THE DECALOGUE TABLETS

SPRING 2025

10 N. Dearborn Street Suite 418
Chicago, Illinois 60602
www.decaloguesociety.org
decaloguesociety@gmail.com

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

Spring 2025 Tablets Contents

SAVE THE DATE

THURSDAY, JULY 10, 2025

91ST ANNUAL INSTALLATION AND AWARDS DINNER

President's Column
Decalogue Society of Lawyers: Leading with Justice, Advocacy, and Unity

by Joel B. Bruckman

Since I took office as President of the Decalogue Society of Lawyers in July 2024, our organization has remained steadfast in its mission to promote justice, combat anti-Semitism, and advocate for equality and inclusivity. Over the past several months, we have continued to expand our reach, build strong partnerships, and serve as a vital voice for truth and the rule of law.

None of this would have been possible without the dedication and hard work of our Executive Committee: 1st VP, Alex Marks; 2nd VP, Judge Lori Rosen; Financial Secretary, Erin Wilson; Secretary, Kim Pressling; Parliamentarian, Robert Karton; Sergeant-at-Arms, Chuck Krugel; and Young Lawyers Section Chairs, Aaron Levin and Ben Usha. Their leadership and commitment have been instrumental in advancing Decalogue's mission.

Standing Against Hate and Supporting Israel
The atrocities committed by Hamas on October 7, 2023, marked one of the darkest days in modern history. Decalogue has been unwavering in its support for Israel, ensuring that the truth is heard and standing against the rising wave of global anti-Semitism. We continue to advocate for the safe return of all hostages and mourn the tragic loss of innocent lives, including members of the Bibas family.

We have also strengthened our partnership with the Israeli Consulate, working together to support Israel and educate the legal community on critical issues. On February 6, we co-hosted a CLE on the ICC Investigation and Findings from an International Law Perspective, featuring an outstanding panel moderated by Sarah Van Loon of AJC, with panelists Adam Weber and Rich Goldberg. This timely discussion provided essential legal analysis of the complex challenges Israel faces on the international stage.

Domestically, Decalogue has spoken out against the surge in anti-Semitism, including incidents at DePaul University and other institutions. We remain resolute in ensuring that hate is challenged and that our legal system upholds the fundamental principles of justice.

Building Bridges and Strengthening Legal Community Ties
Collaboration and coalition-building have been central to our efforts. Over the past several months, we have:

• Hosted events for young lawyers and law students, fostering mentorship and professional development opportunities.

• Co-hosted a special MLK Day CLE event honoring Pastor Chris Harris and Rabbi Michael Siegel of Congregation Anshe Emet, in partnership with the Cook County Bar Association, the Illinois Judicial Council, and the Jewish Judges Association of Illinois.

• Co-hosted the Alliance of Illinois Judges event to recognize steadfast supporters of the LGBTQ community, reinforcing our commitment to equality and inclusion.

• Launched a new tradition with the March 11 "Booze, Schmooze, and Don't Lose" Purim Celebration, creating a fun and engaging space for our members to connect.

• Held a highly successful Reception Honoring the Judiciary on February 26, 2025, at Hinshaw & Culbertson, attended by more than over 200 legal professionals, including more than 100 judges.

• Planned an upcoming model Seder on April 10 in partnership with the Asian American Bar Association and the Asian American Judges Association of Illinois at the Illinois Holocaust Museum, which will feature the limited-time exhibit "Resilience: A Sensei Sense of Legacy."

Operational Improvements: Maximizing Resources for Greater Impact
To ensure Decalogue remains effective and efficient, we have taken significant steps to modernize our operations:

• Closed our physical office and established a shared space with Ankin Law Firm, enabling us to allocate resources more effectively.

• Migrated to a new CRM system and are finalizing a new website, set to launch in early Q2, to improve the user experience, streamline event registration, and enhance accessibility to Continuing Legal Education (CLE) courses.

Defending the Rule of Law Amidst National Uncertainty
At a time of political and social upheaval, Decalogue remains committed to protecting democratic values and the rights of all citizens. With ICE raids increasing throughout Chicagoland, we have spoken out on the importance of due process and the rule of law. Our organization will always stand for justice and uphold the constitutional principles that are the foundation of our democracy.

A Commitment to the Future
This is a critical moment for our legal community and for our world. Decalogue will continue to be a leading voice in the fight against hate, a strong supporter of Israel and the Jewish people, and a champion of justice and equality.

None of this would be possible without the unwavering support of our members, allies, and friends. Your commitment, your voices, and your dedication make all the difference. Thank you for being part of this journey, and I look forward to continuing this important work together.

עם ישראל חי!

From the Judge's Side of the Bench: Success of the SAFE-T Act

by Judge Mary C. Marubio

The Pretrial Fairness Act (also referred to as the SAFE-T Act, and sometimes shortened to just "the Act" or "the "PFA") represented a significant shift in the approach to pretrial practices. This historic legislation aimed to address long-standing inequities within the criminal justice system that were exacerbated by using money as a condition of release.

At the time the Illinois General Assembly passed the Act, there was no data supporting the premise that money bond led to better pretrial outcomes. In other words, posting money did not impact appearance rates or new criminal activity, the two metrics used to determine successful pretrial outcomes. But because money was so ingrained in the court system, people were reluctant to believe the data. The Act has been in effect for almost a year and a half. In that time, the Pretrial Division of the Circuit Court of Cook County has conducted over 53,000 first appearance hearings. The question I'm most often asked about the PFA is "Is it working?" Here are my primary takeaways from these past 18 months:

- **Most people go home.** The presumption under the act is release. Most cases heard in First Appearance Court are scheduled for Release with Conditions hearings. On a regular business day, the Pretrial Division will hear approximately 100 new cases, about 70 of those are scheduled for release hearings. The other cases are a mix of homicides, sex offenses, warrants, and other detention eligible offenses.

- **Judges are receiving better information in court.** Critics claimed judges would not have enough discretion and would be forced to release dangerous defendants. The PFA requires the state to tender any reports or statements that the state relies on during the hearing. This additional information means that the court can hold a more robust and involved hearing. The defense is able to make significant legal arguments regarding the strength of the evidence. There is no more conversation about financial resources. Instead, the court spends time determining whether the defendant poses a danger or discussing which conditions will get the defendant to court and keep the community safe. Judges are getting significantly more information about the facts of the case and the defendant and are able to make more informed decisions.

- **Stakeholders are exercising discretion.** Critics were concerned that the state would file on every possible detention eligible offense and that judges would grant every petition to detain. In Cook County, the State's Attorney's Office moves for detention in approximately 34% of all cases. Judges grant about 60% of those petitions.

- **Defendants appear as required 87% of the time.** The Office of the Chief Judge of Cook County tracks PFA data. According to the dashboard published February 15, 2025, only 13% of defendants had a failure to appear that resulted in a warrant. These numbers are consistent with pre-PFA statistics.

- **Defendants complete their pending case without a new arrest 85% of the time.** Only 15% of defendants are re-arrested while on pretrial release. These numbers are consistent with pre-PFA statistics.

- **The jail is not overcrowded.** Critics of the PFA claimed the Cook County jail population would rise drastically due to violations of pretrial release and detention orders. The jail population in September 2023, the month the act went into effect, was 5,500. On February 27, 2025, it stands at 5,603.

While the Act continues to evolve through judicial interpretation, its initial implementation suggests a move towards a more equitable and data-driven approach to pretrial justice, challenging previous assumptions and demonstrating that fairness and public safety are not mutually exclusive.

I look forward to a more in-depth discussion in April that will include adding resources to the statewide pretrial system, providing holistic pretrial services to defendants and victims, and the impact of the PFA on law enforcement agencies.

Hon. Mary Cay Marubio is Presiding Judge of the Criminal Court Pretrial Division.

Thursday, April 24, 12:15-1:15pm

Assessing the Effects of the SAFE-T Act

Speaker: Judge Mary Cay Marubio

1 hour MCLE credit

Free for Decalogue members, $25 for non-members

Register Here

Best Practices
Artificial Intelligence in Law Practice: Where Do Things Stand Today?

by Ted Banks

1. What Are We Talking About?
In broad terms, artificial intelligence (AI) is the ability of computer systems to perform tasks that typically require human intelligence such as reasoning, learning, problem-solving, and understanding language. There are a wide variety of technologies that enable machines to simulate cognitive functions and make decisions based on data.

Some AI systems, referred to as "narrow" AI, are designed to perform a specific task. When you see suggestions for completing a search in Google or suggested phrases to complete a sentence, those are examples of what a narrow AI application can do. AI systems that do what a person does like drafting a legal memo in answer to a question are "strong" AI systems. ChatGPT is the most well-known AI system at this moment. This is an exceedingly dynamic area, and with lots of money flowing into development of AI systems, it is safe to say that new AI systems will continue to be released with capabilities that exceed ChatGPT or anything else on the market today.

2. AI and the Practice of Law
Lawyers are hired to deal with (or avoid) legal problems, and the main concern of clients is that they get the right advice from their lawyers. Clients usually do not care how the advice is developed; they just care about the answer.

AI can speed up the process of developing legal advice, but we are not yet at the point of AI maturity where a lawyer can rely on information produced by an AI system without a certain level of quality control. Unless you are dealing with a specialized AI system such as Lexis AI, a generative AI system like ChatGPT may not understand that it cannot simply make up cases to support whatever answer it provides to a question the way it invented the answer.

AI systems for the general public create a database by sucking in whatever they can find on the internet. The free versions of certain AI systems may have acquired their internet information some time ago, so whatever is in the system is not current. Paid versions of those systems may have more current data. Even so, they may not have access to certain protected items, and the other items they find suffer from the usual infirmities of items on the internet. Some of it is useful and truthful. But as we all know, a lot of the stuff online is someone's opinion pretending to be fact, or attempts at advocacy by persons or groups trying to change things to be more to their liking. Use of the generalized AI systems reflects society at large, so using a general-purpose AI system as part of employment law research will yield results that reflect the biases of our society.

The specialized legal AI systems (e.g., Lexis, Westlaw, Bloomberg) will, for the most part, confine their research to the database of the legal research system and will usually provide a citation to the case, statute, regulation or other real item mentioned. The same way a careful lawyer checks the cases cited in an opponent's document, you'll need to check every legal item cited by your AI system to verify that (1) it is a real case (or statute or regulation), and (2) you agree with the interpretation of the case provided by the AI system.

3. Ethics and AI
The use of an AI system also must not violate the lawyer's ethical obligations to the client including protecting the confidentiality of the client's information. If the use of an AI system includes uploading client information, then the lawyer must assume that the client information will become part of the AI system and available to any other user – including those with nefarious intent.

However, in order to do a thorough job of researching a client's legal situation, the use of AI may be required. The Illinois Supreme Court, in a policy effective Jan. 1, 2025, has stated that "[t]he use of AI by litigants, attorneys, judges, judicial clerks, research attorneys, and court staff providing similar support may be expected, should not be discouraged, and is authorized provided it complies with legal and ethical standards. Disclosure of AI use should not be required in a pleading." Because generative AI technologies are now capable of producing human-like text, images, video, audio, and other content, the use of AI-generated material can raise questions about the authenticity, accuracy, bias, and the integrity of court filings, proceedings, evidence, and decisions. Unsubstantiated or deliberately misleading AI-generated content that perpetuates bias, prejudices litigants, or obscures truth-finding and decision-making will not be tolerated. All users must thoroughly review AI-generated content before submitting it in any court proceeding to ensure accuracy and compliance with legal and ethical obligations. Prior to employing any technology, including generative AI applications, users must understand both general AI capabilities and the specific tools being utilized.

Lawyers need to be aware of general ethical questions connected to the use of AI, even if they do not impinge on specific legal ethical rules. It may be cute to see replicas of famous people saying outrageous things that were created by AI, but it is scary when you cannot tell whether images or voices are real or created by a computer. Note that it is illegal in Illinois to distribute or transmit digital replicas of individuals via generative AI without the consent of the recorded individual (Illinois Right of Publicity Act, 765 ILCS 1075/5, 1075/30). AI may have the capability to recognize a face, but, like answering a legal question, that capability is far from perfect. Arresting someone based on their face being recognized by an AI system does not – at least not yet – constitute probable cause. Microsoft has issued a policy statement that it will not sell facial recognition to police without federal regulation.

Developing data such as employment decisions based on what an AI system produces can have significant problems. The AI system will look at historical information and, depending on what information is requested, will give advice that reflects the current state of society, including the results of discrimination.

A lawyer using an AI system must be vigilant to detect any signs of this algorithmic bias.

(continued on next page)

4. Using AI in Your Practice

Lawyers have been using AI to facilitate e-discovery for many years, although it has been referred to as AI only recently. The principle of machine learning from a sample of documents is the same principle that today's AI systems use on a much bigger scale. E-discovery systems can go through gigabytes of data and pull up responsive material without the need for a manual review of each page, and the use of automated document review is now well accepted.

Although use of free AI tools has certain caveats, they can be an important part of investigating a client's legal needs. You may want to start each project by posting your question to a general AI system (free or paid), taking care not to upload any confidential information. The answer it provides should provide a general answer to your question and may surface issues you had not previously considered. Specialized legal AI systems will have an advantage in that their answers may be more reliable, but their answers may be less comprehensive since the legal database may not contain information from nonlegal sources that could be useful in educating you about the issue. Nonlegal AI systems can be helpful in starting the project, but they should not be the end of your research.

Getting the most out of your AI system may require repeated submissions of the same question with some refinement of the question each time to get the system's response to more closely address what you really want to know about. Legal research is obviously an area that can benefit from the use of AI tools. Using a system such as LexisAI enables you to research a legal question in natural language, without the need to use Boolean connectors to target the search.

AI can also assist with other lawyer tasks. For example, Casetext is an AI legal assistant that can perform various tasks including legal research. Using OpenAI, Casetext developed a service called CoCounsel that provides a legal research assistant that can review and summarize documents, search a database, and engage in other routine legal tasks.

AI can empower document automation systems to assist a lawyer's practice by helping create standard documents, inserting data at appropriate positions, and review contracts sent by "the other side." This is one example of using AI to improve the management (and profitability) of a legal practice. AI can assist in the drafting of documents outside of the legal area by making client communications more understandable. In the process of reviewing documents, the AI system can catch unauthorized disclosure of personally identifiable information or failure to identify and protect privileged information. AI may be able to identify growing legal areas and guide a firm in a direction that will support new areas of practice that might not otherwise have been apparent.

There are many general tasks that an AI system can facilitate for a law practice. Microsoft suggests that lawyers can benefit from the Copilot AI tool by doing the following: 1. Recap a meeting; 2. Summarize an email thread; 3. Draft email; 4. Summarize a document; 5. Tell me about a topic/project; 6. Give me some ideas for . . . ; 7. Help me write . . .; 8. What did they say . . .; 9. Revise this content; 10. Translate a message.

AI systems can assist in ensuring that clients have effective compliance programs. Following the Federal Sentencing Guidelines, an AI can help develop a compliance risk assessment for a company so that the company can focus on the most important risks it faces and develop a compliance program to mitigate those risks. AI can evaluate likely risks for your company by examining the experience of all companies in its knowledge base that engage in the same business. AI can also drill down into compliance and enforcement experience for specific statutes and regulations and discern the most common violations and what compliance programs work or don't work. The Department of Justice has developed detailed guidelines as to what it expects to see in a compliance program, and one area of increasing emphasis is on data-driven compliance programs. An AI system can help assemble the data that the DOJ (or another agency) wants to see when a company is trying to convince a prosecutor that it has an effective compliance program. Use of AI to address risks will not only help convince a prosecutor of your program's bona fides, but it will also increase the likelihood that you will have an effective compliance program and won't encounter that prosecutor since you won't have legal violations (or at least the likelihood of violation will be reduced). An AI system can monitor the delivery of training, review transactions, examine third-party dealings, focus scrutiny on high-risk financial transactions such as gifts and entertainment, and analyze employee communications for suspicious behaviors.

