from other bar groups who we otherwise would never have occasion to encounter.

In the Fall Tablets, I made the case that these new acquaintances, perhaps even casual friendships, are all important in times of strife. Thankfully, we in Chicago have been spared some of the horrific incidents of anti-Semitism that have occurred elsewhere in our country. But the history of the Jewish people informs us that we can never be complacent. Our adversaries are always crouching at the door. Thankfully, we have great friends in the Chicago legal community.

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From the Judge’s Side of the Bench

Lessons in Civility from The Bard and the Bench

by Justice Jesse G. Reyes

“*And do as adversaries do in law, Strive mightily, but eat and drink as friends.*”¹

In the quest for civility it seems that we in the legal profession are constantly searching for the equilibrium which Shakespeare describes in *The Taming of the Shrew*. But how do we, in real life, reenact this noble scene set forth by the Bard? How do we return to this Elizabethan example of decorum outside the courtroom? The quoted language, I believe, provides us with the answer. For it reflects the notion that lawyers, while representing opposing interests zealously, can nonetheless have professional relationships marked by civility, courtesy and collegiality. Additionally, it could be argued that in this passage, Shakespeare is in essence relating to us the fact that the role of the lawyer is not only that of an advocate but is also that of an officer of the court. Thereby, signifying the means by which to reach this aspirational goal is by conducting ourselves as officers of the court.

While the origin² of “officer of the court” as a title is not entirely clear, its lineage can be traced to England. In fact, it can be said, that the concept of the lawyer as an officer of the court is as old as the common law.³ So, it is conceivable that the playwright was aware of the lawyer’s commitment to the courts when he incorporated this imagery into the play. This ancestral position of the officer of the court can similarly be found in American jurisprudence. In the matter of *In re Griffith*,⁴ Chief Justice Warren Burger stated, “The role of the lawyer as an officer of the court predates the Constitution; it was carried over from the English system and became firmly embedded in our tradition.” While this office may be inherent in our system of justice,⁵ the question becomes what is the nature of this obligation?

Justice Benjamin Cardozo, while serving on the New York Court of Appeals, eloquently set forth his view of the role of a lawyer in our profession. “Membership in the bar is a privilege burdened with conditions. [A lawyer is] received into that ancient fellowship for something more than private gain. He [becomes] an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice.”⁶ This characterization implicitly suggests lawyers, as officers of the court, owe it to the judiciary, the profession and the public to treat one another in a civil and respectful manner, which will reliably lead to enhanced judicial efficiency.⁷ Thus, as described by Justice Cardozo, the lawyer has a duplicative duty to client and court.

While some may find this duality to be problematic, others would say there is no contradiction in being diligent, devoted and dedicated to one’s client while also acting with civility and courtesy. In the words of Justice Anthony Kennedy, “civility is the mark of an accomplished and superb professional[.]”⁸ This notion would require the advocate to do as Justice Antonin Scalia, “I attack ideas. I don’t attack people.”⁹ The lesson to be learned from this statement is that zealous representation can be provided in a civil manner when it is based solely on facts, evidence, logic and reason. On the other hand, the utilization of uncivil obstructive conduct while representing a client may serve to impede the fundamental goal of resolving disputes in a rational, peaceful and efficient manner. The consequences of implementing uncivil behavior can result in extra and unnecessary costs which the client will have to absorb. Such conduct may also ultimately cost the client their case. In the view of Justice Sandra Day O’Connor, “it is not always the case that the least contentious lawyer loses. It is enough for the ideas and positions of the parties to clash; the lawyers don’t have to.”¹⁰ I wonder: did Justice O’Connor have *The Taming of the Shrew* on her mind when she spoke these words about civility?

Overall, we must always be mindful that the adversarial system we work in is not an end in of itself, but rather a means to justice. We must remember that civility is not about agreement, but how we conduct ourselves in the midst of disagreement. To paraphrase Aristotle, “[i]t is not enough to know what to say, one must know how to say it.”¹¹ In keeping with the words of William Shakespeare, we must always be mindful that ours is a noble profession and therefore it is incumbent upon us to proceed in a civil and professional manner both inside and outside the courtroom.

The Honorable Jesse G. Reyes is an appellate court justice in the First District, 4th Division of Illinois.

¹ *The Taming of the Shrew*, act 1, scene 2.

² *Lawyers as Officers of the Court*, Kentucky UKnowledge, By Eugene R. Gaetke, (1989)

³ *Malautea vs. Suzuki Motor Company, Ltd.*, 987 F. 2d 1536, 1546 (11th Cir. 1993).

⁴ 413 U.S. 717, 732 (1973), Chief Warren Burger’s dissent.

⁵ *Langen v. Borkowski*, 188 Wis. 277, 301 (1925).

⁶ *People ex rel. Karlin vs. Culkin*, 162 N.E. 487, 489 (N.Y. 1928).

⁷ *Lawyers as Officers of the Court*, By Eugene R. Gatekeeper, 42 Vand. L. Rev. 39, 43 (1989).

⁸ *Justice Anthony Kennedy’s Remarks at the American Bar Association’s 1997 Annual Meeting.*

⁹ *Antonin Scalia: In his own unforgettable words.*, <https://www.latimes.com/nation/la-and-scalia-quotes-20160213-story.html>.

¹⁰ *Sandra Day O’Connor, Professionalism*, 76 Wash. U. L.Q. 5, at 9 (1998).

¹¹ *Aristotle, On Rhetoric: A Theory of Civil Discourse*, Oxford University Press.

President’s Column (cont’d)

When the massacre in Pittsburgh took place, Hon. William Haddad contacted me almost immediately to plan a joint CLE with the Arab American Bar Association on the subject of Hate Speech, Hate Violence and the First Amendment. The Chicago Bar Association very quickly co-sponsored, and graciously offered space in their building, for what ended up being a very well-attended, very important event. The list of speakers at the event—too long to repeat here—is a testament to the fact that Chicago’s resident statesmen treat bigotry seriously. Some very good people have our back.

They would have our back anyhow, but it’s important to recognize that this support is a two way street. The Decalogue Society, recognizing that the country’s recent trend towards nativism mirrored trends that once targeted the Jewish community, authored an Amicus Brief in the matter of *Trump v. International Refugee Assistance Project*, objecting to what has become known as the Muslim Ban. Our members stood shoulder to shoulder with leaders in Chicagoland’s Arab community in the weeks after 9-11 to reject bigotry directed at Arab Americans. I’m proud to be part of that important tradition. Leaders across Chicagoland, and indeed across Illinois, should know that the Decalogue Society will be part of the movement to reject bigotry when it rears its ugly head.

This year, we also entered into a partnership with IICLE to bring Decalogue CLEs to a wider audience. Some of our CLEs this fiscal year have been recorded, and we anticipate that many of those will be hosted on the web through IICLE, so that our members can benefit from them even if they aren’t present, and so that our presenters can enjoy greater exposure within the legal community. I’m excited to be able to bring greater value to our membership, and to expose the rest of the legal community to the value we bring them.

We also are excited and enthused that many of our members, including past presidents and officers, have been appointed to the judiciary, or have won elections for judge. There are, thankfully, too many to name here. But I’d like to call specific attention to Hon. Michael Strom, Hon. James Shapiro, and Hon. Joel Chupack, three past presidents of the Decalogue Society who have recently either won elections or been appointed to the bench. It makes me proud to know that people who have provided value for their communities are recognized for that; and it gives me comfort to know that the judiciary is in good hands.

As we enter this fiscal year’s home stretch, I’m happy to report that the state of the Society is strong. We are strengthening our ties to the greater legal community by bringing value to our membership, those in our orbit and those with whom we are in contact—and we’re working on building the numbers of all three of those constituencies. As president, I can take responsibility for next to none of this. It has been, as it always is, a team effort, involving our board, past presidents (including, especially, our immediate past president, Mitchell Goldberg who I have leaned on incessantly), committee chairs and community leaders. Thank you all for continuing to be beacons of light and tireless advocates.

Social Action

The Decalogue Social Action Committee conducted a Chanukah Toy Drive in November of 2018. Organized by Social Action Chair, Olwen Jaffe, the Toy Drive benefited children associated with SHALVA and the HINDA Institute, two important local organizations. SHALVA, the oldest independent Jewish domestic abuse agency in the U.S., supports Jewish women experiencing and healing from domestic abuse. The HINDA Institute helps our State’s Jewish inmates, ex-offenders, and their families navigate the criminal justice system and the inmates’ re-entry into society. The toy drive was a success with over 50 toys collected from our members. We send a big thank you to everyone who contributed and helped these children have a happy Chanukah! We hope you will participate next year.



“*I just wanted to send a heartfelt thanks from us and from all the children who benefited from the wonderful gifts. Please thank everyone in the Decalogue Society who donated for their kindness and generosity. They have given joy and made a difference to Jewish children in challenging circumstances on Hanukkah.*”

-Abby Scheiman

The Social Action Committee also organized a Chanukah Party for the Council for Jewish Elderly Robineau Residence in Skokie—an annual event that is eagerly anticipated by the Robineau community. Thank you to everyone who came to sing songs, play music and help host a wonderful party for the residents!

HINDA has created a lending library for correctional institutions. If you have Jewish books to donate, please contact them at hindahelps770@gmail.com.

Volunteer Opportunity with Hinda Institute

Instruct or Tutor clients in Correctional Institutions

How often: Once weekly or monthly

Location: MCC or Cook County Jail

Topics will vary. Volunteer training will be required.

Clients: Client will vary, most will be on short term sentences or on reentry. Multi denominational.

Please contact Abby at 708 990 7849 for more information.

כל דכפין ייתי ויכל

Sunday morning, April 14, Decalogue volunteers, working with Maot Chitim, will deliver Pesach meals to the needy in our community. This is a great family mitzvah project and we hear that one Board member’s children are already clamoring to help again this year. Watch your email for details.

Merit Selection? Democracy Demands Elections

By Judge Abbey Fishman Romanek

Judges have the power to take away a person's liberty, treasure, home, family, and all of the most precious things that matter. People are much more likely to have some contact with the court system directly or through a family member, due to a speeding ticket, a domestic relations issue, a business matter, an injury, or a criminal matter, than they will ever have with their congressman, senator, or chief executive. As a result, citizens must have the opportunity to vote for the people in the position to make those decisions most personal to them.

The arguments against voting for judges and in favor of merit selection are generally as follows: no one knows who the judges are and so no one ever votes for them anyway; if people do vote, they vote based on ethnicity or gender, and that is not the way to get the most qualified or diverse bench; and raising money in judicial races is inappropriate.

Before discussing why voting for judges is so important, it is critical to understand how we elect judges in Cook County. There are approximately 400 judges in Cook County. Approximately 250 of those judges are elected by the public as circuit court judges. About half of those judges are elected countywide and the other half are elected from subcircuits. The subcircuits were drawn by the legislature with the intent to diversify the bench. All of the elected circuit court judges elect approximately 150 associate judges. These associate judges are chosen based on merit and diversity. Every time the associate judge list opens, close to 300 lawyers apply. Each of those applicants is interviewed by a committee of presiding judges. The presiding judges pick the finalists for further interviews by all of the sitting circuit judges, who then vote.

