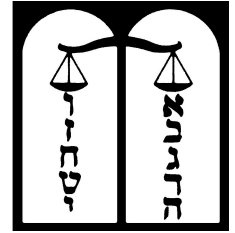


# THE DECALOGUE SOCIETY OF LAWYERS

*America's Oldest Jewish Bar Association*



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## SAVE THE DATES!

**Judicial Reception**  
Thursday, December 3

**Chanukah Party**  
Monday, December 14

## Back to School: What Students and Parents Should Know About "Extracurricular" Activities

*by Adam J. Sheppard<sup>1</sup>*

Back-to-school: a time of great excitement for students; a time that naturally breeds a "party" atmosphere. However, students who plan to engage in illegal "partying"-related activities this fall, such as underage drinking or recreational drug use, should be on alert. There is a growing trend amongst school officials and law enforcement authorities to conduct aggressive investigations into illegal "partying"-related activities on or near school campuses.<sup>2</sup>

For example, our office recently represented a young man who was the lead defendant in a drug case involving a raid of a fraternity house at the University of Illinois in Champaign. The raid was conducted pursuant to a search warrant. The Champaign County Police Department and University of Illinois police conducted a joint investigation into whether drugs were being sold out of certain fraternity houses. The investigation featured confidential informants, students wearing wires against one another, and the use of pre-recorded marked police funds to conduct controlled purchases of drugs. These investigatory tools are typically present in investigations of major drug-operations,<sup>3</sup> and they are now being brought to bear upon students on college campuses.

High-school officials are also not heeding to the oft-sung cry of "leave them kids alone."<sup>4</sup> Warrantless locker searches,<sup>5</sup> searches of student vehicles in high-school parking lots,<sup>6</sup> and pat-down searches at the entryways to schools are increasingly common.<sup>7</sup> Several states, including Illinois, have enacted statutes which authorize warrantless, suspicion-less searches of "lockers, desks, parking lots, and other school property and equipment owned or controlled by the school, as well as personal effects left in those places and areas by students. . ."<sup>8</sup>

The seminal case which laid the groundwork for these intrusions into students' privacy interests was *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). In *T.L.O.*, an assistant principal searched a 14-year-old freshman's purse on suspicion that it contained cigarettes. The official seized a small amount of marijuana from within the purse and turned it over to police. The search was upheld by the Supreme Court. The Court determined that "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject," and thus allowed for departure from the warrant and probable cause requirements.<sup>9</sup>

*(continued on page 3)*



## President's Column

by Barry S. Goldberg

We are approaching the Jewish Holiday of Rosh Hashanah, which marks the beginning of the Jewish New Year. Rosh Hashanah is characterized almost universally by

the blowing of the Shofar, a trumpet made from a ram's horn, which is intended to awaken us from our "slumber" and alert us to the need to reflect on our lives and resolve to improve ourselves.

As Decalogue begins the 2009-2010 year, things are really looking exiting. We have a vibrant Young Lawyers section which held its first networking event of the year on September 1, 2009 at Theory on Hubbard in Chicago. Our Judicial Evaluations Committee is actively involved with the Alliance of Bar Associations For Judicial Screening and has scheduled training sessions for those interested in participating. Our Law Student Division is actively organizing its student representatives for the ensuing year. Our Legal Lecture Series Committee has finalized this year's schedule of speakers for our legal education lectures, all of which qualify for MCLE credit. Our Events Committee has scheduled our annual Judicial Reception for December 3, 2009 and our annual Chanukah Party for December 14, 2009. And the Board of Managers has already held its first meeting.

For over 75 years, one of Decalogue's key purposes has been to maintain vigilance against public and private practices which are anti-social, discriminatory, anti-Semitic or oppressive and join with other groups and minorities to protect legal rights and privileges. Last month, Decalogue was proud to co-sponsor the memorial service held on August 10, 2009 at Emanuel Congregation to remember the victims of the mass shooting at the Tel Aviv GLBT Community Center. Also last month, Decalogue wrote a letter questioning a government body's scheduling of a conference on Yom Kippur and demanding that reasonable accommodations be made for Jewish attendees. The agency did respond and it offered a modified accommodation.

Indeed, after 75 years, Decalogue is still very relevant.

With Rosh Hashanah approaching, the time is right for self-reflection and resolving to improve your involvement with Decalogue. If you haven't yet sent in your dues, do it now. If you want to get more involved, come to our events or sign up for our committees. We really do value the participation of our members. I want to take this opportunity to wish all of you a happy and sweet new year. May you all be inscribed for a year of health, happiness, and success in all of your endeavors.