Chatbots such as Claude, Character.AI, or Replika have become very sophisticated to the extent that it may be difficult to tell that you are not communicating with a real person. While lawyers may want to use a chatbot to communicate with clients or potential clients, there should be no deception. It must be clear that a computer is doing the communicating and not a real person. The FTC has cautioned companies that use chatbots to avoid misleading claims, prevent harmful or offensive conduct, clearly identify advertising, and not collect data without explicit consent, in order to respect consumer privacy.

5. Conclusion

It is clear that the use of AI in legal practice will continue to grow. President Trump has removed various safety and transparency requirements that had been imposed during the Biden Administration. While other countries and the EU are imposing controls on AI applications, it is reasonable to expect few federal regulations on AI use in the immediate future. State regulations and general ethical concerns will still apply. You owe it to your clients to do the best job you can when you provide legal services, which may require the use of AI. Regardless of the lack of specific laws governing the use of AI, you should not be seduced into carelessness by the ease of using AI. You should always use AI with care, which includes vigilant quality control to make certain you are delivering correct advice.

Ted Banks is a partner at Scharf Banks Marmor LLC and an associate adjunct professor of law at Loyola University Chicago School of Law. *This article was adapted from "Leveraging Artificial Intelligence to Solve Legal Research and Drafting Trust and Estate Problems," a presentation to the Decalogue Society of Lawyers by Cliff Scott-Rudnick and Ted Banks on January 9, 2025.*

It's On, It's Off, It's On Again or Is It?: The Corporate Transparency Act

by Joshua S. Kreitzer

The information in this article has been updated through March 4, 2025.

In recent months, we have seen a dizzying number of contradictory orders with regard to the Corporate Transparency Act ("the Act"). This article will explain what the Act is about, why it is in controversy, and what its current status is–at least as of the time this article went to press.

The Original Plan

The Corporate Transparency Act, 31 U.S.C. § 5336, was enacted on January 1, 2021, inserted into a Defense Department appropriations bill. Generally speaking, the Act requires a corporation or a limited liability company (LLC) to submit a report to the Treasury Department's Financial Crimes Enforcement Network (FinCEN) regarding the persons who own at least 25% of the company or exercise substantial control over it. All of these reports are to be filed online through the FinCEN website at https://www.fincen.gov/boi.

According to the Act, Congress has found that more than two million corporations and LLCs are formed each year. Most states do not require the identity of these companies' owners to be disclosed to the states under whose laws they are formed, and Congress believes that "malign actors" seek to conceal their ownership of companies in order to facilitate "money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption."

Hence, the Act requires "reporting companies"—which include corporations, LLCs, and similar entities that are formed by filing a document with the secretary of state (or equivalent) of a state, territory, or Native American tribe, as well as foreign entities that register to do business in the U.S. by filing a document in that way—to report their beneficial ownership.

However, not all corporations and LLCs are considered reporting companies for purposes of the Act. Generally speaking, businesses that are subject to reporting under other federal laws are excluded and do not have to file reports under the Act. Among the types of entities excluded are companies that have issued securities registered with the Securities and Exchange Commission (SEC); brokers, dealers, securities exchanges, and various other entities registered with the SEC; banks; credit unions; insurance companies; regulated public utilities that provide telecommunications services, electrical power, natural gas, or water and sewer services within the U.S.; organizations that are tax-exempt under Internal Revenue Code Section 501(c); and any entity with more than 20 full-time employees in the U.S., reports more than $5 million in gross receipts or sales on its tax return, and has an operating presence at a physical office in the U.S. Even after taking into account these exceptions, though, FinCEN estimated that over 32 million companies would have to report in the first year of reporting, with approximately 5 million new companies being added each year thereafter.

If a company is a reporting company, the information that must be submitted about the company itself consists of (a) the company's full legal name; (b) any trade name or "doing business as" name; (c) the street address of the company's principal place of business in the U.S.; (d) the state, tribal, or foreign jurisdiction where the company was formed; (e) for a foreign reporting company, the first state or tribal jurisdiction in the U.S. where the company registered to do business; and (f) the company's Taxpayer Identification Number (or, if a foreign reporting company lacks such a number, its tax identification number from a foreign jurisdiction).

Furthermore, a reporting company must submit information about its "beneficial owners" as defined by the Act. A "beneficial owner" is an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, owns or controls not less than 25 percent of the ownership interests of the entity. In addition, the definition of "beneficial owner" also includes an individual who exercises "substantial control" over the entity. Under FinCEN regulations, an individual exercises substantial control over a reporting company if the individual: (A) serves as a senior officer of the reporting company; (B) has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body); (C) directs, determines, or has substantial influence over important decisions made by the reporting company; or (D) has any other form of substantial control over the reporting company. Hence, every company is considered to have at least one beneficial owner—even if nobody owns as much as 25% of the company, there must be someone who fulfills a role such as the president, the CEO, or the manager.

For each beneficial owner, the company must provide the person's full name, date of birth, complete home address, and the identifying number from the person's U.S. passport, driver's license, state ID, or if the person has none of those, the person's foreign passport. In addition, the company must upload an image of that passport, driver's license, or state ID.

If there is a change to the information reported about the company or its beneficial owners—for example, if the company's address changes, a new person becomes a beneficial owner, or a beneficial owner moves to a different address—the company must submit an update to its information within 30 days.

In addition, any reporting company established on or after January 1, 2024 is required to provide information about its "company applicants"—the individual who directly files the document that creates a domestic reporting company or registers a foreign reporting company, and the one individual who is primarily responsible for directing or controlling such filing. The same information must be provided about a company applicant as about a beneficial owner, except that the company applicant's business address must be provided rather than their home address.

Under the original regulations, companies established or registered on or after January 1, 2024 were required to submit their initial reports within 30 days of receiving notice of their creation or registration. Reporting companies established or registered before January 1, 2024, were required to submit their initial reports by January 1, 2025. But the latter deadline failed to hold, as we will soon see.

(continued on next page)

Challenges to the Corporate Transparency Act

The Act faced a number of legal challenges. In one case, *National Small Business United v. Yellen*, No. 5:22-cv-1448-LCB (N.D. Ala. Mar. 1, 2024), a Federal district court found the Act unconstitutional, but enjoined enforcement of the Act only with regard to the National Small Business Association, its members as of March 1, 2024, and one individual plaintiff and the companies for which he is the beneficial owner or company applicant. Meanwhile, certain other federal courts declined to take action to prevent the Act from being enforced.

But in December, a district court in Texas issued a preliminary injunction to prevent the Act and its regulations from being enforced at all. *Texas Top Cop Shop v. Garland,* No. 4:24-CV-478 (E.D. Tex. Dec. 5, 2024). The plaintiffs in that case sought a preliminary injunction against the Act and its regulations, on the grounds that the Act intrudes upon states' rights under the Ninth and Tenth Amendments; compels speech and burdens plaintiffs' right of association under the First Amendment; and violates the Fourth Amendment by compelling disclosure of private information.

The court in *Top Cop* stated that the mandate imposed by the Act "marks a drastic two-fold departure from history"; first, by having the Federal government monitor companies created under state law, and second, by ending the anonymity allowed to corporations in various states. The court found that plaintiffs met the criteria for a preliminary injunction, particularly discussing the likelihood of their success on the merits. The court focused on whether the Act represented a valid exercise of Congress's enumerated powers, pursuant to the Tenth Amendment. The government claimed that the Act was justified under the Commerce Clause and the Necessary and Proper Clause of the Constitution. The court, however, disagreed, stating that companies are not "channels" or "instrumentalities" of interstate commerce that Congress can regulate, nor does the mere anonymous existence of a corporation constitute an activity substantially affecting interstate commerce that Congress can regulate under the Commerce Clause. Nor did the court agree that the government's justifications for the Act under the Necessary and Proper Clause were valid, whether in service of the Commerce Clause, Congress's power to regulate foreign affairs and further its national security interests, or Congress's authority to lay and collect taxes. The court also found that the Act substantially threatened plaintiffs with irreparable harm; that the threatened harm outweighed any damage the injunction might have on the government; and that preliminary injunctive relief would not harm the public, thus satisfying the other criteria for a preliminary injunction. Hence, the court issued a nationwide injunction against enforcement of the reporting requirement.

The government appealed the injunction to the U.S. Court of Appeals for the Fifth Circuit, where a motions panel stayed the injunction on December 23, 2024, thus allowing the Act's filing requirement to go back into effect. FinCEN announced an extended deadline for filings – yet just three days later, a merits panel at the Fifth Circuit vacated the stay and thus put the district court's preliminary injunction against the Act back into effect.

Next, on January 23, 2025, the U.S. Supreme Court issued an order staying the preliminary injunction pending the disposition of the appeal in the Fifth Circuit. Justice Neil Gorsuch concurred with the order, and said that the Court should take up the case in order to "resolve definitively the question whether a district court may issue universal injunctive relief." (Justice Gorsuch has in other cases criticized the issuance of universal injunctions, stating in a 2024 concurrence in *Labrador v. Poe*, "Just do a little forum shopping for a willing judge and, at the outset of the case, you can win a decree barring the enforcement of a duly enacted law against anyone.")

Meanwhile, Justice Ketanji Brown Jackson dissented from the order, stating that even though she found it likely that the government would succeed on the merits, she saw no need for immediate action, as the original filing deadline had been set to be nearly four years after the Act had passed and there was "no indication that injury of a more serious or significant nature would result if the Act's implementation is further delayed while the litigation proceeds in the lower courts."

That wasn't the end, though; in the meantime, the U.S. District Court for the Eastern District of Texas had issued yet another nationwide preliminary injunction in a different case, staying the effective date of the reporting rule. *Smith v. U.S. Dep't of the Treasury*, 6:24-cv-336-JDK (E.D. Tex. Jan. 7, 2025). But on February 18, 2025, the same court stayed its own injunction, meaning that the reporting rule could go back into effect. Consequently, under FinCEN's new extended deadline, most companies were required to file their initial, updated, or corrected report by March 21, 2025.

Wait, Never Mind?

As the deadline for this issue approached, FinCEN announced that it would not issue any fines or penalties or take any other enforcement actions against companies which failed to file or update their reports under the Act by the existing deadline, pending a new interim final rule it planned to issue which would provide for new deadlines. Just a few days later, on March 2, the Department of the Treasury announced that even after the new deadline, it will not impose fines or penalties against *U.S. citizens or domestic reporting companies* or their beneficial owners after the rule changes take effect, either.

Under Treasury's new plan, it will issue a new proposed rule that would limit the scope of the rule to **foreign** reporting companies only. While there are certainly large numbers of foreign companies that register to do business in the United States and will be required to comply, possibly in the near future, this new plan would exempt millions of domestic companies that would otherwise have been required to submit reports, as contemplated by the Act.

Unless Congress decides to amend the Act to remove domestic companies, though, the requirement that domestic companies will need to submit reports on their beneficial owners will remain a possibility for the future.

Joshua S. Kreitzer is senior associate attorney at The Law Offices of Marc J. Lane. His practice includes corporate and nonprofit law, taxation, and estate planning. He is a member of the Board of Managers of the Decalogue Society of Lawyers.

Illinois Torture Inquiry and Relief Commission Act

by Judge Michael A. Strom (Ret.)

The Illinois Torture Inquiry and Relief Commission ("TIRC" or "Commission") was established by a statute enacted in 2009. 775 ILCS 40/1 *et seq.* ("TIRC Act" or "the Act"). The Act establishes an extraordinary procedure to investigate factual claims by convicted felons that involuntary confessions obtained by torture ("tortured confessions") were used to convict them. 775 ILCS 40/5, 40/10. Applicable administrative rules are at 2 Ill. Adm. Code 3500 *et seq*., and 20 Ill. Adm. Code 200 *et seq*.

Background

During the 1980s and 1990s, there were a series of allegations that involuntary confessions were coerced at Chicago Police Department ("CPD") Area 2 headquarters. Investigation by the CPD Office of Professional Standards ("OPS"), established that Jon Burge, CPD commander of the Violent Crimes section of Areas 2 and 3, and CPD Detectives under his command at Area 2 used widespread and systematic torture to coerce confessions. *People v. Wrice*, 2012 IL 111860 ¶ ¶ 40-43. Burge was fired in 1993. *Id*.

In 2002, retired Justice Edward Egan was appointed Special State's Attorney "to investigate allegations of torture, perjury, obstruction of justice, … and other offenses by police officers under the command of Jon Burge … [and] to determine if any prosecutions are warranted." Special State's Attorney Report (2006) ("SSA Report"), p. 3. The ensuing four-year investigation revealed many cases of abuse/torture in police interrogations, several unfounded claims, and others where evidence was unclear. The SSA Report stated, among other things:

> "[W]e judge that there are cases which we believe would justify our seeking indictments for mistreatment of prisoners by Chicago police officers. … It is our judgment that the evidence … would be sufficient to establish guilt beyond a reasonable doubt. …There are *many other cases which lead us to believe or suspect that the claimants* were abused, but proof beyond a reasonable doubt is absent." *Id.*, p. 16 (emphasis added).

The SSA Report disclosed five CPD officers (including Burge) for whom evidence would establish guilt beyond a reasonable doubt; however, the Report concluded that statutes of limitations barred prosecution of any police officers. SSA Report, p. 13-16.

Following release of the SSA Report, legislative and community efforts intensified to provide new hearings to persons who claimed to have been tortured by Burge and his subordinates. Those efforts led to passage of the TIRC Act. https://tirc.illinois.gov/about-us.html#faq-whatisthecommission-faq_copy.

At a 2008 hearing before the House of Representatives, Rep. Art Turner stated, "[T]he rationale for this [TIRC] commission is to look into … the torture allegations … leveled against Chicago police officers under the supervision of Commander Jon Burge." 95th Ill. Gen. Assem., House of Representatives Proceedings, May 29, 2008, at 216 (statements of Representative Art Turner).

At a 2009 Senate hearing, then-Senator Kwame Raoul, as lead sponsor of the bill, stated the [TIRC] Act was "about victims of torture seeking relief." 96th Ill. Gen. Assem., Senate Proceedings, Mar. 25, 2009, at 26 (statements of Senator Raoul). He added:

> "[T]here are people who may currently be incarcerated who may not … need to be there. And there are people who may have served time who may want to clear their name. And this [TIRC] commission would allow them a vehicle to do so. … [W]e're trying to create a vehicle where there would be a commission who will confront this issue once and for all." *Id.* at 27.

The TIRC Act became effective August 10, 2009, authorizing creation of the TIRC Commission to conduct inquiries into specified claims of torture filed by August 10, 2014. 775 ILCS 40/5, 40/10, 40/35, 40/70.

Initially, TIRC's jurisdiction was limited to "allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge." In 2016, the Act was amended so that others allegedly tortured by officers not connected to Jon Burge could also file a claim; however, TIRC jurisdiction was limited to Cook County by the language "allegations of torture occurring within a county of more than 3,000,000 inhabitants." The filing deadline was extended to August 10, 2019. See, P.A. 99-688, *eff*. 7-29-16, amending 775 ILCS 40/5(1) and 40/70. The Act applies only to those claims filed not later than August 10, 2019; therefore, the Commission cannot conduct inquiries into claims filed after that date. Approximately 400 claims filed on or before August 10, 2019 remain open.

What Qualifications Are Required to Serve as a Commissioner?

The TIRC Act requires eight voting Commissioners to assess the evidence obtained by the inquiry: one retired Circuit Court Judge, one former prosecuting attorney, one law school professor, one practicing criminal defense attorney, one former public defender, and three members of the public who are not attorneys and not officers or employees of the judicial branch. 775 ILCS 40/20(a). The retired judge appointed as Commissioner shall serve as Chair. 775 ILCS 40/20(b).

The Governor appoints the Commissioners, with the advice and consent of the Senate. 775 ILCS 40/20(a). The Governor also appoints alternate Commissioners for the Commissioners appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. Each alternate must have the same qualifications for appointment as the original Commissioner. The Governor shall make a good faith effort to appoint Commissioners with different perspectives of the justice system, and also consider geographical location, gender, and racial diversity in making the appointments. 775 ILCS 40/20(a-1).

Commissioners receive no salary for serving, but may be reimbursed for reasonable expenses incurred as a result of their duties as Commissioners. 775 ILCS 40/25(b).