Every judicial candidate, whether for a circuit or associate judge position, is also reviewed by 13 bar associations. Members of these bar associations volunteer their time to meticulously investigate and evaluate each candidate's background, interview each candidate and provide the public or the circuit judges with a rating of highly qualified/highly recommended, qualified/recommended, or not qualified/not recommended. This process is onerous. To ask the bar associations to do this on a rolling basis would be a huge inconvenience and conflict with their members' ability to practice law. Furthermore, rolling admission for continued merit selection would take significant court time away from the administration of justice.

Though some voters choose not to exercise their franchise when it comes to electing judges, or choose not to "do their homework" to determine who is the best candidate, that is not a reason to take the choice away from everyone. Rather, that is the reason judges need to work even harder to educate the public as to who we are and what it is we do. As discussed above, the bar associations do their part. But judges have to go out to meet the public and allow the public to meet them. The best way to do that is through the election and retention process we have in Cook County. If everything were done by a select group, judges would effectively remain in ivory towers.

Judges would not know, hear, or feel what the public thinks, sees, or feels about them. Furthermore, if judges were not elected by the public, the public would have no way of knowing who the judges are, and judges would not be accountable for their actions. Not only would this give the public a bad perception of judges, but it would not breed confidence in the court system in general.

There is an issue with the public voting for judges based only on names, genders, and ethnicity. Cook County has attempted to address this issue in three ways. The first is with the 15 subcircuits mentioned above. Those 15 subcircuits drawn by the legislature in 1991 were drawn with an eye toward diversifying the Cook County bench. Each subcircuit had a specific ethnic, political, racial, and religious demographic in mind. Those subcircuits were drawn almost 30 years ago, and those demographics have shifted over time. In fact, only one of those subcircuits was meant as the "Jewish" subcircuit. There was no vacancy in that subcircuit in 2018, yet 3 Jewish judges were elected from 3 different subcircuits just this past year. This is a good thing.

Cook County's second attempt to address diversification on the bench is our merit selection system of associate judges. In the past, a number of diverse and minority judges have been selected based on merit. However, in 2018, not one African American judge was elected. In fact, there was a tie for last place between two African American candidates requiring a runoff.

It is true that some people vote based on names, genders, and ethnicity. The third way the state has attempted to fix this problem is to pass a law which states that if a candidate has changed their name within 3 years before an election (and not because of marriage, divorce, or being adopted), their prior name will also appear on the ballot. The gender issue is far more complicated to address. We are in a state of self-correction. The judiciary has been male-dominated for a long time. It continues to be male-dominated but is much more balanced today. Nevertheless, women vote for women. For better or worse, gender identification and gender fluidity will continue to be an issue we will encounter into future generations where it may or may not continue to be an issue.

Finally, raising money is the biggest concern used by proponents of merit selection for judges. Public finance of campaigns would solve this problem. Failing this, Illinois has done the next best thing by putting in place Canon 7 which prohibits a judicial candidate from soliciting or accepting campaign contributions except through a committee.

Encountering anti-Semitism as a judicial candidate is a common occurrence. But it is not a reason to hide judges from the public by use of only merit selection of judges. Instead, judges, like other candidates, need to turn these encounters into teachable moments. Advise ADL and the Illinois Holocaust Museum and Education Center of the encounters so they might be able to address the issue.

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Merit Selection? Judges Shouldn't Be Politicians

By Judge James A. Shapiro

It might seem strange for a recently elected judge to oppose our current system of electing about two thirds of the judiciary, yet it's the right thing to do in Cook County. Lest anyone question the propriety of a sitting judge expressing his position on this issue, Illinois Judicial Ethics Committee Opinion 1994-17 makes clear that "judges may speak freely about the advantages and disadvantages of merit selection of judges." I hope my elected colleagues and other potential critics will forgive me for honoring my father, "the real Judge Shapiro" (of blessed memory), by speaking out on this issue.

In November of 2016, I persuaded the Anti-Defamation League at its National Commission meeting in New York to support a judicial merit selection resolution after it was about to be voted down. I did so by telling the National Commission about anti-Semitism I had encountered on the judicial campaign trail; in some cases my own, in some cases those of other judicial candidates. Like the time two men told me during my first of many unsuccessful judicial campaigns, "Just what we need, another Jew judge." Or the time when a musical band otherwise sitting mute in the corner of a big room in Lemont struck up *Hava Nagila* when officials introduced a Jewish judicial candidate. Or the time when a prominent politician yielded to political reality when he told a Jewish judicial hopeful, "Oh, I can't get a Jew elected."

Yes, the anti-Semitism in much of Cook County is palpable. And though we somehow managed to elect no fewer than three (3!) Jewish judges this election cycle from three different subshtetls, we cannot count on that trend continuing. That's aside from the fact that electing trial court judges is simply wrong, and leads to an overall weaker judiciary, because the best candidate, or even a competent candidate, doesn't always win.

Let's be honest: in most of Cook County, especially in countywide races but also in most subcircuits, voters are voting for a name on the ballot rather than the candidate behind that name. There are simply too many judicial races to expect voters to do their homework and choose candidates based on relevant criteria like bar ratings and newspaper endorsements rather than ethnicity and gender. This fact encourages judicial campaigns to perpetrate a veritable fraud on the voters. For example, male candidates taking advantage of an androgynous name or nickname to trick voters into thinking they are female. The instances of that are too legion to enumerate, but it was all I could do to thwart my campaign managers from having me run as just "Jamie." Bad idea that the political professionals thought of as *de rigueur*.

The ethnic tricks are also too many to mention. Judicial aspirants legally changing their names to make them more Irish, for decades the biggest vote-getting names on the judicial ballot. Or even more Jewish: I still recall the late, great election lawyer, Mike Lavelle, suggesting I change my middle name to something familiar-sounding like "Rothschild" to try to attract votes. These are not things that lawyers and judicial aspirants should be doing, yet our current system of electing judges encourages it.

Lawyers and judicial aspirants should not be pitted against each other in judicial elections, often engaging in all sorts of pettifogging nastiness during judicial campaigns. Leave that to the real politicians, and avoid the cynicism and pettiness that breeds both within the bar and in public opinion. Judges should not be politicians.

So what's the alternative? When I advocate for merit selection, people assume only lawyers from the big law firms will become judges, or that politicians will pick them. But we already have the closest thing to merit selection right in our midst, a system we already use for no less than a third of the judiciary.

Yes, it's called the associate judge process. It may not be perfect, but it's probably the closest we are ever going to get to merit selection. It approximates the federal magistrate judge selection process, which by most accounts is true merit selection. The associate judge process contains at least three levels of scrutiny, from all the evaluating bar associations, a committee of pretty distinguished presiding judges, and then the circuit judges. Who better to choose the judges than the judges before whom the judicial candidates practice? They have every incentive to want the best colleagues possible, ones who are least likely to embarrass themselves and the judiciary.

Having voted in several of these associate judge elections, I can assure you with certainty that the circuit judges call each other and vote based on whom they think would be a good judge rather than anything else. And remember the bar associations have weighed in favorably and unanimously on each of the associate judge candidates before the committee of presiding judges will even seriously consider them. Moreover, through the careful stewardship of Chief Judge Evans and his associate judge selection committee, we have generally gotten genuine diversity among our associate judges.

For those who are supposed to be in the business of fairness, how fair is it to have a system that disqualifies so many because of the ethnicity and/or gender of their ballot name? In other words, a significant segment of the legal community who aspires to the bench is relegated exclusively to the associate judge process because they don't stand a snowball's chance of getting elected, simply because of their name. I can't think of anything more absurd or unfair.

I propose that all trial court level judges in Cook County be chosen through the associate judge process rather than through literally a dozen or more judicial elections at the end of a primary ballot. (The collar counties and downstate still prefer to elect their judges and would have a manageable number of races for their voters to evaluate.) This would effectively triple the number of associate judge positions and require a virtual "rolling admissions" associate judge selection process, with associate judge elections at least once a year in Cook County. The number of applicants would presumably increase since this would be the exclusive method of becoming a Cook County judge, but there would probably be more self-selection going on as well, since candidates would have to get past all the bar associations.

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Judges Shouldn't Be Politicians

(continued from page 7)

So if all trial level judges would eventually become associate judges, who would vote on the associate judges? The answer is all the judges, including the associates. Exclusively circuit judges voting for associate judges barely passes rational basis scrutiny. If the rational basis is that the circuit judges have gone through the crucible of running for election and winning (even if by the accident of name), then that doesn't explain appointed and unelected circuit judges like I used to be voting in no fewer than three of these associate judge elections. No, the judicial candidates practice just as much in front of the associate judges as they do the circuit judges. All sitting judges should be allowed to vote for associate judge.

What about the p(P)olitics? Keep in mind that the so-called "Madigan List" has not been circulated in associate judge races for about an entire decade now. I personally never got calls from politicians asking me to vote for associate judge candidates, although that might have been attributable to the fact that I have always run as an independent, with little or no political support. But even if some politicians do call the voting judges, is it the worst thing in the world that our elected leaders weigh in on who becomes part of the third branch of government? Besides, it's a genuinely secret ballot.

In any event, the p(P)olitics involved in the associate judge selection process are far less naked than the (P)olitics involved in electing judges. Just the slating process itself is nakedly (P)olitical and breeds cynicism on the part of the public. What possible relevance does a committeeman, especially one who is not a lawyer, have in choosing which judicial candidate the party will support? Because the candidate is "a good guy" (or woman)? Because the candidate paid his/her dues by "carrying water" for the party? Even though the vast majority of elected judges, including those the Democratic Party slated, are pretty competent and independent, it is the appearance of impropriety that is concerning. Every time a heated case comes along (the Rahm Emanuel residency case from 2011 comes immediately to mind), the media scrutinizes the judge's political connections at every level and well-nigh assumes that (P)olitics entered into their decision, even if it didn't.

And what of appellate and supreme court vacancies? How do we keep p(P)olitics out of that selection process? Unlike the trial court, with its multiplicity of races, appellate and supreme court races are far fewer, higher profile, and give the public and the media a chance to focus on them. The public has actually done a reasonably good job of separating the wheat from the chaff in the reviewing court races. Although perhaps not ideal, those judgeships should remain chosen by election. One would have to be a trial level judge for at least ten years to run for the appellate court and an appellate judge for at least ten years to run for supreme court. I simply cannot think of a fair merit system for choosing higher court judges that does not involve the ultimate choice by a politician, which would breed cynicism on the part of the public.

The Brennan Center is vehemently opposed to electing state supreme court judges. They are rightly concerned with the influence of money, especially at the supreme court level. But in Illinois, I find no workable alternative because two of our recent governors, who would ultimately appoint supreme court justices under a merit selection system, have gone to jail.

In summary, my proposal for judicial merit selection in Illinois is:

1. Select all trial level judges in counties with more than 3,000,000 people (i.e., Cook County) through the associate judge method.
2. Counties with fewer than 3,000,000 people would continue to elect their trial court judges.
3. Continue to elect all reviewing court judges as we do now, because I can't come up with a workable way of selecting them by merit in Illinois that does not breed public cynicism.

Unless and until we come up with a viable merit selection system, good luck in court with a judge whom the voters may have elected because of his or her name rather than his or her qualifications.

The Honorable James A. Shapiro is a past president of the Decalogue Society and a recently elected judge of the Circuit Court of Cook County.

Democracy Demands Elections

(continued from page 6)

Suggest to people that they visit and learn how their comments and actions may be perceived so that we may all learn. We must not hide from these encounters; we must grow from them.