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## Spotlight on Members

**Joel Chupack** spoke on Foreclosures at the Distressed Developers Workshop in June 2009, sponsored by Chicago Community Loan Fund.

**Bob Markoff** has been elected Vice Chair of the Illinois Institute for Continuing Legal Education and was selected by the Federal Trade Commission to serve as a panelist at their recent Chicago Roundtable gathering information on State Court Consumer Litigation Practices.

Longtime Decalogue Society member and author, **Robert S. Ross**, has written his second novel, *Alternate Justice*. Published by Lincolnwood, Illinois based, Publications International, Ltd., the book is available in hardcover at the "Book Bin" Bookstore in Northbrook, Illinois and through Amazon.com.

*Alternate Justice* follows the life paths of two brothers who have hated each other from early childhood. As years pass, fate continues to intervene and their lives intersect. The touchstone between the brothers is Justin Posner, a Jewish FBI Agent, who admires one brother, while he has a professional interest and personal vendetta against the other. The novel uses Las Vegas and Chicago as its venues and local readers will recognize many of the sites in the novel.

Like his first novel, *Fatal Volley*, the characters in this novel are named after the author's family and friends, including several Decalogue Society members. *Alternate Justice* has been described as a fast moving good read, with a unique twist at the end that will leave the reader anticipating a sequel.

**Please send us your news for Spotlight on Members!**

## BACK TO SCHOOL *continued from page 1*

Notable progenies of T.L.O. include a pair of Supreme Court decisions which authorized random drug testing of student athletes<sup>10</sup> and students who participated in other “competitive” extracurricular activities such as the Academic Team, Future Homemakers of America, band, and choir.<sup>11</sup> Further, while some state courts have recently attempted to dial back the authority of school officials to search students and their belongings,<sup>12</sup> Illinois has not joined this progressive group.<sup>13</sup>

The Illinois legislature has also implemented significant penalties for common “partying” mishaps. For example, individuals who are found guilty or plead guilty to a charge of Minor in Possession of Alcohol – even if they receive a disposition of court “supervision” – face a three-month suspension of their driving privileges in addition to any criminal penalty that may be imposed.<sup>14</sup> Possession of Cannabis Paraphernalia constitutes a Class A misdemeanor “for which the court shall impose a minimum fine of \$750 in addition to any other penalty prescribed for a Class A misdemeanor.”<sup>15</sup> Possession of a Controlled Substance (other than cannabis) in any amount constitutes a felony.<sup>16</sup>

Parents might also suffer the consequences of their children’s actions. For example, under the Chicago Municipal Code, “the owner of record of any motor vehicle that contains any controlled substance or cannabis [] or that is used in the purchase, attempt to purchase, sale or attempt to sell such controlled substances or cannabis shall be liable to the city for an administrative penalty of \$1,000.00 plus any applicable towing and storage fees. Any such vehicle shall be subject to seizure and impoundment pursuant to this section.”<sup>17</sup> While parents may have an “innocent owner” defense when it comes to properties that the State is seeking to permanently forfeit,<sup>18</sup> that defense is not applicable in the administrative setting referenced above. Furthermore, forfeiture litigation is often lengthy and claimants may incur expenses such as cost bonds.<sup>19</sup>

In conclusion, school officials and law enforcement authorities are cracking down on students’ “partying”-related activities. While officials of decades past may have turned a blind-eye to the “partying” ways of students – see e.g., *Animal House*, circa 1978,<sup>20</sup> and *Dazed and Confused*, circa 1993 – the new law enforcement climate is not so student-friendly. School officials, in conjunction with law enforcement authorities, are engaged in aggressive investigations designed to ferret out underage drinking and recreational drug use. The statutory penalties for such activities have become more severe. Accordingly, students who go off to school seeking a “higher education” this fall would do well to proceed with caution.

<sup>1</sup> Adam Sheppard is an associate in the Law Office of Barry D. Sheppard & Associates, P.C., a firm which specializes in defense of criminal charges. Adam has been a Decalogue member for four years.