(continued on next page)

What Can TIRC Do?
TIRC can investigate and determine a factual claim of torture on behalf of a living person convicted of a felony in Illinois if all the following conditions are met:

1. The convicted person asserts that he or she was tortured into confessing to the crime for which he or she was convicted;
2. There is some credible evidence related to the torture;
3. The tortured confession was used to obtain the conviction;
4. The torture occurred in Cook County;
5. The convicted person waives his or her procedural safeguards and privileges, including but not limited to the right against self-incrimination under the Constitutions of the United States and the State of Illinois, agrees to cooperate with TIRC, and agrees to provide full disclosure regarding inquiry requirements of TIRC. 775 ILCS 40/5(1), 40/40(a & b).
   NOTE: The above waiver does not apply to matters unrelated to a convicted person's claim of torture. The convicted person shall have the right to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry
6. At all points during an inquiry, the convicted person complies with TIRC's requests and remains cooperative with TIRC's requests; if the convicted person is deemed uncooperative by TIRC, the inquiry shall be discontinued. 775 ILCS 40/40(g).

At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. If five or more of the eight voting members of TIRC conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the claim is referred to the Chief Judge of the Circuit Court of Cook County. TIRC files its determination with the clerk of court along with its supporting findings of fact and the record in support of its opinion. TIRC serves the State's Attorney in non-capital cases and both the State's Attorney and Attorney General in former capital cases. 775 ILCS 40/45(a & c).

If fewer than five of the eight TIRC voting members conclude by a preponderance of the evidence that there is sufficient evidence of torture, TIRC shall conclude the claim does not meet TIRC Act standards for judicial review. TIRC shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the court clerk in the circuit of original jurisdiction, with a copy to the State's Attorney and the chief judge. 775 ILCS 40/45(c).

Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or TIRC proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or TIRC proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel. TIRC shall have the discretion to refer its findings together with the supporting record and evidence to such other parties or entities as TIRC in its discretion shall deem appropriate. 775 ILCS 40/45(d).

TIRC may use any measure provided in the Code of Civil Procedure and the Code of Criminal Procedure to obtain information necessary to its inquiry. TIRC may also do any of the following: issue subpoenas or other process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the Circuit Court of Cook County or court of original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. The Circuit Court of Cook County shall hear all challenges with regard to TIRC's authority or access to evidence, including any *in camera* review. 775 ILCS#40/40(d).

TIRC's staff and pro bono attorneys conduct investigations and discovery under the supervision of Supervising Attorneys and Executive Director Aryn Evans to provide Commissioners with the thorough factual research and legal analysis they need to make informed decisions.

All State discovery and disclosure statutes in effect at the time of formal inquiry shall be enforceable as if the convicted person were currently being tried for the charge for which the convicted person is claiming torture. 775 ILCS 40/45(a).

TIRC Proceedings
At the completion of a formal inquiry, TIRC has sole discretion whether to conduct a hearing. 775 ILCS 40/45(a). If formal inquiry demonstrates that TIRC can grant no relief because claimants cannot satisfy necessary statutory preconditions, TIRC's Director notifies the Commissioners and provides them with a recommendation. If a proceeding is scheduled, TIRC's Director will provide any notices required by the TIRC Act and disseminate investigation, legal research, and recommended findings to Commissioners for review. 775 ILCS 40/45(b). Any presentation of evidence and disposition of a claim will be a public hearing subject to TIRC's rules and conducted pursuant to the Open Meetings Act. 775 ILCS 40/45(a & b). TIRC posts its meeting schedule and updates on its website.

What Qualifies As Torture for Purposes of TIRC Claims?
"Torture" is not defined in the TIRC Act, but the administrative rules define torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from that person a confession to a crime." 20 Ill. Adm. Code 2000.10. Essentially, everyone has a breaking point at which they will say anything to make the abuse stop.

TIRC's definition of torture is consistent with international law from the Third Geneva Convention (1949) onward, prohibiting physical or mental torture and any other form of coercion in interrogation of prisoners of war. The U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1987), Part I, Art. 1 defines "torture" as follows:

(continued on next page)

> "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

The federal Anti-Torture Act, 18 U.S.C. § 2340, defines "torture" as follows:

"As used in this chapter-

(1) "torture" means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) "severe mental pain or suffering" means the prolonged mental harm caused by or resulting from-

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality."

In *Payne v. Arkansas*, 356 U.S. 560 (1958), the U.S. Supreme Court stated: "The use in a state criminal trial of a defendant's confession obtained by coercion-whether physical or mental-- is forbidden by the Fourteenth Amendment … [W]here the claim is that the prisoner's confession is the product of coercion we are bound to make our own examination of the record to determine whether the claim is meritorious. The performance of this duty cannot be foreclosed by the finding of a court, or the verdict of a jury, or both." *Id*. at 561, 562.

Although defendant was not physically tortured, the Court found his confession was coerced where, among other things, defendant was not advised of his right to remain silent and right to counsel, was denied food for long periods, threatened with mob violence, and held incommunicado for three days, without counsel, advisor or friend, despite family members attempting to see him. Use of the confession before the jury violated the Due Process clause of the Fourteenth Amendment. *Id.* at 567-68.

TIRC has previously recognized sleep deprivation as a form of torture. *In re: Claim of Jesus Morales*, TIRC Case No. 2013.149-M (Aug. 19, 2020); *In re: Claim of Kristopher Deloney*, TIRC Case No. 2017.486-D (June 26, 2024).

Post-Commission Judicial Review

TIRC essentially performs an investigative function facilitating judicial review for claims of "tortured confessions" filed before August 10, 2019. If TIRC finds sufficient evidence of torture to merit judicial review, TIRC's Chair requests the Chief Judge of the Circuit Court of Cook County to assign the case to a trial judge for consideration. The consequences of TIRC's analyses are left to Circuit Court. TIRC has no legal authority to reverse convictions, quash confessions, order a new trial or award monetary damages.

The court may receive proof by affidavits, depositions, oral testimony, or other evidence. Nothing in the TIRC Act mandates any specific process. After reviewing the materials provided by TIRC, the court may in its discretion order the petitioner (the "claimant" in TIRC) brought before the court for a hearing. 775 ILCS 40/50(a).

Notwithstanding the status of any other postconviction proceedings relating to the petitioner, if the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to rearraignment, retrial, custody, pretrial release or discharge, or for such relief as may be granted under a petition for a certificate of innocence, as may be necessary and proper. 775 ILCS 40/50(a).

Judge Michael A. Strom (Ret.) serves as Chair of the Illinois Torture Inquiry and Relief Commission

Join us to Congratulate Howard Ankin

Decalogue's 2025 Honoree

2025 Vanguard Awards Luncheon

April 22, 2025, 11:30am - 1:15pm

The Union League Club Chicago, 65 W. Jackson Blvd. Chicago, IL 60604

Tickets: $75 - **Register Here** or with the QR code to sit at Decalogue's table

Why Is This Injunction Different From All Other Injunctions? The Automatic Stay, an Update

by Michael H. Traison, Ralph E. Preite, and Kelly McNamee

Addressing an insolvency crisis and the rights and responsibilities of debtors and creditors can be accomplished through consensual, out of court procedures as well as through the bankruptcy court system, with certain exceptions.

Among these exceptions is where an injunction is needed.

Under the United States Bankruptcy Code Section 362, an automatic stay arises upon the filing of the case. We have addressed this in several previous Client Alerts. See, for example "Bank Freezes and the Automatic Stay"; "The Automatic Stay: Even Pre-Petition Seizures May Be Covered;" "Automatic Stay Violators and Pre-Petition Seizures."

The United States Supreme Court addressed the question of whether a pre-petition act, without any more acts post-petition, still violates the automatic stay.

We examined that almost six years ago in our December 31, 2019 Client Alert entitled "Supreme Court to Decide Whether Creditor's Inaction Violates the Automatic Stay." Subsequently, in *City of Chicago v. Fulton*, the Supreme Court held that "mere retention of estate property after the filing of a bankruptcy petition does not violate § 362(a)(3) of the Bankruptcy Code." *City of Chicago v. Fulton*, 592 U.S. 154, 162 (2021).

The Supreme Court explained that "section 362(a)(3) prohibits affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed." *Id.* at 158.

More recently, in the United States Bankruptcy Court for the Middle District of Florida, Judge Jason Burgess was presented with an argument that the *Fulton* decision applied to a pre-petition garnishment that resulted in post-petition garnishments that were detrimental to the Debtor's reorganization efforts. *In re Namen*, 649 B.R. 603 (Bankr. M. D. Fla. 2023).

However, the Court found that the creditor was in violation of the automatic stay and distinguished the facts of Fulton with that of *Namen*.

The Namen Court explained that the facts were distinguishable from Fulton because "the continued post-petition garnishments materially altered the status quo." *Id.* at 611. By the creditor failing to dissolve the writ, the Debtor's finances were directly affected, and the Debtor was unable to pay his employees. *Id.* at 610.

This is different than the facts of *Fulton* in that the City's inaction in *Fulton* did not alter the status quo of the bankruptcy estate. As the Supreme Court explained, the "language of section 362(a)(3) implies that something more than merely retaining power over property is required to violate [section 362(a)(3)]." *Fulton*, at 159.

Thus, the key distinction is whether the post-petition enforcement of a pre-petition garnishment or seizure alters the status quo of the debtor's bankruptcy estate.

Recently, our pharmaceutical client was faced with a similar set of facts as in *Namen*, in a bankruptcy court in New York when a pharmaceutical client's bank accounts were restrained pre-petition. The restraints prevented our pharmaceutical debtor client from using the funds that were deposited into the accounts post-petition to operate its business and prevented it from providing routine medical prescriptions, along with critical-care medicines such as heart medicine, HIV medicine and anti-suicide medicine to customers.

On behalf of our client, our team, including Ralph E. Preite, Michelle McMahon and Kyri Christodoulou, filed an emergency motion for turnover of accounts, and termination of the restraints on the accounts due to the inability to get the medications to the customers who relied on them. Judge John P. Mastando III of the United States Bankruptcy Court for the Southern District of New York granted the emergency motion pursuant to Section 362(a)(1), (2), (3) and (6) of the Bankruptcy Code, along with referring to the *Namen* case for the turnover of accounts and termination of restraints on accounts.

Judge Mastando explained that "[t]he Court is most concerned with getting the medications to the persons who need them, to the customers who require the medications. . . ." *New London Pharmacy Inc. v. Omonoia Society of Kastorians Inc.*, Adv. Case No. 25-01006-jpm (Bankr. S.D.N.Y. Jan. 29, 2025).

Similar to *Namen*, the continued restraints on the accounts of the debtor altered the status quo of the bankruptcy estate because money was being deposited into the accounts post-petition, but the debtor could not use the money as a debtor-in-possession to pay vendors to obtain the much needed medication for its customers.

Although, merely holding onto the property might not violate the automatic stay, if the retention or affirmative act significantly interferes with the bankruptcy estate, then a violation may be found. Our client prevailed.

Creditors should be mindful of the action, or inaction, that they take after a bankruptcy petition is filed. When in doubt, consult legal counsel and consider the effects of any action or inaction that may be taken.

Please note this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and the recipient. If you have any questions regarding the provisions discussed above, or any other aspect of bankruptcy law, please contact Michael H. Traison (mtraison@cullenllp.com) at 312.860.4230 or Ralph E. Preite (rpreite@cullenllp.com) at 212.380.6878 or Kelly McNamee (kmcnamee@cullenllp.com) at 516.296.9166.

Caring About Caregiver Discrimination

by Gail Schnitzer Eisenberg

Illinois law finally protects employees from discrimination based on their actual or perceived family responsibilities under the Illinois Human Rights Act, with the enactment of P.A. 103-0797 (effective Jan. 1, 2025). Family responsibility or caregiver discrimination occurs when an employer takes an adverse employment action—such as termination, refusal to hire or promote, harassment, or demotion—against an employee because of their outside obligations to care for family members, or based on biases about how workers with family caregiving responsibilities will or should act, without regard to the workers' actual performance or preferences. Parents of young children, pregnant and breastfeeding people, and employees with aging parents, disabled family members, or sick spouses or partners may encounter caregiver discrimination.

Most employees will be caregivers at some point in their professional lives while continuing to have to meet their employers' reasonable performance expectations. According to the Department of Labor, 71% of mothers with children at home work for money and roughly 60 percent of two-parent households with children under age 18 have both parents working. And fathers now take on more of the child-rearing responsibilities. Moreover, with baby boomers aging and life expectancy remaining high, more than 1 in 6 Americans working full-time or part-time report assisting with the care of an elderly or disabled family member, relative, or friend, and over 1 in 12 employed adults are caring for both children and elderly or disabled adults as members of the "sandwich generation."

Discrimination against caregivers affects employees of every income level, race, gender, and industry. According to the Center for WorkLife Law, Litigation Update 2016, most cases are brought by management, business, and professional occupations (42.5%), followed by office/admin workers (19.5%), service professions (17.5%), sales (10%), and production and transportation (8%) – but such discrimination is likely more prevalent among non-management employees because they have less control over their schedules and are more likely to face inflexible policies such as mandatory overtime.

Working mothers and pregnant people, however, are most likely to experience this type of discrimination, with low-wage earners and people of color disproportionately impacted. Much of the discrimination is based in stereotypes related to caregiving roles, some of which are "prescriptive" in that they incorporate notions of what women and men should or should not do. Many people disapprove of those who break such norms.

Reflecting the "mommy track" stereotype, one study found that mothers were 79% less likely to be recommended for hire, half as likely to be promoted, and offered an average of $11,000 less in salary for the same position as similarly qualified non-mothers. This is called the "maternal wall," a plateau on the career not just because they are women, but because they are mothers, or "it's not the right time." Demonstrating the breadwinner and homemaker stereotypes, another study found that working mothers suffer a penalty relative to non-mothers and men in the form of lower perceived competence and commitment at work. Social scientists estimate that mothers are paid seven percent less for every additional child they have, as a "motherhood penalty." This is coupled with the "second child bias," in which employers assume a woman with two children will either be less dedicated to her work or that she may quit, so they pull back on opportunities. In contrast, male breadwinners earn more in a "fatherhood bonus." Caregiving fathers, however, experience more mistreatment than "breadwinner" fathers or than men without children.

According to the AAUW, due to the motherhood penalty and fatherhood bonus, on average, mothers make 63 cents for every dollar paid to fathers. Even full-time employed mothers make 71 cents for every dollar made by a father. Indicative of the "mommy brain" stereotype, competency ratings of working mothers were 10 percent lower than nonmothers who were otherwise equal candidates, and working mothers were considered to be 12.1% less committed to their jobs than non-mothers. Similarly, a 2007 study published in the *American Journal of Sociology* found that moms were and held to higher performance and punctuality standards than women with identical resumes but no children. Such perceptions can lead an employer to deny a new parent professional opportunities because they believe that they won't—or shouldn't—be as devoted to their jobs or as reliable as they were prior to having children.

Pre-existing laws—like those prohibiting discrimination based on sex or pregnancy-related condition (Title VII of the Civil Rights Act, Pregnancy Discrimination Act, or Illinois Human Rights Act) or association with a person with a disability (Americans with Disabilities Act or IHRA) or prohibiting retaliation for taking family and medical leave (Family and Medical Leave Act)—have left many caregivers unprotected. But even when rights do exist, the interplay of anti-discrimination laws and caregiver bias is widely misunderstood by employers and courts.

Adding family caregiver status to existing discrimination law provides important clarification to employers, reducing litigation risk and turnover. Illinois joins Alaska, Delaware, Minnesota, and New York, and over 200 local jurisdictions around the country, including Cook County (protecting those living with a minor or disabled child), in prohibiting discrimination based on caregiver status—that is almost a third of the American workforce. Many larger Illinois municipalities already prohibited some discrimination based on parental status including Bloomington, Carbondale, Chicago, Elgin, Kildeer, Oak Park, and Wheeling, while Champaign and Urbana prohibited discrimination based on family responsibilities more broadly. Contrary to Representative Dan Ugaste's arguments in opposition to P.A. 103-0797, the Center for WorkLife Law at the University of California-Hastings found that state-level family caregiver discrimination prohibitions do not meaningfully increase litigation rates, hypothesizing that explicitly labeling the protected category of workers keeps litigation rates low by providing clarity that helps employers avoid litigation. Similarly, the Center found no significant increase in the burden on state enforcement agencies, noting "[w]hen family caregivers are clearly labeled as a protected class, employers are less likely to discriminate against them."