While neither the circuit judge election process nor the associate judge selection process is perfect, there is no substitute for public engagement, public education, democracy, and use of the voter franchise. In this time of serious attempts at major voter suppression across the country, the last thing we should be doing is disenfranchising voters from voting for the people who will be making the decisions on the most important and most personal issues that affect their daily lives. According to the Declaration for American Democracy coalition, a strong democracy is one where voting is a fundamental right and a civic responsibility. Voter suppression is a threat to that democracy.

The Honorable Abbey Fishman Romanek is a circuit judge of the Cook County Circuit Court.

Read the Brennan Center report at
https://www.brennancenter.org/sites/default/files/publications/2018_09_JudicialSelection.pdf

By Justice Michael B. Hyman

Rare is a justice of the United States Supreme Court who becomes a full-fledged superstar. But then, Justice Ruth Bader Ginsburg's career has been a prolonged rebellion against the status quo, a hallmark of today's superstars.

In the documentary *RBG*, we get a glimpse into the life, adventures, and spirit of the 85-year old jurist, Jewish grandmother, feminist icon, two-time cancer survivor, opera buff, and exercise fanatic (she regularly does 20 push-ups!).

Before I saw the movie, I admit that I had only a general knowledge of Justice Ginsburg's life until she joined the Supreme Court and adorned her black robe with a decorative collar.

Ginsburg was born Joan Ruth Bader in the Flatbush neighborhood of Brooklyn, to Russian Jewish immigrants. Ginsburg's older sister died of meningitis when she was two, and her mother died of cancer the day before Ginsburg's high school graduation. Ginsburg attended Cornell University, where, on a blind date, she met her husband, Martin. She graduated first in her class. They both decided to enroll at Harvard Law School, Ginsburg a year after Martin. She was one of nine female 1 Ls among about 500 students. Ginsburg went on to be the first woman on the Harvard Law Review, but left Harvard after Martin got a job in New York City. She transferred to Columbia Law School for her senior year, and, again, graduated first.

Despite her stellar law school career, finding an associate position or clerkship proved next to impossible. Ginsburg says that she joined the Bar when "women were not wanted by the legal profession." Even the renowned Judge Learned Hand refused to hire her, allegedly because he refused to edit his swearing. Justice Felix Frankfurter also turned her down. Ultimately, after much travail, U .S. District Court Judge Edmund Palmieri hired her as his law clerk.

Ironically, Ginsburg often shared a ride to the courthouse with Judges Hand and Palmieri. According to author Linda Hirshman, Judge Hand continued to "talk in [his] usual expressive style." Once Ginsburg asked Hand how he could go on swearing with her in the car, but yet refuse to curb his swearing to hire her. "Young lady, I'm not looking at you," he replied, staring at the windshield.

Ginsburg went on to be a law professor, co-founder of the ACLU's Women's Rights Project, one of the major architects of legal equality for women, and, as of August 2018, an associate justice of the U.S. Supreme Court for 25 years.

One of the many things that impressed me watching *RBG* was the Justice's soft-spoken manner and seemingly reserved personality. Whatever the circumstances, Ginsburg rarely shows any hint of anger, indignation, or frustration. Rather, she exudes a self-assured presence, authenticity, and confidence.

Justice Ginsburg, also known as "Notorious RBG," avoids harsh or hurtful words. As she has said, "Reacting in anger or annoyance

will not advance one's ability to persuade." She also believes that to move others to your position, don't say, "how could you make that argument?" It will be welcomed much more if you have a gentle touch than if you are aggressive."

As a lawyer, Ginsburg's "gentle touch" brought her gratifying successes against considerable odds. She used a combination of well-conceived arguments and scrutiny of the evidence to win her cases. At no time would she descend into vitriol and bombast. She knew better.

That she could connect even with someone whose ideology differed so deeply from hers, indeed was substantially the opposite—Justice Antonin Scalia—attests to her gentle touch. Too often, lawyers display antagonism toward opponents when mutual respect and dialogue would be far more helpful.

We all can learn from RBG's "notorious" example.

Rehearing

"Fight for the things that you care about but do it in a way that will lead others to join you." – Justice Ruth Bader Ginsburg

The Honorable Michael B. Hyman is a past president of Decalogue Society and is currently an appellate court justice in the First District, 2nd Division of Illinois. This article ran previously in the September, 2018 issue of the CBA Record.





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Best Practices: Practical Tips for Requests for Admission of Facts

By Lauren Buford

Practitioners are acutely aware of Illinois Supreme Court Rule 216—the discovery rule for the admission of facts or genuineness of documents. Rule 216 provides that “[a] party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request.” Ill. S. Ct. Rule 216(a). Rule 216 further provides in relevant part:

(c) **Admission in the Absence of Denial.** Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters or (2) *written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part.*

Ill. S. Ct. Rule 216(c) (emphasis added).

Illinois Supreme Court Rule 216 requires a party served with requests for admission of facts to either (1) admit, (2) deny or set forth reasons why it cannot fully admit or deny the request or (3) object where the request is improper. Lawyers are often warned about the dreaded consequences of an untimely response to requests for admission of facts. This article will provide tips to help avoid common procedural traps of Rule 216.

Timeliness

The party responding to requests for admission of facts must answer within 28 days of service. The consequences of failing to answer requests for admission of facts are well known by practitioners: the facts contained within the requests are deemed “judicial admissions which cannot later be controverted by any contradictory evidence.” *Robertson v. Sky Chefs, Inc.*, 344 Ill. App. 3d 196, 199 (1st Dist. 2003). This draconian result stands not only at trial but also at the summary judgment phase of litigation. *Ellis v. American Family Mutual Insurance Company*, 322 Ill. App. 3d 1006, 1010 (4th Dist. 2001).

Unsavory opposing counsel used to bury requests for admission of facts in a large stack of discovery; however, recent changes to the Illinois Supreme Court Rules have made this cheap tactic nearly impossible. Recent amendments to Rule 216 require the proponent of the requests to set forth the request on a separate document, served separately, and with a prominent warning in 12-point or larger boldface type. See Ill. S. Ct. Rule 216(g). While these requirements cut down on the use of requests for admission of facts for procedural gamesmanship, the answering party must keep a keen eye on the clock due to service requirements. As of July 1, 2018, all documents, including requests for admission of facts, must be served electronically. The days of relying on the mail

box rule to add a few extra days to a party’s response deadline are over. Be aware that the 28-day clock begins ticking immediately because electronic service is complete on the day of transmission. See Ill. S. Ct. Rule 12(c).

Reasonable Effort to Obtain Answers

In *Szczablewski v. Gossett*, 342 Ill. App. 3d 344 (5th Dist. 2003), the court considered a party’s duty when answering requests for admission of facts. While Rule 216 does not speak to a party’s duty to inquire prior to a denial, the *Szczablewski* court explained that a party has a “good faith obligation to make a reasonable effort to secure answers to the requests to admit from persons and documents within the responding party’s reasonable control.” *Id.* at 349. For example, the appellate court explained the defendant should avail himself of the knowledge of defendant’s attorney and insurance company.

But beware; simply stating that you’ve made a “reasonable inquiry” is not acceptable. The court in *Oelze v. Score Sports Venture*, 401 Ill. App. 3d 110 (1st Dist. 2010) rejected “boilerplate” responses about a party’s reasonable inquiry. The court expressly declared that stating that the party has “made a reasonable inquiry and the information known or readily available within the [party’s] control being insufficient to admit or deny” was deficient. *Id.* at 124. The court demands more of the party than a boilerplate response. The party claiming, “insufficient knowledge” must explain “why its resources are lacking to such an extent that it cannot answer the questions.” *Id.* at 126.

Notably, this requirement is important when answering requests about the reasonableness and necessity of medical bills. There are options for a defendant to provide a more thorough explanation not provided by the boilerplate answer in *Oelze*. A party can hire an expert economist to provide an affidavit explaining why they cannot form an opinion, at least as to the question of reasonableness. Another option is admitting the bills are reasonable or necessary but only to the extent that the bills are paid. Medical bills are presumed reasonable to the extent paid. *Wills v. Foster*, 229 Ill. 2d 393 (2008). Thus, a defendant gives up little ground when making this admission. Yet another option is to hire a medical expert to review the bills, compare with standard rates for similar services, and provide an affidavit regarding the reasonableness of the medical bills. This option may be particularly useful when plaintiff has sought care and treatment from non-traditional medical treaters or less than reputable establishments.

Who Should Sign the Sworn Statement?

Rule 216 contains a requirement that answers must be accompanied by a “sworn” statement signed by the party. *Brookbank v. Olson*, 389 Ill. App. 3d 683 (1st Dist. 2009). “[A] party, or in the case of a corporation, its corporate representative, must provide the sworn-to denial in response to a request for admission.” *Id.* at 686-87. Sounds simple, right? Be warned, an attorney should be careful when choosing a corporate representative to provide a sworn statement. In most cases, defense counsel has a contact person within a company who assists with discovery responses; however, the corporate point person may not be the best person for this job.



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Practical Tips for Requests for Admission of Facts (cont’d)

In *Skotticelli v. Club Misty, Inc.*, 406 Ill. App. 3d 958 (1st Dist. 2010), the court considered whether the verification of a dissolved company complied with Rule 216 where its denials were based solely on its attorney’s investigation. The court found that the defendant had complied with Rule 216 and that the corporation’s reliance on the investigation had fulfilled its “good-faith obligation to make a reasonable effort to secure answers from persons and documents within its control.” *Id.* at 960. Notably, the court ruled that Illinois case law and the code of civil procedure allow for “Rule 216 responses to be certified by a person with knowledge of the facts at issue, including the party’s attorney.” However, the court in *Z Financial, LLC v. ALSJ, Inc.*, 2012 IL App (1st) 112897, ¶ 35 dismissed this statement as *dicta* holding that a party—not the attorney—must sign the sworn statement. To ensure compliance with Rule 216, a practitioner must consider what the corporate representative knows, how he or she knows it, and whether the language of the verification reflects how that corporate representative obtained knowledge of the responses. Most parties automatically use the standard Rule 1-109 verification to accompany answers to requests for admissions of fact; however, depending on the circumstances, make sure to modify your verification accordingly.

What About the 60-Day Rule?

It’s well settled that requests for admission of facts are a form of discovery and, as such, they are subject to the requirement that all discovery must be complete no later than 60 days before trial. See Ill. S. Ct. Rule 218(c). Rule 218(c) does allow a party to violate the 60 day rule “to do substantial justice between and among the parties.” Therefore, do not assume untimely served requests for admission of facts are invalid. If you are served with untimely requests for admission of facts, immediately file a motion to strike and, in the alternative, seek additional time to answer.

Lauren Buford is an associate at Hughes Socol Piers Resnick Dym, Ltd.

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Five Techniques Plaintiffs’ Attorneys Need to Know to Make the Most of Depositions

By Steven M. Levin

Time and again, the witness testimony my team collects during depositions becomes the most powerful element of our plaintiff personal injury cases and leads to a favorable resolution. The effective strategy we have developed allows us to anticipate what will happen and control the outcome of the deposition. Below is a brief overview of five central techniques in this process. My hope is to empower my colleagues to make the most of this often overlooked opportunity to strengthen a case.