<sup>2</sup> See e.g., <http://chronicle.com/article/Drug-Sting-Nabs-21-Students-at/42845> (“Drug Sting Nabs 21 Students”)

<http://advancement.sdsu.edu/marcomm/information/articles/qanda.html> (year long investigation by university police and DEA resulted in arrest of 18 students); also see *United States v. Walter*, 2007 WL 1795770 (2007)(University of Vermont police obtained a search warrant after obtaining information from an “SI,” a source of information, and conducting surveillance); *Mazuz v. Maryland*, 442 F.3d 217 (4th Cir. 2006)(drug raid at University of Maryland dormitory); *State v. Lofgren*, 47 S.W.3d 167 (Tex. App. 2001)(Undercover officer disguised as a college student entered fraternity house to investigate underage drinking and summoned police officers to the scene); *Commonwealth v. Mistler*, 590 Pa. 390, 912 A.2d 1265 (Pa. 2006. )(Following an undercover operation, officers issued under-age drinking citations to a group of students who were attending a party at Sigma Pi fraternity. On the night in question, the fraternity had opened their house to the public for a party by selling tickets for admission).

<sup>3</sup> See e.g., *United State v. McMahan*, 495 F.3d 410(7th Cir. 2007)(federal investigation into well-established drug business); *United States v. Duran* 407 F.3d 828 (7th Cir. 2005) (FBI investigation into Chicago drug-ring)

<sup>4</sup> Pink Floyd, *The Wall*, “Another Brick in the Wall,” Harvest Records (November 30, 1979)

<sup>5</sup> *In re Juvenile 2006-406*, 156 N.H. 233, 931 A.2d 1229 (N.H. 2007)(locker search); *In re Interest of Isiah B.*, 176 Wis.2d 639, 642, 500 N.W.2d 637, cert. denied, 510 U.S. 884, 114 S.Ct. 231, 126 L.Ed.2d 186 (1993) (random locker searches)

<sup>6</sup> *State v. Schloegel*, 769 N.W.2d 130 (Wis. App. 2009) (Search of high school student’s car deemed justified based on anonymous tip that school officials received that student was in possession of drugs); *Hill v. Sharber*, 544 F.Supp.2d 670(M.D. Tenn. 2008)(search of student’s vehicle following positive alert by drug dog); *People v. Williams*, 339 Ill.App.3d 956 (2003)(search of student’s vehicle in school’s parking lot by police officer, who was assigned as high-school’s resource officer).

<sup>7</sup> *In re P.P., III*, 2009 WL 331887 (Tex. App. 2009)( routine searches of students entering an alternative high-school during which students must take off their shoes, socks, and belt, and submit to a pat-down); *Hill v. Hood*, 2006 WL 39092 (N.D. Ill. 2006) (pat-down searches on every student every day as they entered the school); *People v. Pruitt, et. al.*, 278 Ill.App.3d 194 (1996)(pat-down by police officer revealed gun after student set off walk-through metal detector).

<sup>8</sup> 105 ILCS 5/10-22.6(e)(Illinois School Code)(August 24, 2009)(“As a matter of public policy, the General Assembly finds that students have no reasonable expectation of privacy in these places and areas or in their personal effects left in these places and areas.”); RCWA 28A.600.220(Washington School Code)(2009)(“ No right nor expectation of privacy exists for any student as to the use of any locker issued or assigned to a student by a school and the locker shall be subject to search for illegal drugs, weapons, and contraband . . . .”); compare Section 232.256(2), Florida Statutes (2009)(requiring at least reasonable suspicion prior to a search of a student’s locker) and MD Code, Education, § 7-308 (2009)(same).

<sup>9</sup> *Id.* at 340-341.

<sup>10</sup> See *Vernonia School Dist. v. Acton*, 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995).

<sup>11</sup> See *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 122 S.Ct. 2559 (2002).

<sup>12</sup> See e.g. *State ex rel. Juvenile Dept. of Clackamas County v. M.A.D.*, 202 P.3d 249 (Or. App. 2009)(declining to follow T.L.O on state law grounds, holding that school officials were required, under the state constitution, to act with probable cause); see also *York v. Wahkiakum School Dist. No. 200*, 163 Wash.2d 297, 178 P.3d 995 (Wash. 2008)(holding that suspicionless drug testing of student athletes was unconstitutional on state law grounds).

<sup>13</sup> See Illinois School Code, 105 ILCS 5/10-22.6(e)(Re-approved on August 24, 2009)(authorizing searches of students’ lockers and personal effects); see also *People v. Dilworth*, 169 Ill.2d 195, 661 N.E.2d 310 (1996)(adopting the principles set forth in T.L.O. and Veronia School District); accord *People v. Williams*, 339 Ill.App.3d 956 (2003)(applying the Dilworth/T.L.O. framework).

<sup>14</sup> Cross reference 235 ILCS 5/16-20 with 625 ILCS 5/6-206(a)(43).

<sup>15</sup> 720 ILCS 600/3.5.