(continued on next page)

Illinois' new protections are now the nation's strongest, protecting employees and "nonemployees" from discrimination or harassment based on a wide range of family relationships and caregiving activities or retaliation for opposing the same:

775 ILCS 5/2-101(M): Illinois Human Rights Act

> "Family responsibilities" means an employee's actual or perceived provision of personal care to a family member. As used in this definition:
>
> (1) "Personal care" has the meaning given to that term in the Employee Sick Leave Act.
>
> (2) "Family member" has the meaning given to the term "covered family member" in the Employee Sick Leave Act.

820 ILCS 191/5: Employee Sick Leave Act

> "Covered family member" means an employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent. …
>
> "Personal care" means activities to ensure that a covered family member's basic medical, hygiene, nutritional, or safety needs are met, or to provide transportation to medical appointments, for a covered family member who is unable to meet those needs himself or herself. "Personal care" also means being physically present to provide emotional support to a covered family member with a serious health condition who is receiving inpatient or home care.

The statute *does not* create an affirmative requirement that employers accommodate family responsibilities. Employers are still able to enforce equally their workplace policies, such as those related to leave, scheduling, absenteeism, performance, and benefits, which is expressly stated in the Act. 775 ILCS 5/2-104(E).

Employers can take several steps to create a more inclusive workplace for their caregiving employees, such as reviewing their recruitment ads and job descriptions; offering flexible work arrangements; formalizing mentorship programs and varying times for social endeavors; revising the performance management process; reviewing assignment, promotion, leave, bonus, and compensation policies; and training supervisors and human resources professionals. Not only are implementing some of these best practices the right thing to do, but they will likely decrease complaints, increase satisfaction, improve productivity, reduce absenteeism, and ultimately reduce costs and increase profits by ensuring the best candidates are hired and promoted. Reduced attrition will also mean lower recruitment and training costs.

The new law will fill a loophole in existing legal protections that permitted discrimination based on unfounded assumptions about a caregiver's ability to perform their jobs. Society should be thanking those who take on unpaid family responsibilities—not penalizing them.

Gail Schnitzer Eisenberg is the head of the Employment Practice at Loftus & Eisenberg, Ltd. MyEmployeeAdvocate.com. She is a former member of the Decalogue Society of Lawyers' Board of Managers and chairperson of the Legislative Committee.

---

[1] Bureau of Labor Statistics, U.S. Dep't of Labor, *Employment in Families with Children in 2016*, The Economics Daily (Apr. 27, 2017), https://www.bls.gov/opub/ted/2017/employment-in-families-with-children-in-2016.htm.

[2] Gretchen Livingston, *Most Dads Say They Spend Too Little Time with Their Children*, Pew Research Center (Jan. 8, 2018), https://www.pewresearch.org/short-reads/2018/01/08/most-dads-say-they-spend-too-little-time-with-their-children-about-a-quarter-live-apart-from-them/.

[3] Bureau of Labor Statistics, U.S. Dep't of Labor, *Unpaid Eldercare in the United States—2021-2022* Summary (Sept. 21, 2023), https://www.bls.gov/news.release/elcare.nr0.htm.

[4] Gretchen Livingston, *More Than One-in-Ten U.S. Parents Are Also Caring for an Adult*, Pew Research Center (Nov. 29, 2018), https://www.pewresearch.org/short-reads/2018/11/29/more-than-one-in-ten-u-s-parents-are-also-caring-for-an-adult/.

[5] U.S. Equal Employment Opportunity Commission, Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities (May 23, 2007), https://www.eeoc.gov/laws/guidance/enforcement-guidance-unlawful-disparate-treatment-workers-caregiving-responsibilities.

[6] Shelley J. Correll et al., *Getting a Job: Is There a Motherhood Penalty?*, 112 Am. J. Sociology 1297 (2007), https://www.jstor.org/stable/10.1086/511799.

[7] *Id*.

[8] Jennifer L. Berdahl & Sue H. Moon, *Workplace Mistreatment of Middle-Class Workers Based on Sex, Parenthood, and Caregiving*, 69 J. Social Issues 341 (2013), https://doi.org/10.1111/josi.12018.

[9] *Id*.

[10] Correll et al., *supra* note 6, at 1316.

[11] *See* Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971) (unless a legitimate business reason can be shown, an employer cannot hire men with young children while maintaining a policy against hiring women with similarly young children).

[12] There is no duty to accommodate an employee because of their association with a person with a disability.

[13] About 44 percent of U.S. employees are not eligible for the Family and Medical Leave Act. Scott Brown et al., *Employee and Worksite Perspectives of the FMLA: Who Is Eligible?*, U.S. Dep't of Labor, Chief Evaluation Office (July 2020), https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018PB1WhoIsEligible_StudyBrief_Aug2020.pdf. About 52% of non-low wage and 84% of low-wage workers who needed FMLA leave did not take it because they could not afford to take unpaid time off. Scott Brown et al., *Leave Experiences of Low-Wage Workers*, Abt Associates (Nov. 2020), https://www.abtglobal.com/files/insights/reports/2021/whd_fmla_lowwageworkers_january2021.pdf.

[14] The Seventh Circuit has not officially recognized the "sex plus" theory. In *Palomares v. Second Federal Savings & Loan Ass'n*, the district court found that the male plaintiff, who was the primary caregiver to his son, failed to allege the "essential element of a 'gender plus' claim"—that a man and a woman were treated differently. No. 10-CV-6124, 2011 WL 760088, at *3 (N.D. Ill. Feb. 25, 2011).

[15] 103rd Gen. Assemb., 93rd Leg. Day, Tr. of Debate, at 228 (Ill. Apr. 19, 2024) (statement of Rep. Ugaste) ("This is creating something for lawyers to make money on and to tell business ... not to come here.")

[16] Liz Morris et al., *Litigation or Clarification? The Impact of Family Responsibilities Discrimination Laws*, Center for WorkLife Law (June 2021), at 3, https://worklifelaw.org/wp-content/uploads/2021/07/Litigation-orClarification-The-Impact-of-Family-ResponsibilitiesDiscrimination-Laws.pdf.

[17] Liz Morris & Marni Leob Morse, *Clarification or Complaints? The Impact of Family Responsibilities Discrimination Laws on State Enforcement Agencies*, Center for WorkLife Law (June 2022), https://worklifelaw.org/wp-content/uploads/2022/07/Clarification-or-Complaints-The-Impact-of-Family-Responsibility-Discrimination-Laws-on-State-Enforcement-Agencies.pdf.

[18] Equal Employment Opportunity Commission, Employer Best Practices for Workers with Caregiving Responsibilities (2009), https://www.eeoc.gov/laws/guidance/employer-best-practices-workers-caregiving-responsibilities.

The Illinois Freelance Worker Protection Act: Codification of the Jewish Legal Principle Forbidding Oppression of Freelance Laborers?

by Robert Schwartz

לֹא־תַעֲשֹׁק שָׂכִיר עָנִי וְאֶבְיוֹן מֵאַחֶיךָ אוֹ מִגֵּרְךָ אֲשֶׁר בְּאַרְצְךָ בִּשְׁעָרֶיךָ
בְּיוֹמוֹ תִתֵּן שְׂכָרוֹ וְלֹא־תָבוֹא עָלָיו הַשֶּׁמֶשׁ כִּי עָנִי הוּא
וְאֵלָיו הוּא נֹשֵׂא אֶת־נַפְשׁוֹ וְלֹא־יִקְרָא עָלֶיךָ אֶל־יְהוָה וְהָיָה בְךָ חֵטְא

"You must not wrong the poor and the needy daily laborer by withholding his daily wages, whether he be one of your brethren or one of the aliens who live in your land within your gates. On the same day you will pay him his wage, before the sun sets, for he relies on his earnings for his livelihood; lest he complain to the Eternal against you, and you be guilty." (רש"י)

Deuteronomy 24:14-15 (*Torah Yesharah*, translated and edited by Chas. Kahane. New York, 1963).

On August 4, 2023, Illinois Governor JB Pritzker signed into law the Freelance Worker Protection Act ("FWPA," herein, "the Act," 2023 Ill. HB 1122), establishing and codifying certain protections and procedures for freelance workers. The Act—the nation's first statewide measure of its kind—became effective on July 1, 2024 as 820 ILCS 193/1 *et seq.* and applies only to contracts on or after that date.

Background

In 2022, 60 million Americans were engaged in freelance work, comprising 39% of the workforce. While freelancers may enjoy scheduling flexibility and other perks, they lack many basic legal protections, such as unemployment benefits and wrongful firing prohibitions that may be afforded to workers classified as "employees." An even more pressing and immediate concern for most freelancers is *timely payment*. According to studies conducted by the Freelancers Union, *71% of freelancers experienced late or non-payment*, with 59% living paycheck to paycheck. Furthermore, approximately 75% operate without written contracts. The FWPA addresses these and other issues; this article highlights some provisions of the Act and examines some of its potential repercussions.

Mandatory Payment for Freelance Workers

The legislative history indicates that the primary objective of the Act is to ensure prompt—and full—payment to freelancers, as FWPA states in part:

> a freelance worker **shall** be paid the contracted compensation amount on **or before the date the compensation is due** under the terms of the contract. If the contract does not specify when the hiring party must pay…**compensation shall be due no later than 30 days after the completion of the freelance worker's services**…(b) Once a freelance worker has commenced…the contracting entity shall not require as a condition of timely payment that the freelance worker accept less compensation than the amount of the contracted compensation.

820 ILCS 193/10 (emphasis added). Accordingly, the plain language of FWPA not only mandates timeliness for payment but purports to shore up what is often the "bane of the freelancer," namely non-payment from a recalcitrant contracting party who will, after commencement of work, attempt to negotiate a lesser price, for example in exchange for quicker payment. FWPA §10(b) seemingly prohibits such type of negotiations. It can be anticipated that caselaw may develop concerning whether such provision is in derogation of common law freedom to contract.

Parties Covered Under the Act

FWPA §5 defines a "freelance worker" as anyone hired or retained as an independent contractor to provide products or services in Illinois or for any Illinois-based entity in exchange for compensation of at least $500 (either in a single contract or in the aggregate, within 120 days). The Act specifically excludes as freelancers: workers performing construction services (including for a contractor engaged in construction services) and workers in the traditional employer-employee relationship as defined by the Illinois Wage Payment and Collections Act. All foreign, federal, state, and local government entities including school districts are exempt from the Act as the hiring or "contracting party." Of note, freelancers who have (for personal protection, tax, or other reasons) incorporated themselves or are doing business as a limited liability company or other nomenclature are *not* covered by FWPA because §5 defines "freelance worker" as a "natural person," which is defined as an "individual human being."

The Freelance Agreement Must Be Memorialized in Writing

§15 of the Act requires the hiring or "contracting" entity to provide to the freelancer, physically or electronically, a written contract specifying, at a minimum: (1) the name and contact information of both parties including the mailing address of the hiring or contracting entity; (2) an itemization of all products or services to be provided, the value of the products/services, and the rate and method of payment; (3) the date by which the contracting entity must pay the freelance worker (no later than 30 days after the product or service has been provided, *supra*); and, (4) the date by which the freelance worker must provide a list of products/services rendered (*i.e.*, invoice) if necessary to meet the contracting entity's procedures for timely payment. FWPA requires the Illinois Department of Labor ("IDOL") to provide a model template on its website at no cost to the public, which is now available, in 11 languages, at https://labor.illinois.gov/laws-rules/legal/freelance-worker-protection-act.html.

The contracting entity must retain the contract for two years and make it available upon request to the IDOL. The Act is silent as to what format the contract needs to be retained (presumably, reliably digitized format suffices).

Anti-Discrimination and Retaliatory Provision(s) and Enforcement

FWPA §20 states, in part:

> No contracting entity shall threaten, intimidate, discipline, harass, deny a freelance opportunity to, or take any other action that penalizes a freelance worker for, or is reasonably likely to deter a freelance worker from, exercising or attempting to exercise any right guaranteed by this Act…

(continued on next page)

The FWPA empowers freelance workers to seek recourse against contracting entities for underpayment, the above prohibitions, or other violations by filing a complaint with the IDOL or in an Illinois *circuit court* where the violation occurred within two years after final compensation was due. (Unlike administrative procedure before the EEOC or IDHR, a freelance worker plaintiff is *not required* to file a grievance with the IDOL before filing a lawsuit.) Statutory penalties for underpayment include double the amount of such underpayment, injunctive relief, costs of suit, and all reasonable attorneys' fees. Failure to comply with the written contract requirement enables freelance workers to seek damages equal to the value of the underlying contract or $500, whichever is greater, in addition to the other remedies provided.

The Illinois attorney general may also initiate civil action upon reasonable belief that an entity is engaged in a pattern or practice of FWPA violations by intervention to impose fines including a civil penalty not to exceed $5,000 for each violation, or $10,000 for each repeat violation. Moreover, the Act does not bar a class action proceeding.

Under the current political climate, it can be anticipated that perhaps the most contentious arena concerns prohibitions under the Act's non-discrimination and anti-retaliation clauses. For example, it would appear that FWPA §20 aligns with the prohibition that *employers* may not exploit noncitizens and then threaten them based on their immigration status—but that scenario under the Act has yet to be seen. Likewise, and perhaps of particular interest to this Association, §20 does not address protections afforded to employees (as defined by the Wage Payment Act) pursuant to the even more recent Illinois Freedom of Speech Act (effective January 1, 2025), which harbors workers from being subjected to intimidation tactics, acts of retaliation, discipline, or discharge from their employer for choosing *not* to participate in employer-sponsored meetings that are designed to communicate an employer's position on religious or political matters.

Conclusion

Obviously, nothing herein is intended to constitute legal advice nor express the opinions or views of the Decalogue Society or author. However, it is hoped that the Act may, in the spirit of our Biblical precept, enable more *just* and reasonable results for freelancers and hiring entities alike; the above IDOL link provides excellent guidance.

Robert Schwartz of the Chicago law firm Robinson & Schwartz, LLC concentrates in commercial litigation and mediation.

Judgment on the Pleadings in Light of Jewish Law: The Standalone Value of Claims in Effective Adjudication

by Rabbi Natan Hakimi, Esq.

Illinois law provides for dismissal of claims on the pleadings via §2-615 and/or §2-619 motions. A plaintiff's claims, perhaps with basic factual material provided by a defendant (depending on which type of motion), can sometime speak enough on their own to resolve a dispute without discovery, testimony, or evidentiary hearing. Such motions check whether a claim has sufficient merit to even proceed.

Typically, cases only get genuinely resolved this way in drastic circumstances. Practically, courts dismiss lawsuits fully on the pleadings only when claims are so unfounded that they may safely be deemed literally meritless. In practice, therefore, the vehicle of a "motion to dismiss" is more frequently applied as a litigation tactic: if you are successful, the pleading will be stricken usually without prejudice, enabling the opponent to re-plead by an amended complaint. This forces the pleader to reveal more detail about their case, and if nothing else, "throws a wrench in their wheel." While helpful, dismissal motions infrequently succeed at actually disposing of litigation in the entirety at the early phase (much to the chagrin of clients).

However, Jewish law is more interested, culturally and philosophically, if not practically too, in "sussing out" claims at the outset on the basis purely of their content and logic. There is a fine art taught, indeed, to "weeding out" claims which can be disposed of solely on the basis of their contents alone. As a source material, we need look no further than the classic medieval Torah work which has attained the status simply of the "Code of Jewish Law": the *Shulchan Aruch* of R' Yosef Caro, c. 1565. In the section of the *Shulchan Aruch* dedicated to business dealings and civil adjudication – *Choshen Mishpat* – more specifically, the chapters entitled "Laws of Claims" - *Hilchos To'ein v'Nitan* (CH"M Ch. 75-82), there is extensive material documenting the Jewish approach to civil litigation, with particular material closely resembling the equivalent of rules concerning motions to dismiss.[1]

At the end of the article, further perspective will be shared drawing upon the inspiration accorded to us from the Jewish teachings regarding its contemplated system of civil adjudication, and the lessons for us 21st-century lawyers of the Decalogue Society in our own contemporary legal practice.