1. Define your purpose and align your approach with it.

In order to maximize the effectiveness of the deposition, you must begin with a clear understanding of the purpose of this task. Despite the name, discovery depositions are not about discovery: this is not the time to learn about the case. And it’s not the time to make an argument. Instead, the deposition offers you an opportunity to 1) anticipate the argument the defense plans to make—sometimes before they have articulated it—and 2) obtain testimony from the defendant’s own employees to refute this argument. Whatever happens in that room, remain committed to these goals.

2. Commit to vigorous preparation.

It goes without saying that you should know your own case inside and out, but effective plaintiffs’ attorneys devote just as much thought to understanding the case from the defense’s perspective. In our nursing home cases, the patient’s chart often contains a wealth of information that helps us anticipate what the defense will argue; so, beforehand, we review that material carefully. A second important piece of preparation is to know your witness before you enter the room. Think about what materials the witness has reviewed or not reviewed, and what opposing counsel has coached the witness to say. Is the witness a lower-level employee? The goal of prosecuting a personal injury case involving institutional conduct is to prove that what happened to your client was caused by a systemic problem that is the responsibility of the institution’s owners—inadequate staffing, inadequate training, etc.—and not simply the action or inaction of a single care provider. An employee of that institution, though technically a witness for the defense, has little incentive to remain loyal if you are able to demonstrate that he or she was placed in an impossible situation by the employer. This makes it more likely you can get the witness to agree to your argument.

3. Get the witness to acknowledge the standard of care.

Since every injury, neglect and abuse case involves some kind of violation of the standard of care, or adequate and reasonable practices of the industry in question, the first step in proving that this violation occurred is to establish that a standard exists and that the people who were responsible for your client were aware of that standard. You might ask a series of questions about the standards or customs and practices of the institution, such as: “Would you

agree that the standard of care requires every new patient to be thoroughly assessed? Would you agree that the standard of care requires that a care plan be created for each patient? Would you agree that this care plan must be communicated with the other staff members so that everyone is aware of this patient’s needs?” As the defense witness agrees to each of these very reasonable statements, you are establishing that he or she understood how things were supposed to work in the institution.

4. Get the witness to acknowledge that his or her conduct did not meet the standard of care.

Now that the witness has acknowledged the existence of the standard of care, it’s time to get him or her on record about the number of ways in which those standards were violated. These violations constitute proof that the facility did not follow the standard of care, and it is difficult to mount a successful defense in the face of that proof. This portion of the questioning is also an ideal opportunity to establish proximate cause by getting the witness to 1) affirm the standard of care, 2) affirm what harm the standard of care was designed to prevent and 3) affirm that this harm occurred in your case; in other words: violating the standard caused the injury to occur.

5. Anticipate and undermine common defenses.

Let’s dig in to some specifics by examining the common ways defense witnesses are prepared in a type of case we frequently prosecute, nursing home cases. Many of these defenses will echo familiar tropes in other areas of personal injury law. If you forget everything else in preparing to depose a nursing home employee, remember this simple model: assess, plan, implement and evaluate as a counter to any claim by the defense that an injury was unavoidable. A skilled plaintiff’s attorney can use patient, methodical questioning to undermine these defenses and gain more advantageous testimony.

“This injury was unavoidable. We can’t watch residents 24 hours per day.”

It might be tempting to argue with a witness who says this, but on its face this statement is true: it is impossible to monitor every single resident every second of the day. But in order to be able to state conclusively that an injury occurred because it was unavoidable, a facility would have to be able to show that the injury did not happen for some other reason, such as a violation of the standard of care. In order to discern that fact, the facility would have had to assess the patient, make a care plan and implement it. If the standard of care was followed and injury still occurred, the facility might then be able to argue that the injury was unavoidable. The defendant cannot argue that an injury was unavoidable without being able to show that the institution followed the standard of care. In other words, if you have not assessed, planned, implemented and evaluated the care plan, you cannot claim that an injury was unavoidable.

Five Techniques Plaintiffs’ Attorneys Need to Know (*cont’d*)

“Co-morbidities were to blame for the injury.”

Most patients come in to a facility with multiple health issues that complicate their care. We turn this fact to our client’s advantage by asking, “Wouldn’t you agree that a complex medical history makes it all the more crucial that the facility initiate an assessment, create and implement a customized care plan, and then evaluate its effectiveness?” The witness likely will agree with that reasonable statement, which helps make your case that the facility violated the standard of care, regardless of these other health issues.

“I don’t recall.”

Sometimes witnesses claim or have been coached to say that they do not recall the timeline or treatments around a patient’s condition. It’s hard to understand the aim behind claiming ignorance, but in this case the best course is to emphasize the absurdity of the defense by asking additional questions. For example, in a situation in which the witness claims not to recall whether a patient was checked regularly for pressure sores: Do you recall if you completed regular checks for pressure sores and turned the patient? Do you recall if anyone else completed those checks and periodic turns? Do you recall discussing the patient’s condition or overhearing anyone else at the institution discussing it? This patient came into the facility with no wounds and left with wounds, but you are not able to offer an alternate explanation for how this happened, is that right? As this line of questioning progresses, the “I don’t recall” defense falls apart.

“The chart does not show any record of the patient being in pain.”

A care provider may try to claim that if there is no mention of pain in the chart, that means the patient was not in pain. Common sense, however, tells us that it is of course quite possible that pain was present and not recorded. Sometimes patients are very much in pain but unable to communicate this fact to care providers because of impaired mental status or other factors. Since the patient’s cognitive issues were documented in her chart, any reasonable nurse would have known she couldn’t rely on the patient to be able to communicate that she was in pain; therefore, making the pain-management aspect of her care plan—explicitly or by omission—contingent on self-reporting constitutes a violation of the standard of care.

“Just because it wasn’t documented, doesn’t mean it wasn’t done.”

Here’s the inverse of the argument above. In this case, you should agree with the premise on its face: it’s true that a care provider may indeed have given care and forgotten to document that care. But if that happened, then someone—the nursing assistant, the supervising nurse, the director of nursing—must be able to testify to having provided the care. If the witness is not able to produce the name of the person who provided the undocumented care, this weak excuse collapses.

A related defense is that poor documentation is not the same as poor care. It’s possible a patient received poor documentation and good care. But, pursued to its logical conclusion, this argument also falls apart. Accurate documentation is, in fact, the backbone of good care because it facilitates communication about treatments and responses to care. How can providers possibly track a patient’s condition if the reliability of documentation is in question? What’s more, federal and state regulations explicitly require accurate documentation. A facility allowing poor documentation is in violation of both the standard of care and the law.

“We did not have the capacity to provide the care this resident needed. Her family never should have placed her here.”

A favorite defense of long-term care facilities is to blame someone else for the harm that came to a resident. For instance, in the case of our client, an eighty-five-year-old woman who developed severe pressure wounds, the assisted living facility blamed the woman’s son for her suffering, claiming that they were not equipped to care for her and told him so. And yet they took no action to find a more appropriate placement for her and instead watched her deteriorate. This denial of responsibility did not serve the defense very well. In addition, it’s important to note that the act of blaming someone in and of itself constitutes an admission that there was a breakdown in the standard of care. Don’t let that admission go by without turning it to your advantage.

“Policies and procedures are just guidelines.”

It’s true that a policy might be a guideline, and there might be a time when one would not follow it. In this case, ask the witness for an example. “Under what circumstances would you not follow policies and procedures?” This question, it turns out, is pretty hard for most witnesses to answer. “It would have to be an extraordinary situation, yes? And we can’t even think of one right now, even just a hypothetical. In fact, you probably can’t tell me of a single time in your career when you’ve deviated from policies and procedures on purpose, correct?” This line of questioning will quickly undermine this particular defense.

While any competent lawyer can make a strong argument based on his or her own client’s testimony, it’s been my experience that cases are more often won or lost based upon an attorney’s ability to deal with evidence and testimony from the other side. Depositions offer a valuable opportunity to get witness testimony that makes your case, and, sometimes, a strong performance in deposition will even result in a pre-trial settlement offer. Depositions are as important as trial testimony, if not more so, and they merit the detailed preparation and strategy I’ve outlined here.

Steven M. Levin is a founding partner of the law firm of Levin & Peconti, in which he specializes in personal injury litigation.

The Importance of Mentorship for Female Litigators

By Geri Pinzur Rosenberg

I sat perplexed in my office over 15 years ago. It was a Friday, nearing 5:00 p.m. Virtually every lawyer had left for the weekend. I received a motion to default my client via fax, set for first thing Monday morning. I had been practicing law for less than a month and had no idea how to respond to the motion. At that moment, Melissa Durkin, an experienced attorney in the office—now an associate judge—walked past me. She could have breezed past me and onto her weekend, but instead, she stopped for the next hour to explain the motion and help me draft a motion to vacate technical default. There began a mentor-mentee relationship, as well as friendship, which continues to this day.

Now in my 16th year of practicing law, I am training young, inexperienced attorneys. I am now the mentor. While I was extremely fortunate to have a superb mentor, many female attorneys are not as lucky. An excellent article appeared in *The Atlantic* in September, 2018, entitled “What It Takes to Be a Trial Lawyer If You’re Not a Man” (<https://www.theatlantic.com/magazine/archive/2018/09/female-lawyers-sexism-courtroom/565778/>).

Here are some of the jarring statistics from the article:

- “In 2016, for the first time, more women were admitted to law school than men. In the courtroom, however, women remain a minority, particularly in the high-profile role of first chair at trial.”
- “The New York State Bar Association...found in a 2017 report that female attorneys accounted for just 25 percent of all attorneys appearing in commercial and criminal cases in courtrooms across the state. The more complex the civil litigation, the less likely a woman was to appear as lead counsel, with the percentage shrinking from 31.6 percent in one-party cases to less than 20 percent in cases involving five or more parties. The report concluded: ‘The low percentage of women attorneys appearing in a speaking role in courts was found at every level and in every type of court: upstate and downstate, federal and state, trial and appellate, criminal and civil, ex parte applications and multi-party matters.’”
- “According to a 2006 report by the American Bar Association, nearly two-thirds of women of color said they had been shut out of networking opportunities; 44 percent said they had been passed over for plum work assignments; and 43 percent said they had little opportunity to develop client relationships.”
- “Women make up only 33 percent of federal trial-court judges.... The state-level statistics are just as dismal: 30 percent of trial-court judges are women. In 2015, according to the Women’s Donor Network, an advocacy group, 17 percent of elected prosecutors were women; women of color made up 1 percent.”

The article articulates what most female litigators face in the practice of law. There are few female litigators who are given the opportunity to try big cases. There are many female attorneys who are the only woman at their firm; or, if not the only woman, there are zero partner-level female attorneys at the firm to go to for guidance and mentorship.

Judge Durkin did not simply mentor me on how to practice law. She also taught me how to behave in court, how to negotiate, how to navigate opposing counsel, how to interact with clients, and, most importantly, how to still be genuine and be myself in a heavily male-dominated field. For female litigators, there is often a fine line between assertiveness and aggressiveness. My mentor-mentee relationship was uniquely special because Judge Durkin had navigated this path before me and could offer advice from first-hand experience.

It is imperative to understand that the mentor-mentee relationship flows both ways. Whenever I meet with first year lawyers, I provide the following advice regarding finding a mentor: (1) sometimes you need to actively seek out a mentor, so go to a more senior attorney in your firm/company and tell him/her you are impressed with his/her work and ask if you can offer assistance on his/her cases; (2) say thank you, be appreciative and follow up with a thank you note or email; (3) make your mentor’s life easier by offering to help out with court coverage, filing documents, printing out case law, preparing jury instructions, etc.; and (4) follow through—when a mentor gives you advice, listen and act on what he/she recommends.