<sup>16</sup> 720 ILCS 570/402

<sup>17</sup> Chicago Municipal Code Ordinance 7-24-225 (Emphasis added).

<sup>18</sup> 725 ILCS 150/8

<sup>19</sup> See e.g. 725 ILCS 150/6(c)(3)(10% cost bond)

<sup>20</sup> Incidentally, the Dartmouth fraternity house which inspired the “National Lampoon’s *Animal House*” movie was the subject of a police raid in 2006; police had obtained a search warrant for the house following a two-year investigation). See <http://www.nytimes.com/2006/06/09/us/09cnd-dartmouth.html>.

# The Ark Legal Clinic Seeks Volunteer Attorneys

*by Richard Hanus*

Given these very challenging economic times, the ARK, now more than ever, appreciates the contributions our community members are able to offer, whether those contributions are their professional guidance or their financial resources. The members of the Decalogue Society are in a special position, as Jewish attorneys, to extend their hand with their expertise to help ARK clients in need of legal counsel.

The following exemplify the difficult legal situations that face ARK clients everyday:

## Family Law:

Heidi and her husband David are seeking a divorce. They have two young children. Heidi is employed as a teacher and David is a health care worker. Heidi needs advice on her divorce rights. She wants to make sure she receives the proper amount of child support in order to take care of her children.

## Foreclosure:

Lisa's husband passed away after a late diagnosis of cancer. She is 52 years old and the mother of three pre-teen children. She was laid off from her job just before her husband died. The family had a high deductible and was struggling to pay their mortgage. She was served with foreclosure papers and is in danger of losing the family home.

## Bankruptcy & Collections Defense:

Joe and Linda have been juggling their bills. Over the past year, when Joe was laid off of his accounting job, they have built up what seems to be insurmountable debt. They receive daily phone calls from creditors who are threatening litigation and continue to fall further behind on their bills. They need assistance deciding whether it is in their best interest to file for bankruptcy or whether to negotiate a payment plan with the creditor.

## Evictions:

Michael, a 44 year old divorced father, is facing eviction. He has been living from paycheck to paycheck due to a decrease in his home repair business. He has been unsuccessful in his pursuit of a part-time job. He has been living in the same apartment for 7 years and cannot afford a higher rent elsewhere. Michael has been in touch with the landlord who is now becoming impatient. Michael is afraid of becoming homeless.

To volunteer, please contact  
Cori Hork or Bonnie Azose, at the ARK  
at (773) 973-1000

# More Mitzvah Opportunities

Since 1908, **Maot Chitim of Greater Chicago** has enabled thousands of Jewish needy people to experience the Passover holiday in a traditional and dignified manner, and more recently Rosh Hashanah.

Now, 101 years later, Maot Chitim delivers Yom Tov food packages to 12,000 families in the Chicago area. For their excellent work, Maot Chitim received Decalogue Society's Community Service Award at our annual Dinner.

The need for monetary contributions is ongoing, but especially acute as the holidays approach. Volunteers are also needed to pack the food and deliver it to the families.

Volunteer at 847-674-3224, or  
volunteer@maotchitim.org  
Monetary donations can be made at  
[www.maotchitim.org](http://www.maotchitim.org)

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## Special CLE: Divorce in Israel

The Decalogue Society of Lawyers and JUF Lawyers Division present Rabbinical Court v. Family Court: The Death of Good Faith in Filing for Divorce in Israel.

Please join Decalogue and the JUF Lawyers Division from 12:00pm – 1:00pm on September 23, 2009 in the Lillian & Larry Goodman Conference Center at the Jewish United Fund/Jewish Federation of Metropolitan Chicago, 30 S. Wells St. Chicago, Illinois, for a fascinating lecture and a discussion with Israeli attorney Ilan Shahar. Mr. Shahar will discuss the structure of the Israeli court system. He will particularly focus on the courts' history and conflicting ideologies between Israel's rabbinical court and civil court regarding matrimonial disputes. The free class earns 1 hour of CLE credit. An optional Kosher lunch is available for \$12.00.

Registration is through the JUF at  
<http://www.juf.org/professionals/cle.aspx>

Please keep in mind the security at the Jewish United Fund/Jewish Federation of Metropolitan Chicago is very thorough and will take a few minutes to get through prior to the event. A photo IID is required.