In examining the *Choshen Mishpat*, Laws of Claims, we at first note a distinct tendency for the Jewish civil philosophy to be highly investigative and judicially activist in its approach. In a Jewish legal system, the *dayan* (judge) is expected to effectively run the litigation almost entirely *sua sponte*, with the presence of advocates ("*toanim*") only to assist litigants in making strong arguments to the tribunal. The equivalent of a §615/619 motion would therefore be carried out effectively by the judges themselves, who will apply a certain medley of principled rules and common-sense logic to "rule out" factually or legally implausible claims and defenses.

To teach this principle, the *Shulchan Aruch* in *Choshen Mishpat* offers numerous sample fact patterns with different variations of claims, responses, and the *halacha* (law) governing what the outcome should be in each case. The laws in this section begin by introducing the idea that claims not only have a goal-component ("relief sought") but a justification for the same ("legal cause"), which has to be assessed by the court:

> A claimant demands that a defendant owes them a certain sum. The *Beit Din* requires him to clarify his claim – "Did you loan to him? Did you deposit with him? Did he damage you?" Potentially, he believes he is owed money, but his claims are meritless. So too, the defendant, who replies, "I don't owe you anything," we must clarify his claim. Perhaps he too is mistaken, and believes he owes nothing, but has meritless defenses. Even if the litigants are learned people [who are not suspected of making frivolous claims], we ask them to clarify their claims. If the litigants refuse to clarify, the court may ascertain whether it believes this means the parties are lying, or whether there is a legitimate reason for their refusal. The reason we have to clarify is because people are often foolish and they have specious claims. (C"M 75:1).

In a perfect world (or Federal court), it would be sufficient to simply put defendants on "notice" of the nature of a claim. The *Beit Din* apparently follows a more stringent pleading standard (like Illinois), and claims must "survive dismissal" by showing not only the relief sought, but the underlying factual basis for it. The *dayanim* are encouraged to actively investigate and employ discretion in weeding out frivolous cases. A full review of the scenarios in the *Shulchan Aruch* would be beyond the scope of this article, but the sum effect is to give an impression to a student judge of how to assess cases at their incipience for internal logic and dispose of issues or even whole cases merely on the basis of the pleadings alone. While the standard may be similar, this process is evidently designed to have more "teeth" than the §615/619 motions of secular civil practice.

The *Shulchan Aruch*, while it remains an enduring classic in the Jewish pantheon, was written almost 500 years ago, so circumstances change. The flavor one undeniably gets is that a Jewish court, as classically understood, should intervene early and assertively by applying logical derivation methods – clearly of the same type inculcated in Talmudic school – to claims. This economizes the judicial process and, as we shall see, conforms better to a deeper understanding of the purpose(s) of civil adjudication.

One may read this and be envisioning an "Encyclopedia Brown" sage who uses their x-ray wisdom to divinely predict verdicts by the claims of the parties alone. It has a rustic charm and perhaps even a compelling certain validity, but it is important to recall there are extreme differences in the cultural milieu from which the respective systems arose. The *Shulchan Aruch* deals heavily with injuries, loans, partnerships, and other issues that would have been normal in a pre-medieval agrarian society. In the context of modern, global society, claims are harder to resolve summarily because the issues are more complex.

(continued on next page)

Lawyers today usually only accept cases in the first place if they believe the matter has a high likelihood of success. Suddenly Judge Brown – *Dayan Shmuelavitz* – is quickly losing relevance, basing his judicial philosophy on *Choshen Mishpat* with its body of precedential case law mostly involving debt collection and agricultural profit-sharing arrangements.

Nevertheless, the Torah speaks in every generation, and even the civil laws found throughout its many commentaries lay claim to divine wisdom. A practicing lawyer in the modern era can derive benefit from its teachings. For example, while as noted, the *dayanim* have a more activist orientation. In America, the judiciary fulfills a "passive goalkeeper" role. Judges are not *looking* for ways to carve justice for a litigant. Thus, a lawyer who spells out the situation for the judge – not through "legal argument" but through the *clarity* of the situation being claimed itself – is more likely to be successful than one who expects the judge to figure out how and why to find reasons to rule in their favor. Counsels who "play by the rules" while cutting to the heart of the matter appeal to judges' innate desire for justice and judicial economy. A good claim speaks – nay, sings – for itself, because it is true. Jewish thought reveals this is not "psychological manipulation," but rather a core component of what civil adjudication intended all along.

Jewish thought is premised on the concept of a universal origin to the world, including the judges, cases, claims, and the situations being adjudicated. It is unabashed in its belief in the existence of *universal principles of logic* and justice underlying all of human thought and societal behavior which in turn are rooted in the essence of G-d. Hence, the faculties of adjudication stem from the same root as the behaviors subject to adjudication. It follows that judges, arbitrators, or mediators care that a case is true – not just "demonstrable," "sufficient," "nonfrivolous," or theoretically sound. Therefore, the only true "legal standard" ultimately is *reality itself* because the legal reality, the social reality, the judicial reality, the logical reality, and the psychological reality are all one thing. Hence, judges not only are *permitted* to have a "human side," but are *expected* to employ their own rational, intuitive, and emotional capacities which govern their own personal cognition and decision-making, while executing the adjudicative function. No longer is the judge a "wizened sage" an old-fashioned myth, but rather the person sitting behind the bench of every case in which you are practicing. People want to be convinced of the truth, because their true desire, by and large, is to carry out the right and the just result in the world.

The American judicial system explicitly regards itself as conforming a "best fit" against local economic and cultural realities through common law and legislative rules that evolve. The Jewish system underwrites its mandate with the presumption that the law merely executes the raw truth of life's complexities to its necessary conclusion in every given case. It should be no wonder than in the latter system, when cases present in which inescapable logic compels a certain outcome, the judge has no fear of ruling summarily in favor of that outcome, a real King Solomon, no evidence necessary. In secular thought, the evidentiary and precedential burden must reign supreme because the judicial function is agnostic to conclusions until all claims have been "proven" to legal sufficiency, operating over certain rules of admissibility, burden, standard, and so on. The rule of law is conformed to at all costs, because it is the only social equalizer and the only empirically valid method of capturing truth with systematic reliability and eliminating bias. Any law or procedure which creates an unjust outcome needs to simply be refined. It has served our culture this way for hundreds of years, driving not only the administration of justice, but in many respects, the success of America as a culture, government, and economy.

Yet, we are lawyers, and we are beholden to zealous advocacy in this tempestuous world, and sometimes that means gritting your teeth and believing that your case is true because it is true, not because the legal system ratified it to be so. A strong lawyer has to manage to simultaneously trick his or her brain into all at once figuring out a position, defending the position, and then actually believing in that position. True, a strong lawyer cannot just stride in high and mighty on their "justice horse" to court, holding out their hands and expectantly awaiting the judge to deposit therein a favorable verdict / ruling / prize. But, at the same time, a lawyer should keeps in mind, "if my client's position is truly correct, a judge *has* to agree with me. They *have* to, because it's the only true outcome."

If you are good at demonstrating the reality of the situation even within tremendous adversity and constant ambiguity, valid arguments will be more easily revealed that help your case to be argued, not only in dispositive motion practice but throughout pretrial litigation and trial.

Jewish law predicts, essentially, that judges are the law at the trial level, and that they are human, part of the process itself. That humans who are judges are good and smart and desire to carry out justice. That justice means the true resolution of a real situation. That human judges will innately respond to the force of strong claims, claims which speak for themselves. That this is not psychological manipulation, but on the contrary, is the deeper obligation that judges and societies are expected to discharge – which humans are expected to maintain in their quest for a just society – ascertainment of the truth. In turn, this is the meaning of true advocacy, to which we all aspire.

Rabbi Natan Hakimi is a partner in Kulek, Hakimi & Katz LLC.

[1] For more background on the Choshen Mishpat part of the Shulchan Aruch and how this area of Jewish law has practical relevance today, see the author's Fall 2024 Decalogue Tablets article, "Jewish Court: What Does It Do?"

Want to write for the Tablets?

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

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

Netanyahu's Legal Woes

by Adv. A. Amos Fried

Benjamin Netanyahu is Israel's longest serving prime minister. He was first elected to the country's highest political position in 1996, less than a year after Yitchak Rabin's assassination. In 1999 he was ousted only to be reinstated ten years later to serve from 2009 until 2021. He returned to office in late 2022 and remains Israel's chief executive to this day.

Taken altogether, Netanyahu has led Israel for an unprecedented 17 years, surpassing legendary David Ben-Gurion's previous record of 13.5 years.

But great longevity oftentimes breeds great animus, and no other Israeli public figure exemplifies this better than Benjamin (Bibi) Netanyahu. An entire political camp encompassing all of the left has emerged, known in Israeli parlance as "*Rock lo Bibi*" (Just not Bibi) or in the commonly used acronym "*RalaB*."

Were one to receive an understanding of the world solely through legacy media outlets, both inside and outside of Israel, Bibi would quickly be identified as the vilest creature currently to walk the earth, singularly responsible for every sinister disaster afflicting the Middle East. Within Israel, Bibi is portrayed as the primary culprit both for the October 7, 2023 Hamas attacks and the dismal fate of the hostages still being held by that nefarious terror organization. Internationally, Netanyahu is a consummate war criminal, virtually convicted in *absentia* for genocide with a cross-border warrant out for his arrest issued by the International Criminal Court.

Conversely, there are those who view Netanyahu as nothing short of Israel's savior. Indeed, not for naught has he thrived politically for so many years. Despite his relentless vilification, or perhaps as a result thereof, the Israeli electorate has bestowed upon Netanyahu the honor of leading the country time and again over the course of three decades.

But what could not be achieved at the ballot box has been pursued with fervor via much more powerful means. Not that Netanyahu didn't provide more than enough fodder for those intent on seeking his downfall. With his penchant for blindly accepting pricey gifts and tributes from famously wealthy businessmen, his almost obsessive pursuit of favorable press, and his glaring lapses in judgment and common sense, it was only a matter of time for his opponents, both political and within Israel's administrative "deep state," to gather enough *prima facie* evidence to take the offensive. Beginning in late 2016, the police opened investigations into suspicions of bribery, fraud and breach of trust by Netanyahu dating back tens of years and eventually through to 2017. It wasn't long till word got out and weekly protest rallies were held outside the prime minister's official residence in Jerusalem, Tel Aviv's Rabin Square and even at the Petach Tikva home of then Attorney General Avichai Mandelblit, in demand that Netanyahu stand trial. For the better part of a year these vigils continued while almost daily the media solemnly interviewed members of the vehemently "*RalaB*" movement known as "Crime Minister," bemoaning the rampant corruption with which Netanyahu and his government have plagued Israel.

In November 2019, indictments were first entered against Netanyahu and three co-defendants involving three separate episodes entitled cases 1000, 2000 and 4000 (Cr.C (Jer.) 67104-01-20). The specific charges included one count of accepting bribes, carrying a maximum sentence of 10 years incarceration, along with three counts of fraud and breach of trust, with a maximum sentence of three years imprisonment per count. A third file against Netanyahu, 3000 (referred to also as "the Submarine Affair"), revolving around suspicions of tampering with tenders for the purchase of naval vessels from a German company, was eventually dropped.

"Case 1000" involves Netanyahu's close relationship with Israeli billionaire Arnon Milchan and Milchan's friend, Australian billionaire James Packer. Netanyahu's connection with Milchan dates back to 1999, whereas only in 2013 was he first introduced to Packer. During the period between 2014-2017, in addition to serving as prime minister, Netanyahu also held the post of Minister of Communications, while coincidentally handling affairs related to Milchan's business interests. Beginning in 2011 Netanyahu and his wife Sarah received various "benefits" from Milchan and later on, from Packer as well. These included expensive boxes of cigars, cases of champagne and jewelry, which the Netanyahu's allegedly solicited from their benefactors to the point that it became a kind of "supply line." The scope of the benefits accumulated to some NIS 692,000 (approximately $195,000). "Given the numerous connections between the defendant Netanyahu and Milchan, the defendant Netanyahu should have completely refrained from dealing with Milchan's affairs, within the framework of his duties," so the charges read. But of course he didn't, and time and again Netanyahu exercised his official duties in favor of Milchan, such as engaging with American government officials to grant Milchan entry visas to the United States, acting (albeit unsuccessfully) to extend the exemption from reporting and payment of income tax granted to returning residents (a category including Milchan), and assisting Milchan by intervening in regulations affecting a major merger deal between two of Israel's leading media companies Reshet and Keshet. Case 1000 thus concludes that, "by these actions, the defendant Netanyahu committed acts of breach of trust that materially harm the public trust, moral integrity and the propriety of administrative action by executing his public duties in a severe and ongoing conflict of interest between his personal commitment to Milchan and his commitment to the public."

"Case 2000" is based on recorded conversations between Netanyahu and co-defendant Arnon Mozes - chairman and publisher of Israel's largest newspaper Yedioth Ahronoth. The recordings revealed that on several occasions the two, notorious rivals, met and discussed ways to advance certain reciprocal interests. Netanyahu was eager to have the prominent media outlets controlled by the Yediot Ahronoth group to improve news coverage of him and his family members. For his part, Mozes was seeking legislation that would impose restrictions on his newspaper's main competitor, the free "Israel Hayom."

(continued on next page)

In a meeting held in 2014, during the run-up to the election campaign for the 20th Knesset, "the defendant Mozes offered the defendant Netanyahu a bribe." In exchange for the desired positive press coverage alongside a change for the worse for Netanyahu's political opponents, the prime minister "would use his influence so as to promote legislation" that would serve to bring significant economic benefits to Mozes and his numerous business concerns. "Defendant Netanyahu did not refuse the bribe offer nor did he halt the conversation with defendant Mozes because of it, and although he did not intend to promote the bill, he continued to have a long and detailed conversation with defendant Mozes about the components of the proposal, hence conveying the impression that there was a viable possibility he would use his governmental power to promote legislation that would benefit defendant Mozes." However, this was all a ploy by Netanyahu to induce Mozes to begin instituting the desired change in reporting already throughout the election period. Netanyahu even went so far as to meet with top government officials knowing full well they would reject the proposed legislation, just to further the faux representation that he was indeed devoted to advancing the scheme. Following that, Netanyahu assured Mozes that he would continue his efforts to promote the required legislation after the elections, thereby seeming to keep the bribe offer alive.

"By these actions," the indictment thus accuses, "the defendant Netanyahu committed an act of breach of trust that materially harmed the public's faith in public servants and elected officials and the purity of the latter's morals. By abusing his position and the power of office in order to receive personal benefit, and by being the most senior elected official, he conveyed a message that offers of bribery are a tool that can be used to advance the mutual interests of senior public servants and businessmen, and that there is nothing wrong with bribery transactions." As a result, Netanyahu was spared the charge of actually accepting a bribe, but nevertheless indicted for fraud and breach of trust.

"Case 4000" is portrayed as the most severe of the charges and is certainly the one that receives preeminent attention. While serving as Minister of Communications, Netanyahu was authorized to regulate telecommunications, influence government policy and legislation, and grant approvals and permits for various business operations. Until the early 2000's, Bezeq was a fully government owned and run telecommunications conglomerate with a monopoly on landline telephony and internet access infrastructure. With Netanyahu's authorization, Bezeq underwent a process of partial privatization whereby Israeli businessman Shaul Elovitch became the controlling shareholder of the newly formed Bezeq Group, and by extension owner of the popular news website Walla. "The realm of media coverage was of great significance to the defendant Netanyahu, as well as to his family members, and he attributed crucial importance to it in everything related to his political future," alleges the indictment. "Against this background, a 'give-and-take' relationship was created between the defendants Netanyahu and Elovitch, based on their shared understanding that each of them holds a significant interest that the other party has the ability to advance."