Given my positive experience as a young attorney, I am extremely passionate about mentorship. I participate in Women’s Bar Association of Illinois’ L2L mentoring program. I regularly offer to meet new attorneys and law students for coffee to discuss their career ambitions, review resumes and offer suggestions and advice regarding finding a job and career advancement. For example, one young attorney I met at an event was the only female attorney at a small law firm. She was unhappy and reached out to meet for lunch to discuss her career. I listened and suggested she look for a position that would better fulfill her career goals. She is now at a firm she absolutely loves and thoroughly enjoys practicing law. I strongly feel it is my obligation to give back to the next generation of female attorneys. If you are a more experienced lawyer in a position to mentor, I implore you to get involved. I guarantee the experience will be incredibly rewarding.

Geri Pinzur Rosenberg is a chief attorney at the Chicago Transit Authority, specializing in personal injury defense litigation.

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Beyond a Reasonable Doubt: Juries Don't Get It

By Judge James A. Shapiro

The Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution require prosecutors to prove criminal defendants guilty beyond a reasonable doubt in order to secure a conviction.

Some jurisdictions require the trial judge to instruct juries on the meaning of beyond a reasonable doubt, some permit it, and others (like Illinois) proscribe it. The Federal Constitution neither requires nor prohibits trial courts from defining the term “reasonable doubt.”

The sole requirement is that the trial court accurately instructs the jury on the “concept” that the state has the burden to prove the defendant guilty beyond a reasonable doubt. The Supreme Court deferentially reviews the substance of reasonable doubt definitions and finds error only if there is a reasonable likelihood that the jury in fact understood the instruction to permit conviction based on proof below the reasonable doubt standard.

The prototypical definition of reasonable doubt was set forth by Chief Justice Shaw in *Commonwealth v. John W. Webster*, 59 Mass. 295, 320 (1850):

It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

Over a half century later, in *State v. De Lea*, 36 Mont. 531 (1908), the Montana Supreme Court found no error in Chief Justice Shaw's mid-19th century definition, but found the definition of reasonable doubt more complicated than reasonable doubt itself:

I do not think the words ‘reasonable doubt’ require explanation. I believe that any juror who has not the mental capacity to understand the words themselves could not possibly comprehend the definition given to them by the courts. How can it be said that a juror could not understand what is meant by a ‘reasonable doubt’ but would know the meaning of the words ‘an abiding conviction to a moral certainty,’ used in the definition?

Perhaps jurors of the mid-19th and early 20th centuries were more intelligent than today's, because judging by their jury questions, many (if not most) of them are just not getting it. For example, in the recent trial of Paul Manafort, the jury notoriously requested a definition of reasonable doubt before hanging on a large number of counts while convicting on others.

In *Victor v. Nebraska*, 511 U.S. 1, 27 (1994), Justice Ginsburg's concurrence explicitly endorsed the following definition from the Federal Pattern Criminal Jury Instructions:

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

This may be the best of the definitions, but the mere fact juries have to ask for a definition so often is evidence that “beyond a reasonable doubt” is “beyond” many of their comprehensions.

“Beyond a reasonable doubt” is an epistemological standard that most lawyers and judges can fathom, but most jurors cannot. Descartes used the concept of doubt (whether reasonable or not) to prove existence (“I think therefore I am” follows from “I doubt therefore I am,” among other things).

But just the fact that we have to define “beyond a reasonable doubt” suggests the term itself is ambiguous and beyond many jurors' comprehension. Even in jurisdictions that don't permit definition, jury questions asking for one suggest the standard is out of reach for many of them.

While it is impossible to quantify the burden of proof in terms of percentage of certainty, comparison with other burdens of proof helps. The one burden of proof that is easy to quantify is the civil “preponderance of the evidence” standard. That burden is anything—as little as a mill—over fifty percent. Such a standard would be equivalent to the average juror's mere belief that a criminal defendant actually committed the crime.

Then there's the intermediate “clear and convincing” burden used in some administrative and pretrial judicial proceedings. While that burden, like beyond a reasonable doubt, is impossible to accurately quantify in percentage terms, many think of it as approximately 75% certainty. And we know that beyond a reasonable doubt is a significantly higher standard than clear and convincing evidence. Thus, when one compares the beyond a reasonable doubt standard to a factfinder being “clearly convinced” of the truth of something, beyond a reasonable doubt should be upwards of 90% certainty. Yet most jurors invariably minimize this standard because they are reluctant to “let go” a defendant who actually committed the crime. In fact, prosecutors are trained to subtly minimize their burden of proof by purporting to embrace it in opening statement and closing argument, while telling the jury it's “the same burden we have in every criminal case.” In other words, if the burden were so high, there wouldn't be any criminal convictions.

The strong suspicion is that many juries are convicting on evidence that is truly less than beyond a reasonable doubt. It is true that a defendant convicted on evidence that is less than beyond a reasonable doubt has the right to appeal on that ground.

Reasonable Doubt (*cont'd*)

However, that right is virtually meaningless, as the defendant's burden on appeal is to show that “no rational trier of fact could find guilt beyond a reasonable doubt.” That has become a virtually insurmountable burden, as most appellate judges are reluctant to second-guess a jury's verdict by essentially calling it irrational. Consequently, trial juries effectively have the final say on whether the prosecution proved its case beyond a reasonable doubt. The collective subjectivity of what a jury deems to be proof beyond a reasonable doubt essentially dwarfs the more objective “no rational trier of fact” standard on appeal.

One solution is to put the beyond a reasonable doubt standard into terms that the average juror can actually understand (I know, what a novel concept). Since most jurors seem to care only about whether they think the defendant really committed the crime or not (“Did he do it?”), regardless of whether the prosecution actually proved it beyond a reasonable doubt, the first “juror-friendly” question in the analysis could be, “Do you believe the prosecution proved each and every element of the crime it charged the defendant with committing?”

But in order to minimize the danger of convicting the innocent, as the reasonable doubt standard purports to do, we could further instruct the jury, “Keeping in mind the extraordinary injustice in the possibility of convicting an innocent person, are you sure?” Invariably, juries will wonder and even ask the judge how “sure” they have to be. One hundred percent? Ninety-nine percent? Fifty-one percent? The answer will be the subjective one of however sure they have to be to satisfy their collective conscience that they are not convicting an innocent person. Tell them, “Sure to a moral certainty.”

Thus, the criminal burden of proof would become a two-part standard: (1) “Did the prosecution prove every element of the crime it charged the defendant with committing?” and (2) “Keeping in mind the extraordinary injustice in the possibility of convicting an innocent person, are you sure?” Perhaps with a burden of proof articulated in a way more jurors can actually understand, fewer juries would convict the innocent.

The Honorable James A. Shapiro is a past president of the Decalogue Society and a recently elected judge of the Circuit Court of Cook County.

Avoid Penalties from Failure to Return Repossessed Vehicles

By Michael Traison

The Hudson River may appear a bit wider today, as a recent decision of the United States District Court for the District of New Jersey makes clear, at least with respect to the interplay between a vehicle repossession by a lender or lessor and the filing of a subsequent bankruptcy petition by the borrower or lessee.

Depending upon which side of the river the case is on, failure to return the vehicle could result in damages, actual or punitive because of a split of opinion in different circuits. Differences between circuits can be resolved by the ultimate court in our country. We can look forward to a possible United States Supreme Court decision resolving the conflict.

The decision in *Denby-Peterson v. NU2U Auto World*, No. 17-9985 (D.N.J. Nov. 1, 2018), which affirmed a New Jersey bankruptcy court ruling, reviews the clash between the majority rule in some circuits, including that for the Second Circuit, which includes New York, regarding the issue of damages. The lesson: proceed with caution and react promptly.

The filing of a petition under federal bankruptcy law creates an immediate injunction or stay of any actions against a debtor and property of the debtor's estate outside of the bankruptcy case.

While, on the one hand, it is well recognized that state law normally governs what happens when a vehicle is repossessed, when there is a subsequent bankruptcy filing the debtor/trustee may demand return of the repossessed vehicle, claiming it is property of the estate (created by the filing of bankruptcy). Mere refusal to return it is not the answer.

Short of returning the vehicle, the best remedy is to file a motion to lift the stay to proceed with your state court remedies. Even if you lose, it's less likely that damages would be assessed. In the circuits following the majority ruling, including New York, simply refusing can lead to sanctions.

Michael H. Traison is a partner at the law firm, Cullen and Dykman, LLP, specializing in restructuring and insolvency, commercial law and international law.

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Spotlight on Jewish Community Legal Services: Giving Back Is a Reward in and of Itself

By Judge Joel L. Chupack

“Pro bono” does not mean for free. Rather, it translates to “for the public good.” Having been a volunteer for Jewish Community Legal Services, I can tell you that it has also been for my own good. Every pro bono case that I have handled brought me back to why I became an attorney and the feeling that I had when I first joined the profession. I looked forward to the next call from Sima Blue, the director of JCLS, and the story that she was going to tell me about the prospective client.

A recent referral from JCLS was that of a widow who lost her Skokie home by foreclosure. Her home was in the shadow of the congregation that I attended. She had lived in the home for 40 years, but when her husband died a few years earlier, she was left with no income, no savings and a ton of debt, including a federal tax lien, sandwiched between the primary mortgage and a junior mortgage. This formerly well-to-do and sophisticated woman was now facing becoming homeless. She had no family that could help her and with only social security as income, her options were limited. Yes, she did apply for residency in subsidized housing, but the waiting list was two-years plus. Every time I spoke with my client, she told me that she cannot believe that this is happening to her. Such incredulity was a common chorus from those caught up in the foreclosure crisis.

Having come to JCLS after the foreclosure sale had been confirmed, I did not know what I could do for her. I rummaged through the documents in the court file for anything. Service was good. She appeared in court several times. There was no equity in the home

to fight for. The judgment for foreclosure and sale and the order confirming sale seemed standard. But that proved to be to my client's benefit because the order confirming sale did not expressly provide for payment of the junior mortgage, which would have resulted in a surplus from the sale. The omission was an unintentional mistake, but it gave me enough rope to proceed on a motion to vacate the order confirming sale and to petition for the surplus funds.

I did not expect to win the case and I did not win the case, but I did get my client what she desperately needed—time. After over a year of post-judgment litigation and working behind the scenes with a social worker at the Council for Jewish Elderly and with the successful bidder at the foreclosure sale, my client was able to find alternative housing and spared her the indignity of the sheriff evicting her, taking her to a hospital for a mental health evaluation and placing her into temporary housing, which is its protocol in such situations.

In the end, we did the best that we could. My client was immensely appreciative that she had someone on her side that she could trust and talk to and preserve her dignity. I felt I was successful in taking on this lost cause, but still accomplishing a worthwhile result.

Just one case can have an immense impact on one's life and will enrich yours. Please contact Sima Blue at JCLS: legalservices@juf.org or 847-568-1525. You will be grateful for it.

The Hon. Joel L. Chupack is a past president of the Decalogue Society and a recently elected judge of the Circuit Court of Cook County.

Jewish Holidays 2019 (5779-5780)

Purim: (not Holy Day) Wednesday, March 20 sunset-Thursday, March 21 sunset

Passover: Friday, April 19 sunset-Sunday, April 20 sunset

Chol Hamoed Passover (not Holy Days) 4/20-4/26

Passover: Friday, April 26 sunset-Sunday, April 28 sunset

Shavuot: Friday, June 8 sunset-Sunday, June 10 sunset

Rosh Hashanah: Sunday, September 29 sunset-Tuesday, October 1 sunset

Yom Kippur: Tuesday, October 8 sunset-Wednesday, October 9 sunset

Sukkot: Sunday, October 13 sunset-Tuesday, October 15 sunset

Chol Hamoed Sukkot (not Holy Days) 10/16-10/20

Shmini Atzeret: Sunday, October 20 sunset-Monday, October 21 sunset

Simchat Torah: Monday, October 21 sunset-Tuesday, October 22 sunset

Chanukah: (not Holy Days) Sunday, December 22 sunset-Monday, December 30 sunset

Connecting in Chicago with Rabbi Ari Goodman: Part 1

By Logan Bierman

Ari Goodman was raised in West Rogers Park, Chicago, in a Chabad home surrounded by a strong Jewish community. Ari attended yeshiva all over the world; Australia, Israel, Chicago, Los Angeles and New York, to name a few. Ari became a full-fledged Chabad Rabbi just a few short years ago.

Since becoming a rabbi, Ari has gotten married, had two children and set up shop in Chicago's West Loop with a mission. What is that mission? To reconnect Jews of all shapes, sizes and affiliations to the Jewish community; to provide a warm and caring Jewish home to any and all who come; and to teach Jewish lessons that can be applied to every person's everyday life.

I had the pleasure of sitting down with Ari on February 12, 2019 for an interview.

Q: How long have you been back in Chicago?

A: My wife, Mindy, and I moved to Chicago's West Loop a year and a half ago.

Q: Why are you here?

A: We are here as Chabad Shluchim.¹ We are here in the city to spread Torah and Judaism to the beautiful Jews in this awesome city. There is just so much potential and so much opportunity here. There is a huge demand for more Jewish life, activity and community.

Q: That is a lofty goal. Where have you started?

A: We have started with people like you.² There is a National Conference of Jewish Lawyers and Jurists³ that Rabbi Meir Hecht⁴ started about six years ago. I joined him and used that as the first platform to connect with Jewish law students. It was before the conference two years ago that I first reached out to you. After we met, you and others introduced me to your friends who have introduced me to their friends and that is how we have started to build our community of Jewish graduate students and professionals. We have just been out meeting professionals in the city. We meet for one-on-one coffee; they come to us for Friday night meals; we throw parties for Jewish events, etc. People seem to really love what we have going on, so they bring their friends who bring their friends. Our community, I really prefer the term family because that's how I feel about all these people, has grown exponentially in the last year. We have been able to curate a real Jewish environment.

Q: What have been your major successes since starting?

A: First, I would say that being able to work with law students, young lawyers and professionals from around Chicago—allowing them to help create, shape and expand our family—has been an amazing success. Just two months into our endeavor we decided to throw a

Purim soiree. Rabbi Hecht is close with partners at Dentons and he was able to arrange for us to use their space. I worked with the few people I had met, yourself included, to plan and promote the party. We (Mindy and I) had really low expectations. We thought it would be a smaller, more intimate group; anywhere from seven to forty people. After a meeting I had with you at the Starbucks near Kent, you told me that with the right marketing plan, the party could be huge. We worked together to create a plan to get the word out and get people in the door. At the end of it all, over 150 people attended our soiree! It was just really special and definitely a huge success.

At the beginning of December, we threw another party at Dentons, this time for Chanukah. Mindy and I used the same basic model to let the people we have met plan and promote the party. Because we have met so many people we had to put together a committee of just a handful to make the party happen. This time we had 280 people! It was amazing! Jews from all backgrounds and all different professions; there were law students, medical students, lawyers, doctors, people in finance, business, marketing, etc. It was really special for me to be able to work with the people on the committee to make this happen.

The other major success we have had is our Friday night meal. For me personally, it is a treat and a highlight. I love being with everyone there in our home. My wife, Mindy, is not just our chef (I get to play sous-chef), but she truly makes any and all feel so welcome and at home. Every time we host, there are more and more people who want to come. We have to cap it because our current home can only seat 50. There are new people every time, and so far, it seems everyone has wanted to come back.

We have had some really special meals. One in particular, we had the pleasure of having Justice Richard Bernstein from the Michigan Supreme Court.⁵ Justice Bernstein is blind from birth but has not let that stop him in any way. In addition to his impressive legal career he is also an avid marathon runner and triathlete. We made sure to invite mostly law students and lawyers and Justice Bernstein shared with us stories and lessons from his life.

Q: So what is next for you? What will be your next measures of success?

A: To be honest, being involved in this type of activity and connecting with so many people, while the demand for Jewish experiences and Jewish knowledge is at an all-time high, and people need inspiration and meaning in their lives—providing all of that is our goal. Unfortunately, sometimes you can lose the individual, one-on-one relationship with the people you are connecting with. For me, the goal is to keep growing, but at the same time strengthen the close relationships we have already built.

It's a step by step process, but it has to be done as a whole. It's not just my wife and I. We want to be doing this together with the community we are building. If someone is inviting a friend to an event, we don't want them to say, "there is a rabbi and rebbetzin

Rabbi Ari Goodman (*cont'd*)

and they're doing this and you should come." Our hope is that they might say, "I'm a part of this and we are hosting this event and you should join me." That is how we have been successful so far and how we will continue to be successful. That is, in my mind, what not just a true Jewish organization is, but what a true Jewish community and family is.

I know it sounds like an attempt to be humble but it is just the truth. We would be nothing without the people we have met and connected with. They are the driving force behind everything. My wife and I are really just here to help the process along.

Q: Do you have any event coming up?

A: We will be throwing another huge Purim soiree. The details have not been announced yet but as soon as everything is finalized we will be getting the word out. In the meantime, we are hosting Friday night meals and will continue to invite new people as we meet them.

Q: How can people meet you?

A: I invite people to call me or email me. My number is 773-633-5560 and my email is rabbiarigoodman@gmail.com. I am always happy to sit down for coffee or meet people at their office. Around Chicago, I host periodic Lunch 'n Learns.⁶ Mindy and I also host a Torah class and social on Wednesday nights at 7:30 p.m. in our

home. Finally, I hold Rabbi hours at the Standard Club where people can always come to meet me and schmooze.

* * *

I cannot thank Rabbi Ari enough for sitting down with me for this interview. I have to say, working with Ari for the past year has been an absolute pleasure. In my opinion, Rabbi Ari is doing something very special that currently the Jewish people desperately need. Ari possesses the passion, drive and ingenuity to continue to be a great success. The Chicago Jewish community is very lucky to have him and I am excited to see what the future holds for him and the community he is building.

Logan Bierman is a 3L at Chicago-Kent College of Law, Chair of Decalogue's Law Student Division and a member of the Board.

¹ Schluchim are a team. Husband and wife. Shliach and shlucha. They bring with them by the truckload: friendliness, affection for all Jews, compassion, tolerance, self-sacrifice, utter devotion and selfless dedication.

² I am a 25-year old, third year law student at Chicago-Kent College of Law.

³ <http://jewishlawconference.com>

⁴ Rabbi Hecht is the Director of the Jewish Learning Institute (JLI) Chicago.

⁵ <https://courts.michigan.gov/courts/michigansupremecourt/justices/pages/justice-richard-bernstein.aspx>

⁶ Currently Ari holds Lunch 'n Learns at Northwestern's Feinberg School of Medicine, Chicago-Kent College of Law, and at offices within the Loop. Reach out to Rabbi Ari for more information or to set up a lunch of your own. Rabbi Ari can also host courses for CLE credits.

Surrogacy: Who Is The Parent From A Jewish And Illinois Legal Perspective?

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Succession Planning and the Coming Senior Tsunami

By John Cesario

Illinois is expected to see a dramatic rise in the number of attorneys over 65 years of age engaged in the practice of law over the next 10 to 15 years. This situation will present some challenges to the bench and bar, particularly as more practicing lawyers suffer from age-related impairments. In turn, clients may suffer from a lack of care and oversight by attorneys suffering from those impairments.

The ARDC is attempting to address this challenge by various means, including making presentations to bar associations and other groups relating to the aging of the profession and including relevant topics in the Proactive Management Base Regulation (PMBR) program approved by the Illinois Supreme Court in January, 2017. The ARDC has also added information to its website on the topics of closing a law office and succession planning.

Another issue relates to the need for sole practitioners to have a succession plan in place in case the attorney becomes unable to attend to client matters. The ARDC has made several presentations each year to bar associations and other groups about how to create succession plans. In making presentations to bar associations, the ARDC emphasizes the following points about creating a succession plan.

- First, attorneys should have written instructions to family members or support staff to describe how to generate a list of client names and addresses for both pending client matters and closed matters. In this regard, Supreme Court Rule 769 is instructive. That rule, entitled *Maintenance of Records*, requires attorneys to maintain records which identify the name and last known address of each of the attorney's clients and whether the representation of the client is ongoing or concluded. This information is important for good office management because it allows attorneys to list and review all matters that are subject to the attorney's duty of care and diligence. Although not a rule requirement, attorneys should also maintain client telephone numbers and email addresses to facilitate communication with clients if the lawyer becomes incapacitated.¹

- Second, attorneys should have written instructions about how to locate a calendar or computer program that lists all pending matters and future court dates and filing deadlines on all cases. The instructions should include relevant user names and passwords. Since ongoing proceedings are time sensitive, they are of the highest priority, and any succession plan should focus on such matters. The plan should therefore include the names, titles and case numbers of all pending litigation matters, and the names and addresses, telephone numbers and email addresses for all clients with pending matters.

- Third, attorneys should prepare careful instructions about any client trust accounts or escrow accounts. These instructions should identify the financial institution where accounts are located, the titles of all accounts and all account numbers. In addition, the attorney should describe where the client trust account records are located in the office.

- Fourth, there should be written instructions about how to access and retrieve messages from the voice mail system, email messages and, where warranted, text messages from clients, colleagues and opposing counsel. Information about how to change the greeting to the voice mail system should also be included. This can be a simple and effective way to alert callers to the situation and to refer them to a contact person who can provide more information and arrange the return of documents to clients.

- Fifth, there should be instructions regarding closed files. The instructions should describe where closed files are stored and how those files are organized. The attorney should take care to identify any closed file that may contain an original will, deed or trust agreement that may require additional care and effort to return to the former client.

- Sixth, lawyers should consider whether to include a reference to the succession plan in initial attorney-client agreements so that clients are aware of the plan in case of the lawyer's death or incapacity. The statement could be as simple as including a paragraph to note that in case of death or serious illness, the law office has made arrangements for attorney "John Smith" to wind-up the attorney's practice.

Time devoted to planning for unfortunate circumstances will bring peace of mind to sole practitioners and will be enormously helpful to family and friends attempting to close a law practice under difficult conditions. A good succession plan may also ease the cost of administering the estate of a deceased attorney, and facilitate efforts to sell the lawyer's practice pursuant to the provisions of Rule 1.17 of the Illinois Rules of Professional Conduct.