How did this play out? In return for favorable media coverage on the Walla website, alongside negative reporting against his political rivals, Netanyahu utilized his regulatory authority in ways aimed at benefiting Elovitch and the several telecommunication companies he controlled, "the scope of which is estimated to be in enormous amounts" (the indictment does not reveal the actual figures). "The defendant Netanyahu carried out various actions in favor of the defendant Elovitch in exchange for the benefits he received from the Elovitch couple [Iris Elovitch is a co-defendant] in the field of press coverage as mentioned, while acting with favoritism and placing himself in a conflict of interest between his public positions and his private affairs, thereby deviating from the norm." Accordingly, in this case Netanyahu was charged with accepting a bribe in addition to fraud and breach of trust.

Shortly following the indictment, Netanyahu submitted a request for immunity, which by statute the Knesset is allowed to grant when the commission of the "action was in the performance of one's duties, or for the performance of one's duties, as a member of the Knesset." Yet here we should note the stark difference between how such circumstances are handled in Israel as opposed to the United States.

Article II, Section 4 of the United States Constitution provides that the President (and others) "shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors," through a process involving both chambers of Congress.

On the other hand, the question of criminal prosecution for alleged official acts of a president was recently settled by the Supreme Court in its landmark decision, *Trump v. United States* 603 U.S. 593 (2024). Facing the four criminal indictments brought against him in 2023, Donald Trump claimed immunity from criminal prosecution. In a 6-3 ruling, the Supreme Court determined that a former President is entitled to absolute immunity from criminal prosecution for actions within his "conclusive and preclusive" constitutional authority, as well as at least presumptive immunity from prosecution for all his official acts.

In his concurring opinion, Justice Clarence Thomas wrote, "Few things would threaten our constitutional order more than criminally prosecuting a former President for his official acts. Fortunately, the Constitution does not permit us to chart such a dangerous course. As the Court forcefully explains, the Framers 'deemed an energetic executive essential to…the security of liberty,' and our 'system of separated powers' accordingly insulates the President from prosecution for his official acts…To conclude otherwise would hamstring the vigorous Executive that our Constitution envisions. 'While the separation of powers may prevent us from righting every wrong, it does so in order to ensure that we do not lose liberty.'"

(continued on next page)

Netanyahu could only dream of such judicial deference. Less than a month passed before he rescinded his application for immunity, publicly posting on Facebook a message addressed to the "Citizens of Israel." Realizing that the proceedings in the Knesset would prove to be nothing more than "a circus," orchestrated by the "Just not Bibi" movement as a "continuation of the obsessive personal persecution against me," Netanyahu pledged to "shatter all the unfounded allegations and frivolous charges proffered in my case." Netanyahu latter went on to declare that "my first request from the court is complete transparency. I ask that everything be broadcast live, continuously and uncensored. The public needs to hear everything and not through the distorted filter of the prosecution's media cohorts," though in actuality no such motion was ever submitted to the court.

The trial officially began on May 24, 2020, in the Jerusalem District Court. Netanyahu and the co-defendants all denied the charges against them. The prosecution listed 333 witnesses, with only about a third of them actually testifying. To be sure, this was neither the first nor the only time a high executive stood trial in Israel. Former prime minister Ehud Olmert was indicted and eventually convicted of a series of crimes involving graft and corruption for which he sat 16 months in prison (out of a 27-month sentence). Former president of Israel, Moshe Katzav, rejected a plea bargain of six months community service for indecent acts of a sexual nature and ended up going to prison for five years after being convicted of rape. And yet, never before has there been such a drawn-out, rancorous and publicly divisive prosecution against a sitting prime minister as in the trial of Benjamin Netanyahu.

In a future instalment we hope to review what has transpired since the indictment and the ensuing trial, which has so far spanned some five years.

Adv. A. Amos Fried, a native of Chicago, is a licensed member of both the Israel and New York State Bar Associations and has been practicing law in Jerusalem for over 32 years. He specializes in civil litigation, criminal representation and commercial law. His private law firm is located at 5 Ramban St. in Rehavia, Jerusalem, and he can be reached at 011-972-544-931359, or aafried@aafriedlaw.com.

Egypt's Unfulfilled Obligations to Gazan War Refugees Under International Human Rights Law

by Ross "Ari" Holberg

Civilians in war zones are typically allowed to flee battle and cross borders into countries where they may be taken as war refugees. Egypt, however, closed its border to refugees from Gaza during the October 7 War. Former British Commander Richard Kemp, CBE, and Jonathan Conricus of the Foundation for the Defense of Democracies have said they were unaware of another time in history a country at peace has closed its borders to war refugees. [1] Kemp has also asserted Egypt is obliged by treaty to take Gazan war refugees.[2] As explained below, Commander Kemp is correct.

Egypt's Legal Obligations to Gazan War Refugees

The Convention Relating to the Status of Refugees was adopted in 1951 and amended with a Protocol in 1967. The Convention and Protocol bind over 100 states to provide procedural and substantive protections to refugees in search of asylum.

Especially given that the Convention was drafted in the aftermath of massive post-war displacement, the word "refugee" may call to mind for many an image of a person desperately fleeing war. But neither the Refugee Convention nor its 1967 Protocol protect war refugees. States who have ratified the Convention have agreed to not "expel or return" foreign nationals to countries where the person's "life or freedom would be threatened *on account of his race, religion, nationality, membership of particular social group or political opinion.*"[3] Whatever legal protection is available to war refugees won't be found in the Refugee Convention.

War refugees, however, are not entirely without legal protections. Many states have agreed by treaty to give refugees greater protection does the Refugee Convention. Egypt, for one, is party to the Organization of African Unity Refugee Convention. Now known simply as the African Union, the OAU adopted its refugee convention in 1969 to address migration attributed to "decolonization struggles across the continent." As of May 16, 2019, fifty-five countries had ratified the OAU Convention.[4]

The office of the U.N. High Commissioner for Refugees has said the OAU Convention "is considered the most generous and flexible international agreement on refugee protection."[5] Beyond incorporating the protections of the 1951 Refugee Convention, the OAU Convention extends to:

> every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.[6]

Because Egypt has ratified both the U.N. and OAU conventions, Egypt is legally bound to take in not only refugees facing discriminatory persecution in other countries but also refugees from foreign war zones. Gaza has been in various states of war and civil disorder since late 2023. The OAU Convention therefore binds Egypt to accept Gazans who present themselves at the Strip's border crossing with Egypt.

The Prohibition on Refugee "Push Back"

The core of the 1951 Refugee Convention and the OAU Convention is the *nonrefoulement* principle. The Convention was adopted following mass displacements during and after World War II. The Convention reflects a philosophy that countries have agency to some extent for the foreseeable consequences of returning potential refugees to places where they face the threat of persecution. Under this humanitarian approach to international law, the signatories to the Convention could not return, or *refouler,*[7] a person without providing an opportunity to request asylum. The same principle animates the U.N. Convention Against Torture and Other Forms of Degrading Treatment and the European Union Convention for the Protection of Human Rights and Fundamental Freedoms.

Some clever governments have deduced, however, that if a person can't present themselves to a border guard, they also can't request asylum. To avoid the ramifications of the refugee conventions they have ratified, these countries will prevent, or "push back," migrants trying to reach the country's land and presumably request asylum. Countries including the United States and Italy have taken this approach by interdicting migrants at sea.

In *Sale v. Haitian Centers Council, Inc*., the United States Supreme Court held the Coast Guard's interdiction of migrants on the high seas violated neither the Immigration and Nationality Act nor the 1951 Refugee Convention. Justice Stevens wrote for the Court that Article 33 of the Convention, which said no signatory "shall expel or return ('*refouler*') a refugee" who faces persecution on protected grounds, was not meant to apply beyond the borders of the receiving country.

Justice Stevens noted that the drafters were careful to include the parenthetical reference to the word "*refouler,*" which he observed was "*not* an exact synonym for the English word 'return.'" The Court consulted "two respected English-French dictionaries," that listed "'*refouler*' as one of many possible French translations of 'return.'"

None of the English translations of "*refouler*" the Court reviewed used the word "return." The dictionaries instead used "words like 'repulse,' 'repel,' 'drive back,' and even 'expel.'" These definitions implied to the Court that "return" was meant to mean "a defensive act of resistance or exclusion at a border rather than an act of transporting someone to a particular destination."

By contrast, the European Court of Human Rights held in *Hirsi Jamaa & Others v. Italy* that Italian financial police violated a nonrefoulement provision of the European Convention on Human Rights when they interdicted North African migrants on the high seas and returned them to Libya. The Court concluded that the Convention's language providing that "[n]o one shall be subjected to torture or to inhumane or degrading treatment or punishment" prohibited a signatory state from returning a person to a country in a state of "armed conflict," even when the person would first be returned to an intermediate country not at war.

Continued on next page

This practice of extraterritorial repulsion is commonly known as "pushback," though this is redundant with the meaning of refouler as defined by Cambridge: a verb meaning "to push back." As a term of art, however, "push back" means to actively prevent a refugee from reaching the border and asserting a claim of asylum the receiving country would be required to adjudicate. Egypt's actions at the Gaza border appear to meet this definition of "push back."

Pushback of Refugees by Egypt at the Rafah Crossing

In recent years, Gaza has shared two border crossings with Israel and two with Egypt. The Erez crossing provides pedestrian passage between Israel and northern Gaza, with passage normally restricted to Gazans entering Israel on work permits or for medical procedures. The Kerem Shalom crossing allows goods to enter Gaza from Israel near the Gaza-Egypt border.

Egypt maintains two border crossing with Gaza. Pedestrian and goods are at times permitted to enter Gaza from Egypt through the Rafah border crossing. In 2018, Egypt opened the Salah al-Din Gate for commercial use. At the time, Rafah was the only crossing between Egypt and Gaza, although the Salah al-Din Gate had previously been used as a "humanitarian access" point.

The Rafah border crossing is heavily fortified. After the onset of the October 7 War, Egypt closed the Rafah crossing to border crossing, with exceptions primarily for Gazans with visas to foreign countries or able to pay exorbitant fees. Egypt adopted a blanket policy of refusing Gazans entry into Egypt through the Rafah crossing. Gazans were therefore not generally able to present themselves at the border to request asylum under the OAU Convention.

Additionally, Egypt closed Rafah to humanitarian aid after Israel took control from Hamas of the Rafah crossing in May 2024. Shipments of aid thus had to be diverted to the Kerem Shalom crossing, which had to be temporarily closed after being attacked by Hamas.

Israel's operation in Rafah also revealed the extent to which Egypt will go to keep Gazans out of Egypt. When Israel was preparing to operate in Rafah during the October 7 War, Egypt threatened to suspend its peace treaty with Israel and to intervene against Israel in the International Court of Justice case brought against Israel by South Africa alleging Israel was committing genocide in the Gaza Strip. Additionally, Egypt built a retaining wall into which Gazans could potentially overflow into in the event of a military campaign without actually being able to enter the Sinai. Egypt did not follow through on its threats nor end up needing to accommodate a crush of Gazans fleeing hostilities, as Israel moved approximately 900,000 people out of Rafah before operating in the border city.

Egypt's Violations of the OAU Refugee Convention and Potential Remedies

It is fairly clear Egypt has violated the OAU Refugee Convention, and potentially other multinational treaties, by refusing Gazan war refugees entry into Egypt, a neutral country in the war. Egypt has a reputation for being nervous about admitting Gazans, largely credited to the prevalence of terror groups such as Hamas, which was founded as an offshoot of the Muslim Brotherhood. The Brotherhood took control of Egypt in 2011, during the Arab Spring, when U.S.-supported regime change in Cairo resulted in the relatively fleeting replacement of President Hosni Mubarak with Brotherhood member Mohamed Morsi.

However, Egypt is capable of vetting potential refugees for ties to Hamas or other terror groups. Egypt has extensive room to accommodate Gazans in the Sinai but has not used the land for that purpose. Egypt's border policies during the October 7 War have been little else if not consistent. Although the "push back" doctrine has often been applied at sea, it has also been applied in the context of land borders, such as in the European Court of Human Rights case of *N.D. & N.T. v. Spain*, where Spain maintained a similar obstruction to migration, by putting up walls within its own sovereign territory. The Court found that Spain's use of the border to avoid its humanitarian obligations to potential asylees violated European law.

Because Egypt committed a grave breach of international human rights law by denying Gazans access to its border, for the purpose of preventing Gazans from seeking refuge in Egypt, international action against Egypt is appropriate. Among other potential remedies, Israel, the United States, or any interested African Union member state could bring litigation against Egypt in the International Court of Justice. Regardless of whether the litigation were successful, the process would embarrass Egypt and potentially deter other countries from condemning war refugees to death.

Additionally, the United States may condition or even revoke aid to Egypt. Egypt receives about 1.8 billion dollars of aid from the United States annually, and its human rights record already requires it to receive waivers from the U.S. Department of State before it receives certain aid. In 2024, the Biden administration granted Egypt a waiver for its role in the ceasefire-hostage release negotiations, a move opposed even by stridently anti-Israel senators.

Many other legal and political moves are available to punish and deter Egypt from denying Gazans the basic dignity of safety from war, and from waging lawfare against Israel through abuse of the border and asylum process. to the integrity of basic principles international human rights law, particularly the *nonrefoulement* principle, it is essential Egypt face public and significant consequences for its actions during the October 7 War.

Ross "Ari" Holberg is an Assistant Public Defender at Cook County Public Defender.

---

[1] *See* Sky News, Outsiders, *"Horrifically Biased": Former British commander accuses BBC of anti-Israel bias*, Sep. 8, 2024, https://www.skynews.com.au/opinion/outsiders/horrifically biased former british commander accuses bbc of antiisrael bias/video/964f5a9f0032dd1137e25d178d9662af; Foundation for the Defense of Democracies, "All Eyes on Gaza," *Foreign Podicy* (podcast Feb. 13, 2025), https://www.fdd.org/podcasts/2025/02/13/all-eyes-on-gaza/.

[2] Sky News, *supra* note 1.

[3] 1951 Refugee Convention, art. 33 (emphasis added).

[4] Africa Union, OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, U.N.T.S. 14691, June 20, 1974, at 14.

[5] Fatoumata Lejeune-Kaba, Q&A: *OAU Convention remains a key plank of refugee protection in Africa after 40 years*, UNHCR (Sep. 9, 2009), https://www.unhcr.org/news/q-oau-convention-remains-key-plank-refugee-protection-africa-after-40-years (accessed Aug. 27, 2024).

[6] Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), art. I, § 2, Sep. 10, 1969.

[7] *Refouler* is a verb meaning "to push back" or "turn back." Cambridge PASSWORD French-English Dictionary, Refouler (2018) & Cambridge GLOBAL French-English Dictionary, Refouler (2014), https://dictionary.cambridge.org/dictionary/french-english/refouler.

Thank you to the Sponsors of our Judicial Reception

HOT DOG SPONSOR

Smith Gambrell & Russell, LLP

GOLD SPONSORS

Ankin Law Office
Bossov Law Offices
Dickinson Wright PLLC
Diversity Scholarship Foundation
Ginsberg Jacobs LLC
Levin & Perconti
Rubin & Machado, Ltd
Savage Goldish Family
Schoenberg Finkel Beederman Bell Glazer LLC
Women's Bar Association of Illinois

SILVER SPONSORS

Louis A Berns, Favil David Berns & Associates
Sharon Weiss Eiseman
Hoffenberg & Block
Jakubs Wigoda
David Olshansky
Peck Ritchey, LLC
Floyd Perkins and Kate Gainer

BRONZE SPONSORS

Law Office of Samuel S. Bae
Marvin A. Brustin
Law Offices Of Steven R. Decker
Guy Delson Geleerd Jr. Trial Lawyer LLC
Judges Barry & Mitchell Goldberg & Family
Judge Pat Heery & Minnie Green
JAMS
Sherry Hazel Joseph
Markoff Law
Matanky Realty Group, Inc
Sheppard Law Firm, P.C.
Judge Shelley Sutker-Dermer

Honoring the 80th Anniversary of the Liberation of Auschwitz-Birkenau: Reflections and Legal Legacies

by Judge Megan Goldish

On January 27, 2025, the world commemorated the 80th anniversary of the liberation of Auschwitz-Birkenau, the Nazi extermination camp where over 1.1 million people, mainly Jews, were murdered during the Holocaust. After Auschwitz was liberated in 1945, humanity learned of the shocking horrors of genocide, forced labor, and systemic dehumanization that had occurred at the camp. Even eight decades later, Auschwitz serves as a stark reminder of the legal, moral, and social responsibilities we carry today.