Interestingly, several States actually require attorneys to designate a successor in the event the attorney dies or becomes incapacitated. These jurisdictions differ slightly in the details, but in essence require every sole practitioner to state whether they have designated a lawyer, or law firm, to review files and records and communicate with clients if they became ill or died suddenly. Although the dangers are most acute with sole practitioners, lawyers who practice in firms should also establish procedures for disaster contingencies as numbers do not guarantee safety in the modern world.

Concluding thoughts and observations

The challenge of an aging legal profession creates difficulties and opportunities for the bench and bar. There is an increasing need to develop programs to identify and address age-related impairment issues that seek to balance the need to protect the public with the need to respect the dignity and respect the abilities of senior attorneys. Older attorneys who may no longer have the ability or desire to practice law full-time have many opportunities to serve the profession in pro bono capacities. The Illinois Supreme Court anticipated this phenomenon by amending Rule 756(k) to allow attorneys in inactive and retirement status to provide pro bono legal services under the auspices of a sponsoring entity that is a not-for-profit legal service organization.

(continued next page)

Retired Judge Sheila Murphy: Mobilizing Change Artists

By Shelley Sandoval

"When things are going wrong, they're actually going right, and you just don't know it. If it doesn't go according to the plans, look at the big picture and focus on your goal, remember we're all *change artists*, each person can effectuate change."
- Judge Sheila Murphy (Ret.)

Judge Sheila Murphy, who retired in 1999, inspires and influences change everyday. With the energy, purpose, an passion of a Golda Meier, Murphy seeks to make paradigm changes in our community.

She believes change is possible. That each of us can be change artists. That each of us can change our community. But it's important to start with ourselves.

Murphy's work spans service as a Cook County Public Defender, Federal Defender panel attorney, of counsel to Rothschild, Barry and Myers, trial judge, and, in 1992, the first female presiding judge of a Cook County district court. She brought the first drug treatment court to Illinois and opened a school in the basement of the courthouse for children expelled from school.

She also opened the first domestic violence court in the suburbs with the help of 37 area police chiefs. With the advice of court administrator Joy Lee, the staff learned about trauma, substance abuse and mental illness. Janet Reno, the Attorney General of the United States, befriended Judge Murphy, and provided funds through the Justice Department to send seven Markham judges to Miami to learn how to preside in drug treatment courts. Judges started out with some opposition, but soon embraced the concept.

Throughout her career, Murphy has advocated for more women to be in positions of power, and for the Cook County Bar Association to have defense of prisoners' opportunities.

While it is easy to focus on the successes, as an associate judge in the domestic violence court, Murphy recalls she was faced with significant opposition to her diverse thinking. After identifying the need for a children's room, Murphy stepped up installing a room in which could children play while at the courthouse. A judicial supervisor told her to stop work on the children's room, "You're not a social worker," he remarked. When she nevertheless continued the effort, she was swiftly re-assigned to Traffic Court.

Meeting resistance with integrity, grace, and determination, sometimes means picking your battles, arming yourself with the ability to adapt within the circumstances, and practice patient resiliency. Later, attorney Laurel Bellows objected to Murphy's treatment and Murphy was transferred to Chancery. Eventually, however, the children's room became a reality, a tribute to her remarkable character and intellect.

Murphy's natural bold and wise attitude seems to have no brakes. After observing the progressive structure of the Red Hook Community Justice Center in Brooklyn, New York, Murphy is now working to develop new resources and attitudes within the Illinois court system. She teaches Restorative Justice with Professor Michael Seng at John Marshall Law School and co-chairs the School's Restorative Justice Project. Seng and Murphy also edited a law book, *Restorative Practices...A Holistic Approach*.

As a change artist, Murphy is always looking for ways to make changes that improve lives. For example, providing tennis shoes to a young offender may be a simple means to improve morale and balance behaviorisms by encouraging naturally occurring endorphins associated with cardio exercise. As she says, "This is how we effectuate change. Kindness creates change. Fear creates violence."

Judge Murphy also promotes the Illinois Lawyers' Assistance Program or LAP, which provides wellness resources and support to judges, attorneys, and law students – the only entity that provides cost-free, confidential counseling for the legal community. Murphy has been a LAP member since the 1980s and serves on its Board by appointment of the Illinois Supreme Court.

All of us should try to emulate Judge Murphy and be change artists.

For more information about LAP, visit our site at www.illinoislap.org, or contact the Chicago LAP office at 20 South Clark St., Suite 450, 312-726-6607 or 800-527-1233. You may also send a totally confidential email to gethelp@illinoislap.org. No problem or concern is too big or to too small. You have the ability to affect the future of our profession for the better.

Shelley Sandoval is the Legal Community Liaison for the Illinois Lawyers' Assistance Program.

Succession Planning (cont'd)

Finally, the ISBA has formed a Special Committee to study Succession Planning and Transition issues. The Special Committee has created a website with articles, proposed forms and information about how to implement a succession plan. See www.isba.org/committees/successionandtransitionplanning.

John Cesario is Senior Counsel for the Administrator of the Attorney Registration and Disciplinary Commission and is responsible for representing the Administrator in proceedings in which the ARDC is appointed Receiver pursuant to Supreme Court Rule 776.

¹ Additionally, Supreme Court Rule 769 provides that an attorney shall maintain all financial records related to the attorney's practice, for a period of not less than seven years, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns and tax reports.

My Football Game with Marty

By David W. Lipschutz



For the last few years, I have written several articles about my “Honorable” adventures. As Tablets readers may recall, “To me, judges are celebrities; they are the equivalent of Brad Pitt, Kate Winslet, and Bruce Campbell.” See [My Dinner with Marty](#), The Decalogue Tablets, Spring 2017. I have had the amazing opportunity to spend time and interact with trial judges, an appellate court justice, and even a bankruptcy judge! The first article I published detailed my fanboy obsession with Cook County Judge Martin “Marty” Paul Moltz. He was the perfect person to flagship my exciting endeavors with esteemed members of the bench. Judge Moltz and I had a lovely dinner at The Blind Faith Café in Evanston. You can read all about it here: <https://www.decaloguesociety.org/wp-content/uploads/2017/03/Spring-2017-Tablets-0315.pdf>.

At that dinner, Judge Moltz and I discussed his immense love of sports. I joked that our next event should be attending a football game, as he is a season ticket holder of the Chicago Bears. As luck would have it, we made that dream a reality. Sort of.

When he invited me, without blinking, I emphatically responded, “YES!” He specifically invited me to the Bears game against the L.A. Rams. Before I go into detail about the evening and my subsequent conversations with Judge Moltz, I must point out that the Bears and the Rams were the best teams in the NFL, and they should have been this year’s Super Bowl contenders (Judge Moltz may have mentioned that it was impossible for these two teams to both end up in the Super Bowl).

Shortly before game day, Judge Moltz informed me that he was unfortunately unable to attend. However, he wanted me to keep the tickets and to invite my partner, Erin. I had previously told the judge how Erin had taken the news when I told her I was going to a Bears game (hint: she wanted to take my place and go with the judge). I had also informed the judge that she is much more knowledgeable about football—and sports, in general—than me, so she was the perfect replacement for him. She’d be his proxy at the game. This worked out to everyone’s benefit, especially since it was approximately 10° outside during the game, and Erin and I had to huddle together for warmth. I do not know how keen Judge Moltz would have been about the huddling.

With the exception of the weather, everything about the game was perfect. Our seats and the view were spectacular—50 yard line, a few miles up, with an impeccable view of the entire field. The attendees around us were rabid and rampant fans. I wore my Ditka t-shirt under the twelve layers of clothing as well as a Chicago Bears winter cap. We drank a beer and cheered loudly. I followed the tradition of my Bubbie, who would always shout “woof woof woof” each time the Bears scored. There were a lot of points scored, so I was shouting it quite often.

In order to make up for the last minute replacement (Erin was essentially the Chase Daniel to Judge Moltz’s Mitchell Trubisky, amirite? ...anyone?), Judge Moltz and I decided to have lunch the following day to discuss the game as well as the judge’s lengthy history of attending Bears games. We met at the Chicago Loop staple—Pizano’s Pizza and Pasta.

As it turns out, Judge Moltz has been going to Bears games since they played at Wrigley Field. And before you ask, yes, they used to play at Wrigley Field (I couldn’t believe it either!). He also mentioned how he was one of the first people to ever play in a fantasy football league. However, it was back when it was illegal to gamble on sporting events. And since he was a prosecutor at the time, and the fellow members of his league were all judges and various politically-involved individuals, there was no way they intended to make it public.

I am immensely grateful to Judge Moltz. For our next outing, I think you, the reader, should choose what activity we do. What adventure should we take on next? Perhaps [My Bowling Game with Marty](#), or [My Trip to Paris with Marty](#), or [My Visit to the Moon with Marty](#).

David W. Lipschutz is Senior Associate Attorney at Arnold Scott Harris, P.C., a Decalogue Board member, and Co-Editor of The Tablets.

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Jews in Sports



Today’s Jewish Professional Hockey Players

by Justice Robert E. Gordon

Believe it or not, there are nine Jewish hockey players in the National Hockey League (NHL).

The best of the group is Jason Zucker, age 26, a left-winger from Newport Beach, California, with the Minnesota Wild, who last year had 33 goals and 31 assists for 64 points, a +8 rating. This was the third-best season for any Jewish skater in the NHL. Michael Cammalleri, who is now retired, had better point seasons under a different rating system.

Zach Hyman, age 26, is the second-best in the group. He is a center from Toronto with the Maple Leafs. Last year, Zach had 15 goals and 25 assists for 40 points with a +22 rating.

Andre Burakovsky, age 23, is a left wing from Malmo, Sweden, in his fifth season with the Washington Capitals and has been prone to injuries, missing the entire playoffs last year. This year, as of the first of January, he has 12 goals and 13 assists for 25 points with a +3 rating.

Jakob Chychrun, age 20, is a defenseman from Boca Raton, Florida, in his third season with the Arizona Coyotes (owned by Jews). Last year, he mustered 4 goals with 10 assists for 14 points, meriting a +2 rating in 50 games. In November, he signed a 6-year contract extension for \$27.6 million.

Jason Demers, age 28, is a defenseman from Dorval, Quebec, in his second season with the Arizona Coyotes. Last year, his least productive since 2011-12, Jason slapped 6 goals with 14 assists for 20 points with a -4 rating.

Josh Ho-Sang, age 22, is a right wing from Thornhill, Ontario, in his second season with the NY Islanders. Last year, he had 2 goals and 10 assists for 12 points with a -7 rating.

Luke Kunin, age 20, is a forward from Chesterfield, Missouri, who tore his ACL on February 27, 2017, and first came back to play with the Minnesota Wild in December.

Brendan Leipsic, age 24, is a left wing from Winnipeg, Manitoba, with the Los Angeles Kings after being traded by the Vancouver Canucks. Last season, he had 3 goals with 6 assists for 9 points with a -3 rating.

Nate Thompson, age 33, is a veteran center from Anchorage, Alaska, and is a recent convert to Judaism. Nate is in his second season with the Los Angeles Kings. Last year, in 27 games he had 1 goal and 5 assists for 6 points with a -1 rating.

There are 12 Jewish skaters in the minor leagues, including Jake Walman, age 22, from Toronto, a defenseman who donned his first NHL uniform with the Chicago Blackhawks but failed to see any action during his two-day stay. There are two Jewish skaters with Canadian Hockey League, and four in the European Hockey League.

The Honorable Robert E. Gordon is an appellate court justice in the First District, 4th Division of Illinois and a Decalogue Board member.

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Chai-Lites

By Sharon L. Eiseman

Decalogue ‘Chai-Lites’: up to the minute news about busy members coming, going, celebrating, being recognized, volunteering, acquiring more titles and running and running—including for the judiciary! You should be in our next Tablets—so please let us know what you’re doing!

Levin & Perconti founding partner and Decalogue Life Board Member **Steven M. Levin** joined firm partners Susan Novosad, Margaret Battersby Black and Michael Bonamarte at the Society of Trial Lawyers 84th Annual Black Tie Dinner Dance last Saturday. Levin serves as the Society’s president and in a heartfelt speech told the crowd that the processes of arbitration and mediation are “no more than a business,” while “juries are the most literal embodiment of a representative democracy. They are of the people, by the people, for the people. As Thomas Jefferson said, “The government closest to the people, serves the people best.”

Past President **Mitchell Goldberg** will be honored in April with a Vanguard Award at the Chicago Bar Association’s Vanguard Awards Luncheon. Clearly, “old presidents” don’t fade away or disappear—they just keep doing more!

Past Presidents **Joel L. Chupack** and **James A. Shapiro** were sworn in December 3, 2018 as Cook County circuit judges and on January 10, 2019, Past President **Michael A. Strom** was sworn in as a Cook County circuit judge. It appears Decalogue provides a good training ground for its presidents who are destined for the judiciary.

1st Vice President **Helen Bloch** was selected by Super Lawyers Magazine as a Super Lawyer for 2019 in the field of employment law. The Super Lawyers designation, given to the most respected legal practitioners in the state, is based upon peer recognition and professional achievement. Only 5% of the lawyers in each state are selected to receive this honor. Helen is thrilled to be included as one of those and we are proud of her! And Helen has company: thirty-two year DSL member **Marc Blumenthal** was also recognized as a Super Lawyer in his field of practice: Franchise/Dealership Law. This year was his tenth straight year of receiving such a distinction. We are indeed fortunate to count so many talented lawyers among us.

In the McHenry County Pillars section of its December 27, 2018 edition, the Northwest Herald featured long time Decalogue member **Herb Franks** as an “area influencer,” which is a resident “who has made the most impact, particularly behind the scenes, in the McHenry County area.” Herb has long been deemed a trailblazer even though or perhaps because he is frank, direct, sometimes brittle, charming and often very funny, all while making an important point or observation.

Paul W. Plotnick, a long standing member of Decalogue for over forty years, has received the North Suburban Bar Association’s Prestigious President’s Award for his 40+ years of service to the Association.

Salvatore Chaz DeBella was born January 11, 2019 to Decalogue board member **Nicole Annes DeBella** and her husband, Joey. And not far behind Salvatore’s birth, Decalogue board member **Marty Gould** and wife, Marie, welcomed Dominick Martin Gould into the world on January 23rd of this year. Perhaps we will see a new young class of DSL members in a few decades!

On February 25th, Decalogue board member **David W. Lipschutz** spoke on a panel about the City of Chicago’s new “fresh start” program for individuals who have filed a Chapter 7 bankruptcy. The event was hosted by the Office of the U.S. Trustee. Lipschutz also recently closed the critically-acclaimed, Jeff-Recommended production of *Evil Dead: The Musical*. On March 15th, he starts performances for *Poseidon! An Upside-Down Musical* with Handbag Productions. For more information, visit handbagproductions.org.

Board member **Charles Krugel**, perhaps the most-often-cited member in the Chai-Lites, was recently featured in an on-line marketing publication called James Toolbox. The article wasn’t about Charles but instead provided his recommendations as to the most effective means for generating new business and keeping existing clients happy. Charles, whose practice includes labor and employment law and counseling on behalf of business, believes that the best ways to general business are through networking, trading ideas with fellow attorneys and other professionals, joining LinkedIn, creating a website that is highly informational and easy to navigate as well as a blog (if you have something to say and are ok with that kind of communication), engaging in pro bono work, recognizing that existing clients are a key marketing tool and accepting that marketing is a “never ending process.”

Long-time Decalogue member and board member **Sharon Eiseman** attended the 20th Anniversary Celebration of the Women Everywhere Project, held on February 28, 2019, at which our esteemed Decalogue member and editor of *The Decalogue Tablets*, **Geri Pinzur Rosenberg**, was also present. We are pleased Decalogue has been a constant and devoted “bar partner” of WE almost since its establishment in 1999. The event highlighted the valuable support of the Project from Chief Judge Timothy Evans who, in recognition of that support, was presented with the Women Everywhere Stalwart Advocate Award. The presentation also noted why and how the Project began; its dual mission of (1) volunteering annually for community service agencies which provide resources for women and their families who have suffered from domestic violence, and (2) introducing female high school seniors to the justice system; what it has accomplished in the past two decades; and how it expects to fulfill its mission in the future. Sharon was mentioned as one of the co-founders of WE.

Sharon Eiseman is a board member of Decalogue and the Bureau Chief of Land Acquisition at the Illinois Attorney General’s Office.

Welcome New Members!

<i>Steven Alpert</i>	<i>Jeffrey Moskowitz</i>
<i>Robert Baizer</i>	<i>Jacob Nabat</i>
<i>Breana Lynn Brill</i>	<i>David Adam Neiman</i>
<i>Christopher C. Cooper</i>	<i>Perry Perelman</i>
<i>Hal Dworkin</i>	<i>Carter Plotkin</i>
<i>John Fairman</i>	<i>Laura Reichel</i>
<i>Jason Garcia</i>	<i>Travis Richardson</i>
<i>Simon Gottlieb</i>	<i>Jonathan Saffron</i>
<i>Ross Greenspan</i>	<i>Eva S. Saltzman</i>
<i>Kenneth Hoffman</i>	<i>Joshua Shancer</i>
<i>Jeremy Iloulim</i>	<i>Steve Sheffey</i>
<i>Eunbyeol Ko</i>	<i>Judie Lyn Smith</i>
<i>Leah Kovtunen</i>	<i>Zoe Spector</i>
<i>Nicholas Krislov</i>	<i>Eugene Toyberman</i>
<i>Julie Kuhn</i>	<i>Miriam Wayne</i>
<i>Jacob Matthew Levin</i>	<i>Zack Weinberg</i>
<i>Robert McCarthy</i>	

Law Student Leaders

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Logan Bierman, lbierman@kentlaw.iit.edu

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Jaynechorpash2020@nlaw.northwestern.edu
douglaslavey2020@nlaw.northwestern.edu

Loyola:
Carrie Seleman, Cseleman@luc.edu

Calendar

Wednesday, March 27, 12:15pm-1:15pm
CLE: Cyber Security
Speaker: Theodore Banks, *Partner, Scharf Banks Marmor*
134 N LaSalle Room 775
<https://www.decaloguesociety.org/services/legal-education/>

Wednesday, April 3, 12:15pm-1:15pm
CLE: Sex Harassment – From the Shop Floor, to the Classroom, Hollywood and Beyond
Speakers: Robin Potter & Nieves Bolanos
134 N LaSalle Room 775
<https://www.decaloguesociety.org/services/legal-education/>

Wednesday, April 11, 11:30am-1:00pm
Vanguard Awards
Standard Club, 320 S Plymouth Court
Decalogue Honoree: Past President Mitchell Goldberg
Tickets \$75, Kosher meal available through Decalogue
<https://www.decaloguesociety.org/events/events-2/>

Wednesday, May 1, 12:15pm-1:15pm
CLE: Enforcement of Judgments
Speaker: Robert Markoff
134 N LaSalle Room 775
<https://www.decaloguesociety.org/services/legal-education/>

Wednesday, May 15, 12:15pm-1:15pm
CLE: Juvenile Justice
Speaker: Judge Michael Toomin
134 N LaSalle Room 775
<https://www.decaloguesociety.org/services/legal-education/>

Wednesday, May 22, 12:00pm-1:30pm
CLE: 2019 Ethics Update
Speaker: Wendy Muchman, *ARDC Chief of Litigation and Professional Education*
Location TBA
Professional Responsibility credit pending
<https://www.decaloguesociety.org/services/legal-education/>

Thursday, June 6, 12:00pm-1:30pm
CLE: Understanding Exposures in a Legal Liability Claim
Speaker: Brian Olson, *ISBA Mutual*
ISBA Mutual, 20 N Clark Ste 800
<https://www.decaloguesociety.org/services/legal-education/>

Thursday, June 27, 5:15-8:30pm
Decalogue 85th Annual Installation & Awards Dinner
Hyatt Regency, 151 E Wacker
Tickets will go on sale in May

Decalogue is planning lots of activities this summer. Watch your email for more information.



Van•guard (noun)
*A group of people leading the way in
new developments or ideas*

2019 Vanguard Awards

April 10, 2019

11:30 a.m. reception • 12:00 p.m. lunch
The Standard Club • 320 S. Plymouth Court, Chicago IL

*Together we will honor the individuals and institutions who
have made the law and legal profession more accessible to
and reflective of the community at large.*

Rishi Agrawal
South Asian Bar Association of Chicago
Hon. Marvin E. Aspen
Chicago Bar Association
Karina Ayala-Bermejo
Hispanic Lawyers Association of Illinois
Hon. Edmond E. Chang
Chinese American Bar Association
Hon. Lynn M. Egan
Women's Bar Association of Illinois
Rudy Figueroa
Filipino American Lawyers Association
Mitchell B. Goldberg
Decalogue Society of Lawyers
Andy Kang
Asian American Bar Association
Juan Mendez
Puerto Rican Bar Association
Robert J. Pavich
Serbian Bar Association
Polish American Association
Advocates Society
Rouhy J. Shalabi
Arab American Bar Association of Illinois
Chester Slaughter (posthumous)
Cook County Bar Association
Hon. Mary S. Trew
Lesbian and Gay Bar Association of Chicago
Andrea L. Zopp
Black Women Lawyers' Association of Greater Chicago, Inc.

\$75 per person
\$750 for table of 10
Reservations:
Tamra Drees at 312-554-2057 or tdrees@chicagobar.org

Purchase tickets to sit at a Decalogue table at <https://www.decaloguesociety.org/events/events-2/>
Kosher meal option available.

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 Law and End of Life Issues
- "Jewish Clause" in Inheritance
- Jewish Divorce
- Adoption and Jewish Law
- Surrogacy and Jewish Law
- 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

Filed an amicus brief challenging the Muslim travel ban.

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 seized in Egypt.

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

Advocated for multicultural 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 <https://www.decaloguesociety.org/membership/> or renew your dues in May.

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

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Visit our website www.decaloguesociety.org/services/advertising/ for pricing and specifications
Ad Deadline for Spring Issue: Friday, August 16, 2019

The Decalogue Society of Lawyers and Jewish Judges Association of Illinois

**Welcomes the Cook County Bar Association, Illinois Judicial
Council and the Hispanic Lawyers Association of Illinois**

to a Model Seder
to explain the meaning of Passover
and enjoy a light lunch based on the foods of the Seder Plate

Thursday, April 11, 2019

12:00-1:30pm

Loop Synagogue, 16 S Clark, Chicago

RSVP at www.decaloguesociety.org/events