The Significance of the Liberation

The liberation of Auschwitz not only marked the end of unimaginable suffering, but also became a defining moment that strengthened the Jewish community. Survivors, many of whom had lost their entire families, emerged from the camps traumatized, bearing witness to crimes so extreme that they defied comprehension. For the Jewish community and the world at large, the liberation of Auschwitz has become an enduring symbol of resilience and a call to "never forget." Out of the literal ashes of Auschwitz, the Jewish community found renewed determination to rebuild and inspired generations to honor their heritage, pursue justice and protect human rights.

Lessons from Survivors

The 80th liberation ceremony was held in a specially constructed tent over the gate of the camp. This ceremony featured speeches from survivors and dignitaries and included moments of silence to honor the victims who perished at the camp. Survivors shared their harrowing experiences, emphasizing the importance of remembrance and the dangers of rising antisemitism. Their testimonies served as poignant reminders of the atrocities committed and the resilience of the human spirit. The testimonies of the survivors at the ceremony, with royalty and world leaders in attendance, demonstrated a shared global commitment to honoring the past, learning its lessons, and standing united against hatred.

World leaders and dignitaries from over 50 countries were in attendance, including German Chancellor Olaf Scholz, Ukrainian President Volodymyr Zelensky, and members of the royal families of Spain, Denmark and the Netherlands. Their participation highlighted a unified global stance against hatred, a focus on educating future generations, and a commitment to ensuring such atrocities never occur again. King Charles III was present, and he became the first British monarch to visit Auschwitz. He met with survivors, toured the camp, and participated in ceremonies honoring the victims. As he walked through the camp, you could see him visibly moved to tears. In his address at the ceremony, he stated, "We recall the depths to which humanity can sink when evil is allowed to flourish, ignored for too long by the world.… [We must] ... challenge prejudice and never be a bystander in the face of violence and hate. As the number of Holocaust survivors regrettably diminishes with the passage of time, the responsibility of remembrance rests far heavier on our shoulders, and on those of generations yet unborn. The act of remembering the evils of the past remains a vital task and in so doing, we inform our present and shape our future."

Lessons from Survivors

The survivors who addressed the audience during the ceremony imparted several profound lessons. They stressed the need for vigilance against rising antisemitism and extremist ideologies to prevent history from repeating itself. They urged society to keep the memory of the Holocaust alive, ensuring that future generations understand the consequences of unchecked hatred and intolerance. The survivors called for proactive engagement against bigotry, stressing that silence can lead to atrocities. These lessons serve as a reminder of our responsibility to remember the past and actively oppose hatred in all its forms.

Lessons from Liberators

The liberators of Auschwitz, soldiers from the Soviet Red Army, were among the first outsiders to witness firsthand the horrors of Auschwitz. Accounts of their observations remain some of the most chilling accounts of human suffering ever recorded. Upon entering the camp, they were overwhelmed by the scale of suffering. Their recollections described in heart-wrenching detail how they encountered approximately 7,000 emaciated prisoners in striped uniforms, piles of corpses, and the smell of death permeating the air. These liberators discovered personal effects confiscated from prisoners, such as stacks of children's toys and piles of shoes and coats. They also found mountains of human hair, gas chambers, crematoria, and detailed Nazi records documenting the systematic murder of over a million people. Despite the horrors they witnessed, some liberators went beyond their military duties to provide survivors with food, medical care, and emotional support. Their actions remind us that even in the darkest times, compassion and humanity can prevail. Not surprisingly, many liberators later described being haunted by what they saw for the rest of their lives.

Today, the museum at Auschwitz displays the items the liberators recovered, including over 110,000 shoes, seven tons of human hair, and thousands of suitcases, teddy bears, and eyeglasses, as evidence of Nazi crimes and as a memorial to the victims. These artifacts provide undeniable physical proof of the mass extermination that took place, while also serving to humanize the victims. Astonishingly, Holocaust denial continues to exist, and these objects serve as irrefutable evidence of Nazi atrocities. These items are displayed so that future generations never forget.

The liberators' role extended beyond freeing the prisoners; they bore witness to the atrocities that had occurred. Liberators exposed the scale of Nazi brutality, which helped lead to the Nuremberg Trials and the development of international human rights law. Their testimonies served as vital evidence at the Nuremberg Trials and reinforced the idea that those responsible for genocide must face justice, laying the foundation for future war crimes prosecutions. Liberators expressed disbelief that the world had allowed such horrors to happen and stressed that indifference to persecution and hatred can have devastating consequences.

(continued on next page)

Notably, there were Jewish soldiers among the liberators of Auschwitz. An estimated 500,000 Jewish soldiers served in the Red Army during World War II. For Jewish liberators, the experience was particularly poignant and personal. Many had lost family members to the Holocaust or were aware of the Nazi persecution of Jews. One liberator was Lieutenant Colonel Anatoly Shapiro, a Jewish officer who led his battalion in liberating Auschwitz. Shapiro later described his shock and horror at what he saw, including the evidence of mass torture and murder. He dedicated much of his life to sharing his experiences and ensuring the memory of Auschwitz and its victims was preserved. In 2006, the President of Ukraine named him a "Hero of Ukraine."

Legal Ramifications of Auschwitz's Liberation

Auschwitz's liberation exposed the extent of Nazi atrocities, sparking an urgent need to address war crimes on a global scale. This led to significant legal and political developments that still resonate today.

The atrocities committed at Auschwitz and other camps led to the convening of the Nuremberg Trials, where key Nazi officials were prosecuted for crimes against humanity and war crimes. For the first time in history, an international tribunal held individuals accountable for actions that targeted specific groups based on race, sexual orientation, religion, and ethnicity. The trials established legal principles that remain foundational to international law, including the idea that state officials could be held personally responsible for their actions, and that "just following orders" was not a valid defense.

Additionally, in 1948, the United Nations adopted the Genocide Convention, defining genocide as a crime under international law. This was a direct result of the Holocaust and the liberation of Auschwitz, as the world sought to codify protections to prevent such atrocities from reoccurring.

The 1948 Universal Declaration of Human Rights was another response to the horrors of Auschwitz and the Holocaust. The declaration enshrined the rights to life, liberty, and security of person, and provided a framework for combating systematic discrimination.

The legal principles that emerged after Auschwitz's liberation continue to shape modern prosecutions of war crimes and genocide. International courts, such as the International Criminal Court (ICC), have drawn upon the precedents set by Nuremberg to prosecute crimes in Rwanda, the former Yugoslavia, and Darfur.

Unique Perspective and Lessons of the Liberation

The house of Rudolf Höss, the longest-serving commandant of Auschwitz, opened to the public for the first time on January 27, 2025, the 80th anniversary of the camp's liberation. Situated just outside the perimeter fence of the camp, the house has been restored to reflect its appearance during the period when the Höss family lived there from 1941 to 1944. As part of the restoration, a mezuzah was added to the front door as a gesture of respect for the Jewish victims of the Holocaust. The opening of this house to the public serves as a reminder of the atrocities committed during the Holocaust and underscores the importance of education in preventing future acts of hatred and antisemitism.

Recently, the documentary The Commandant's Shadow was released, which explores the story of Hans-Jürgen Höss, the son of Rudolf Höss, as he confronts his father's legacy and meets Auschwitz survivor Anita Lasker-Wallfisch. Hans-Jürgen grew up in that privileged home just outside Auschwitz, largely unaware of the atrocities committed by his father. The film captures his personal reckoning as he visits Auschwitz decades later, and rather than deny his father's crimes, he struggles with their significance. The documentary delves into the inherited trauma and the moral reckoning of the descendants of both perpetrators and victims of the Holocaust. Their interactions highlight the contrast between those who suffered under Nazi rule and those who inherited the burden of complicity. Further, the film demonstrates the lessons of the responsibility of future generations to learn from the past and of the necessity of holding war criminals legally accountable.

Challenges in Today's World and Lessons for the Legal and Global Communities

Despite progress made since the liberation of Auschwitz, the fight against hate is ongoing. Holocaust denial and antisemitism are on the rise globally. Antisemitic incidents in the U.S. reached record levels in 2024, demonstrating the urgent need for education and action. Further, the legal principles established after the liberation are continually challenged by repressive regimes, weakened support for international law, and a lack of enforcement mechanisms for prosecuting crimes against humanity. The lessons of Auschwitz must continue to inform how the international community responds to emerging crises, including ongoing calls for violence against any religious group.

The 80th anniversary is an opportunity to renew our commitment to justice and the preservation of human rights. Holocaust education is critical to ensuring that future generations understand the importance of standing against bigotry. Governments must continue to strengthen laws that protect against actual genocide and hate crimes. This includes correcting any incorrect definitions of international crimes, expanding the reach of the Genocide Convention, and supporting an unbiased and dedicated international courts system. Moreover, stricter enforcement of hate crime laws, alongside public campaigns to counter hate speech, is essential. Holocaust denial should not be allowed. It is worth noting that countries like Germany and France have criminalized Holocaust denial, in an attempt to balance free speech while combating hate speech.

Never Forget, Never Again

Survivors of Auschwitz are living witnesses to history. Supporting them, sharing their stories, and learning from their resilience is one of the most profound ways we can honor the anniversary of liberation. The legal and moral legacies of Auschwitz's liberation shape our world today, challenging us to uphold justice and protect human dignity. As we mark this anniversary, let us recommit to ensuring that "never again" is not just a phrase, but a reality. Auschwitz's liberation reminds us that the fight against hatred, injustice, and genocide is not over—and that it is our duty to carry the lessons of the past into a more just future.

Judge Megan Goldish is a past president of the Decalogue Society of Lawyers.

Jill Wine-Banks: An Evening with a Pioneer

by Nicole Spicer

At first glance, when I picked up *Watergate Girl* by Jill Wine-Banks, I noticed her outfit. Believe me, I get it, that is not the point of the book or of the important work she has done in her career. But that picture captures a moment in time, it has the feel of the 1970s fashion, and it depicts a woman smiling even as she dealt with the press regularly during an unbelievably crazy political and legal era. After spending an evening with the author as part of the Special Author event presented by the Decalogue Society and co-hosted with the CBA Alliance for Women, the ISBA Standing Committee on Women and the Law, and the WBAI on September 25, 2024, I had new appreciation for the cover photo and truly how purposeful that choice of photo was. Ms. Wine-Banks brought up the title of her book in her discussion. She was appalled that her publishers at first suggested *Watergate Girl* because she was not and is not **just** a girl. Her publishers pointed out that it was important because that term "girl" captured that time too, and during her time as a young attorney she and her female colleagues were indeed often referred to as "girls." I love this. I don't love the diminutive term, but I love that her story illustrates a time and a history that we female lawyers should be aware of. Partly to appreciate how far we collectively have come, but also to notice and thank those who came before us and truly pioneered being a woman in law.

Jill (she was so down to earth I feel like she would be okay with my informal use of her name) gave us a truly fascinating night of stories from not just her time on the Watergate trial, but the hurdles she had in gaining employment as a female attorney. Some examples of the absurdity she faced were questions asked at an interview: "What kind of birth control do you use?" "How many kids do you plan to have?" WHAT? It was all I could do not to audibly gasp at the birth control question. Today that question at an interview would be ripe for a lawsuit, but for Jill at that time it was normal and accepted.

Our evening with Jill was filled with so many great stories that I literally filled up three pages of notes for my article. The lovely thing is that you don't need to have an evening with Jill to really get an idea of how unique it was to be a female lawyer in the 1970s and 1980s. You just need to read her book! The book is filled with fascinating stories about what it meant to lose faith in the President of the United States (a novelty in the 70s), to battle to be taken seriously and equally with her male counterparts, to build a career while also suffering through a difficult and disappointing marriage. Her personal side of the book really underscores how amazing it is that she achieved everything she did. Leaving a marriage at that time was not taken lightly and being a career-woman was a novelty. Jill did it all with grace and humor, and to this day she keeps fighting the good fight.

I think we, as women, think of the really BIG names for female pioneers in law, like Ruth Bader Ginsberg and Sandra Day O'Connor. You know what? Jill Wine-Banks is now on my list of a female that every single woman going into the legal practice should know about. What Jill did was ground-breaking and scary and difficult and to this day, she is STILL doing it. She participates regularly in two podcasts, she works as a commentator for MSNBC, and she still fights for the ERA. I grew up in the 1980s so I know about the ERA, but for those generations younger than me, do you know what the ERA is? (Hint: it stands for Equal Rights Amendment.) Do you know how hard women fought for it? And did you know we STILL aren't truly equals in the eyes of the law? We have come a long way, such a long way since Jill began practicing as a young woman. But you know what? There is still work to be done, and I for one am thankful Jill is out there still speaking up, speaking out, and sharing what it took to get there.

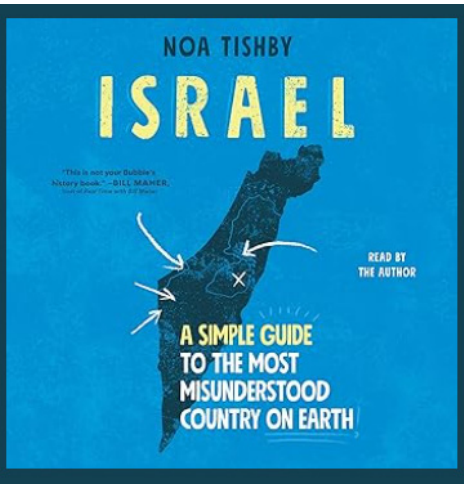
Go read the book, I promise, you won't regret it.

Nicole Spicer is a partner attorney at the Law Office of Erni M. Wilson, LLC.

Decalogue Womxn's Committee Book Club

Wednesday, April 2, 2025, at 5:30pm
Cambria Hotel Lounge 32 W Randolph 9th floor

Join us for the spring meeting of the Womxn's Committee Book Club. The book we have chosen is *Israel* by Noa Tishby. If you would like to be notified of committee meetings, please email us at decaloguesociety@gmail.com.



Join us for our Spring Book Club

Register Here

And watch your mail for information about our Fall event

Book Review: *Tablets Shattered*

by Michael H. Traison

Joshua Leifer. *Tablets Shattered: The End of the American Jewish Century and the Future of Jewish Life*. New York: Penguin Books, 2024.

The moment I finished reading the acknowledgments in this book, I turned the page to see what other reviewers had said about it, which some might regard as "cheating" when assigned a book to review. The idea that the author "pulls no punches" is a recurrent one in many of the evaluations he and/or his publisher chose to reproduce in his opus. That is hardly surprising, as Joshua Leifer finds fault with just about everything in the American Jewish community from the so-called "establishment" secular institutions of Jewish communal life to the reformist ideologues, the conservative movement, Jewish innovators, and the *Haredim* [ultra-Orthodox].

However, in none of the reviews, at least the ones I read, was it stated that despite its grandiose title, this book is a passionately written memoir, not a work of scholarship or even, strictly speaking, a reportage. However, it is apparent after reading only a few pages that the author is an extremely talented writer and journalist possessing qualities beyond his years. In his bio we learn that his "essays and reporting have appeared widely in international publications, including *The New York Review of Books, The New York Times, The Guardian, The New Statesman, Haaretz, The Nation*, and elsewhere," which is impressive indeed.

But Leifer's book must be seen for what it is: the story of a twenty-something's ongoing struggle with his own identity as a Jew, rather than a definitive answer to a complex phenomenon that has wracked American Jewish thinkers and ordinary Jews for years—how and why the "American Jewish Century" has ended and what the future portends for Jews in *Di Goldene Medina* [the Golden Country, as Jewish immigrants called it]. Perhaps it is just me, but I believe that memoirs should be written by people at a different stage in life, and that to write your own story at such an early age suggests a generous dose of chutzpah.

At the core of *Tablets Shattered* is the author's disillusionment with what has become of modern-day Israel and American Jewry. His view of the Jewish State has been shaped by his experience as a journalist covering the West Bank and being on what he calls "the wrong side of an Israeli soldier's gun" (p. 1). That episode was clearly traumatic and compelled him to question many of his assumptions about his own relationship to Israel. He notes that "[b]y mid-century embourgeoisement and suburban anomie, when a cultural and religious crisis appeared imminent," the Jewish State had become the dominant icon of Jewish expression in America, especially among Jews who were not steeped in religious knowledge and observance.

It is important to point out here that American Jewry, including the Jewish community institutions, fell in love with Israel not in 1948 but rather in 1967. Only twenty-two years after the cessation of hostilities in World War II, the Six-Day War represented a kind of catharsis for the Jewish people, who until then had been ashamed and devastated by what had happened to them as a nation. With some notable exceptions, until then Jews had been helpless. That year brought about a change in the self-image of the Jewish people in America and elsewhere in the Diaspora. I think that in this sense, the post-Holocaust period only ended in 1967, though some may argue that after October 7, we have returned to it.

Ironically, in August 2024, a Brooklyn bookstore decided to cancel a launch for *Tablets Shattered*, because the moderator of the event, Rabbi Andy Bachman of Temple Beth Elohim, was branded a "Zionist." This was widely reported on and put Leifer and his opus in the spotlight. Of course, you cannot pay for advertising that good, and the author and his book were suddenly front-page news, at least in the Jewish media.

Leifer's approach to the issue of American Jewry and its swan song is rather pontifical, and that is surprising for a young writer who feels ready to explain everything he thinks we need to know but is not yet aware of what he himself does not know or has yet to experience. His many personal references to his own childhood, including as a pupil at Gerrard Berman Day School and Solomon Schechter School, both in North Jersey; his various disappointments in family relations; and the trauma he experienced when transferred from an all-Jewish environment to a public school suggest that this book may have been written as a kind of therapy. Leifer goes to great lengths to explain what was wrong with the various Jewish stations along his journey to find himself—perhaps unaware that none of them can be perfect. Much of what he has written suggests to me a geographer surveying the landscape while flying in a Piper Cub at 5,000 feet rather than looking down from a 747 at 30,000 feet. Perhaps when he rereads his book thirty years from now at age sixty, his own pomposity and superficiality will amuse him.

Before becoming a lawyer, I was a high school teacher. Had the author been one of my twelfth-grade English students and asked me about his plans to write a book, I might have told him to stick to one theme. This is precisely the opposite of what Leifer has done. He wends his way through no fewer than five different subjects: American Jewish history, the contemporary communal structure of American Jewry, Israel and its politics, his own personal journey, and religious philosophy. On any one of these he might have written a very compelling account, relying not strictly on his own observations and interviews but also on the works of many serious historians, sociologists, and other scholars. Instead, the result is a mishmash, though one with many interesting and worthwhile nuggets. In my opinion, Leifer's tendency to quote dozens of individuals (many of whom are not exactly giants in their field) as though they are respected authorities is annoying and a sign of immaturity.

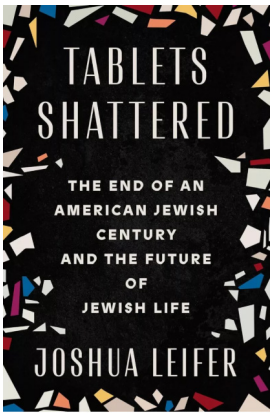
Leifer is especially disillusioned with the leadership of American Jewry and insists that it is not representative of the Jewish population and out of synch with it. To some extent, he is not mistaken. The leaders have generally been wealthy, far better off than average Jews, who were mainly middle class. The professionals in Jewish communal organizations kowtowed to them and continue to do so—even when they disagreed with them. Many ordinary Jews felt alienated by the federations and by the major Jewish advocacy and defense organizations, especially the most powerful ones, including the American Jewish Committee (AJC) and the Anti-Defamation League (ADL). All of them needed money to survive, let alone thrive, and so they handed out the lay positions to the wealthy. Many people are unhappy with that practice. I am not—and would urge others to recognize that reality isn't always a meritocracy.

Of course, the truth is that those rich donors in the Jewish community weren't welcome in the non-Jewish community, so they took advantage of the opportunities they did have. Nowadays things are different. The press is replete with reports of Jewish benefactors giving money to institutions that have nothing to do with Jewish people or issues in particular.

Continued on next page

Having just read *The Money Kings*, by Daniel Shulman, on the role of Jewish immigrants on Wall Street, I was excited when I began *Tablets Shattered*. Leifer promises to provide the background to the history of the American Jewish community, but I was quickly disappointed when I realized that all he offers is a shallow and condensed introduction to what he really wants to talk about, and that is not the evolution of the American Jewish experience but rather his own story; he is engaging in an exercise in navel gazing.

What was truly astonishing to me, however, was that Leifer failed to talk about or even hint at Judaism as an ethnicity or nationality—the idea of belonging to a group with a common origin, heritage, history, and traditions, including in the realms of gastronomy and humor. He seems to be drawn into the American—as opposed to European—concept of Judaism or Jewishness as being only a religion or faith, which is, of course, ridiculous, seeing as there are so many people who consider themselves (or are considered) Jewish who are far removed from religious belief or practice. Since October 7, I think more American Jews than ever have begun to recognize that they feel Jewish and believe that their future is tied to Israel and the Jewish people, even if they have never set foot in a synagogue and their favorite Passover breakfast is bacon and eggs on matzah. Of course, there are many others who have become estranged from their heritage in part because they reject Zionism or claim that Judaism should be decoupled from it. These *Tikkun Olamers* can sometimes be seen at anti-Israeli demonstrations alongside ultra-Orthodox Neturei Karta extremists with whom they have nothing in common but their disgust with Israel.



Leifer alludes to ethnicity when discussing the transformative nature of the Six-Day War, when a sea change in Zionist attitudes in America signaled the end of Jewish victimhood, which had reached its zenith in the Holocaust. But he fails to understand that the nationalistic fervor that suddenly emerged almost out of nowhere—and to which I was an eyewitness—was a sign that Jews had finally recognized that secular Jewish self-identification as opposed to religious practice was also a legitimate manifestation of Judaism. As his book was published shortly after the Hamas invasion of Israel, the aim of which was to obliterate the nation-state of the Jewish people, Leifer might have used the opportunity to explore the idea of Jewish national identity.

He does deal with the national quality of Jewishness when writing about A.B. Yehoshua's address to an AJC centennial observance in 2006 at the Library of Congress at which the renowned Israeli author "compared the Jewishness of American Jews to a jacket, which one can take on and off, while his own Israeli Jewishness was more robust, more permanent." Yehoshua declared; "Being Israeli is my skin; it's not my jacket" (p. 203). In fact, it was only at the beginning of my own journey to what has become for me an intimate relationship with Poland and its people that I began to hear the term "Jewish nation" and to hear the leaders of the nation-state speaking in the name of what Americans sometimes call the "Jewish people." The fact that Leifer rarely departs from the concept of Judaism as a religion may be a reflection of how very personal his book is.

There is no denying the author's anger. The deeper one delves into his book, the clearer it becomes that the brief historical survey and observations about American Jewish life are but a prelude to a sometimes vitriolic diatribe against Israel, which includes some quite outrageous accusations, including the charge that it is guilty of the "carpet bombing of Gaza" (p. 217), which Israel's detractors will cite with glee.

Strangely, Leifer does not include a bibliography, nor does he provide any scholarly basis for some of his conclusions. For example, his introductory words on American responses to the Jews and Israel should certainly have made reference to Michael Oren's *Power, Faith, and Fantasy: America in the Middle East*, and when discussing the rescue of some European academics from near-certain annihilation in the German Final Solution, he might have cited Laurel Leff's recent study, *Well Worth Saving*.

The author's repeated criticism of the Jewish establishment might have been enriched had he mined the plethora of research by historians ranging from Yehuda Bauer's early study of the American Jewish Joint Distribution Committee to popular works such as Stephan Birmingham's now-classic *Our Crowd* as well as *The Money Kings*, which I mentioned above. Instead, he relies primarily upon his own observations and conclusions, or on those of the purported authorities from whom he quotes in conversations he conducted for his book, as any journalist might do to add color to a feature story. But we cannot, of course, confuse that with real scholarship.

Leifer's discussion of the ultra-Orthodox community in Lakewood, New Jersey is especially informative and interesting. Most of mainstream American Jewry is unaware of this community, and for many it will be eye opening. Especially compelling is his description of the dichotomy between local politics—which means support for the Democrats—and the more than 54 percent support for Donald Trump. His references to the Satmar Rebbe and Orthodox commentator Avi Shafran who are opposed to the Trump mania sweeping sections of the observant population is especially worthwhile. The author correctly points out that some rabbis have suggested that support for Trump may wind up creating an America in which Jews are far less welcome than they are now. It is especially strange that Leifer paid so little attention to the Modern Orthodox movement. This is a rather glaring omission given the vitality of that particular stream of Judaism. Leifer might have also spent more time on the special relationship between the United States and Israel, which can be traced back to the days of the Pilgrims. Just think of how many towns in America are named after cities mentioned in the Bible.

When I finished this book, I couldn't help but think that were I ever to meet the author, I would probably tell him, "Josh, no doubt much of what you say is true, and you write very well indeed, but I've been around much longer than you, and I don't see things quite the same way." I would hope that hearing the views of those who disagree with him wouldn't upset him. Leifer is presently working on his PhD at Yale, and despite my misgivings about much of what he has written in this book, I am looking forward to reading more from him in the coming years. Let there be no mistake, I understand why he did not wait to publish *Tablets Shattered.* I probably would not have either had I been at his stage of life and possessed of his exceptional intellect, talent, and hubris.

Michael H. Traison is an attorney in Chicago and Herzliya, Israel. This review was originally published in Israel Journal of Foreign Affairs.

by Judges Abbey Fishman Romanek and James A. Shapiro

In February, a group of judges, some Jewish, some not, together with some of their spouses traveled to Buenos Aires to meet with representatives of the Simon Wiesenthal Center there. We met with Ariel Gelblung, director of the Simon Wiesenthal Center in Buenos Aires, and his assistant Dario Penzik.

Ariel was a commercial litigation lawyer before becoming director of the Simon Wiesenthal Center. He explained to us the history of the Jewish community and antisemitism in Argentina. Like our immigration to so many other countries, including the United States, we started immigrating to Argentina in significant numbers during the late 19th century to escape the Russian pogroms and other antisemitic violence against our people.

Argentinian Jews were tolerated fairly well until a veritable pogrom of their own in 1919, known as "La Semana Trágica" (Tragic Week), when thugs killed hundreds of Jews in response to a general labor strike. Like every country other than the Dominican Republic, Argentina refused at the Evian Conference in 1938 to take in any Jews in response to Hitler's campaign against us.

The next major antisemitic incidents occurred in the early 1990s when the Israeli Embassy was bombed in 1992, and the Asociación Mutual Israelita Argentina ("AMIA") was bombed two years later in 1994. No one was ever charged or convicted in these bombings, but investigations revealed that eleven Iranians were responsible for them.

Judge Matthew Jannusch (left) at the memorial site of the Israeli Embassy 1992 bombing. Memorial to the 87 victims of the AMIA bombing in 1994 (right)

Before visiting the AMIA memorial, we visited the memorial for the 1992 Israeli Embassy bombing that killed 22 people. The site has 22 trees, one for each of the victims.

Appropriately enough, the new AMIA Center was built on the same site as the original, similar to the way One World Trade Center was built on the same site as the 9/11 terrorist attacks, to remind the terrorists that we can and will rebuild.

Abbey Fishman Romanek is a judge in the Domestic Relations Division of the Circuit Court of Cook County. James A. Shapiro is a judge in the Domestic Relations Division of the Circuit Court of Cook County, and a past president of the Decalogue Society.

Board member **Alon Stein**, elected from the 12th subcircuit, was sworn in as a Circuit Court Judge on December 2.

Daniel Goldberg was named one of JUF's 36 under 36.

Michelle Katz' fourth and final, Tatiana Sydney (Katz) Rosenblum became a Bat Mitzvah in San Juan during winter break. Also, I was just named as a Super Lawyer for the 5th consecutive year.

Ken Levinson was recognized on the 2025 Illinois Super Lawyers List and named to the Illinois Top 100!

Board member **Judge Neil Cohen** became the proud grandpa of Lucy Margot Cohen.

Ella Marks, daughter of Decalogue First Vice-President, **Alex Marks**, received the Silver Star of Deborah, the Gold Star of Deborah, and the Eternal Recruitment awards at the BBYO 2025 International Convention in Denver, Colorado.

Pesach Mitzvah Project
Sunday, April 6, Time TBA

Decalogue is returning to 820 W. Belle Plaine on Chicago's north side to distribute food packages for Pesach. If we have enough volunteers we will deliver to additional buildings. Boxes will be delivered to us so you do not need your own vehicle - just join us at the appointed time, grab some packages and help the needy of our community celebrate the Fesitval of Freedom. Children of all ages can participate so this is a great opportunity to involve your family in our mitzvah project.

Sign-up at
https://forms.gle/naxjFSHtqqdzzDeA

Welcome New Members!

Tina Abramovitch
Gabrielle Adelstein
Alison Anixter
Rachel Aranyi
Joel Barrett
Tamar Basch
Katie Bendalin
Sheri Bennet
Jessica Bleiweis
Randy Evan Borre
Will Bouton
Eli Butman
Ben Chesler
Edward Chupack
Aaron Cohen
Yehuda Davis
Benjamin Dym
Ahmed El Sammak
Brendan Isaac Epton
Joshua Feldman
Isaac French
Lilli Friedland
Lucy Friedman
Minna Gelberman
Jodi Gladstone
Eva Goldblat
Matthew Goldstein
Sophie Gurfinkel
Sonje Hawkins
Abigail Holtzman
Randi Holzman
Jeffrey Hymen
David Kerman
Davey Komisar
Jaclyn Lantz
Lyndsay Lazar
Tamar Lerner
Benjamin Levey
Molly Levinson
Aaron Bradley Lieberman
Meir Lieberman
Emma Liebman
David Lifsics
Sara London
Sara Magid
Paige Maizes
Paige Lauren Maizes
Grace Stewart Masback
Brandon McCowan
Deborah Meirowitz
Lacey Marina Modell
Max Moss
John Mulroe
David Adam Neiman
Hannah Newman
Ben Padnos
Lisuan Poh
Ruthie Renberg
Maya Resnick
Daniela Reyes
Nick Riback
Alicia Rodriguez
Cat Rosen
Corey Steven Rosenberg
Kevin Rosner
Max Rotenberg
Sofia Rubin
Maggie Elizabeth Schwartz
Rachel Sidel
Danny Siegel
Jordan Sigale
Alexandra Silversteyn
Zachary Sinykin
Erin TePastte
Jessica Thiel
Emma Torbik
Michael Warren
Kyla Wegman
Margo Weissman
Samuel White
Shmuel Wyckoff

Thank You to Our Members Who Gave Above and Beyond

Life Members:

Howard Ankin, Adam Bossov, Charles Golbert, David Lipschutz, David Olshansky

Firm Members:

Coleman Law PC, Rubin & Machado Ltd., TR Law Offices LLC

Sustaining Members

Tina Abramovitch
Maryam Ahmad
Kevin Apter
Theodore Banks
David Becker
Adam Bossov
Debbie Cohen
Neil Cohen
Erin Cohn
Lindsay Coleman
Richard Colombik
Stephen Daday
Morton Denlow
Sharon Eiseman
Corri Fetman
Charles Golbert
Barry Goldberg
Michael Goldberg
Richard Goldenhersh
Megan Goldish
Howard Goldrich
Matthew Goldstein
Robert Groszek
Pat Heery
Kenneth Henry
Kenneth Hoffman
Patrick John
Adam Kibort
Charles Krugel
David Lipschultz
Mary Mikva
Donald Nathan
Jill Quinn
Leslie Rosen
Mara Ruff
Andrea Schleifer
Jody Schneiderman
Jeffrey Schulkin
Mary Sevandal Cohen
Robert Shipley
Jordan Sigale
Alon Stein
Steven Stender
Renata Stiehl
Neal Strom
Michael Weil
Ariel Weissberg