**2009-2010  
THE DECALOGUE SOCIETY  
OF LAWYERS  
Legal Education Series  
Joel L. Chupack, Chair  
Barry S. Goldberg, President**

**The Decalogue Society of Lawyers is  
an accredited MCLE provider.**

To register for any lecture, please email  
**decaloguesociety@gmail.com**  
or call 312-263-6493  
at least 2 days in advance

**Dates, locations and speakers are subject to change. To ensure you have current information,  
please email us at [decaloguesociety@gmail.com](mailto:decaloguesociety@gmail.com) to be put on the list for CLE updates.**

Date: Wednesday, September 16, 2009, 12:30-1:30pm  
Speaker: Daniel J. Azulay  
Azulay Seiden Law Group  
Topic: Immigration and Family Law Coordinated or Contradictory  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, September 30, 2009, 12:30-1:30pm  
Speaker: Retired Justice Dom J. Rizzi  
Topic: Appeals and Briefs – Practice Tips  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, October 14, 2009, 12:30-1:30pm  
Speaker: Robin Becker  
Solutions First Legal Services  
Topic: Collaborative Business Divorce  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, October 28, 2009, 12:30-1:30pm  
Speaker: Charles Allen Silverman  
Topic: Landlord Defense of RLTO Actions  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, November 18, 2009, 12:30-1:30pm  
Speaker: Wendy J. Muchman  
Group Manager ARDC  
Topic: The New Illinois Rules of Professional Conduct  
Location: John Marshall Law School, 315 S Plymouth Ct, Rm 200

Date: Wednesday, December 2, 2009, 12:30-1:30pm  
Speaker: Eugene F. Friedman  
Friedman & Friedman, Ltd.  
Topic: How To Get Yourself Disbarred  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, December 16, 2009, 12:30-1:30pm  
Speaker: Rabbi Gedalia Dov Schwartz  
Chief Rabbi of the Chicago Rabbinical Council  
Topic: The Intersection of Jewish Courts and Civil Law  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, January 13, 2010, 12:30-1:30pm  
Speaker: Nancy M. Vizer  
Nancy M. Vizer, P.C.  
Topic: Employer's Obligation to Verify Employee Legality  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, January 27, 2010, 12:30-1:30pm  
Speaker: Nathan H. Lichtenstein  
Aronberg Goldgehn  
Topic: "You Bet Your Life" – Viaticals and Life Settlements  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, February 10, 2010, 12:30-1:30pm  
Speaker: Lawrence R. Krupp  
Director, Kessler Orlean Silver & Co.  
Topic: Income Tax Update  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, February 24, 2010, 12:30-1:30pm  
Speaker: Mitchell B. Goldberg  
Lawrence, Kamin, Saunders & Uhlenhop  
Topic: Current Trends in Securities Litigation  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, March 10, 2010, 12:30-1:30pm  
Speaker: Daniel S. Rosen  
Nash Disability Law  
Topic: How to Advise Your Clients on Social Security Disability  
Benefits  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, March 24, 2010, 12:30-1:30pm  
Speaker: Judge Moshe Jacobius  
Presiding Judge Domestic Relations Division  
Topic: Rethinking Custody and Visitation Disputes  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, April 14, 2010, 12:30-1:30pm  
Speaker: Michael Strom  
Topic: Contribution and Fault Allocation  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, April 28, 2010, 12:30-1:30pm  
Speaker: Judge Ronald S. Davis  
Associate Judge, Law Division  
Topic: Request to Admit Facts  
Location: 29 S. LaSalle Rm 610

Date: Wednesday, May 12, 2010, 12:30-1:30pm  
Speaker: Judge Robert Lopez Cepero  
Law Division - Jury  
Topic: New Developments in Construction Contract Law  
Location: 29 S. LaSalle Rm 610

**We are no longer mailing this schedule in label format to all of the members, but will do so on request.  
Please contact Aviva at [decaloguesociety@gmail.com](mailto:decaloguesociety@gmail.com) or 312-263-6493 if you would like labels for your planner.**

# Religion and the U.S. Supreme Court

by Hon. Dom Rizzi

On August 8, 2009, Sonia Sotomayor became the 111th member of the U.S. Supreme Court. She became the third woman and the first Hispanic to serve on the Court. Most people believe that when President Obama selected Sotomayor he chose someone who is eminently qualified to be on the Court. But, the real question that arises when considering President Obama's selection is not whether Sotomayor is qualified but rather whether she was a favorable choice. There are obviously many considerations, too numerous to mention all of them here, but is religion one of the considerations?

Our history tells us that a presidential nominee's religion should not even be thought of as a possible favorable or unfavorable factor in determining whether a person should be nominated to become a member of the U.S. Supreme Court. Before President Wilson nominated Louis Brandeis in 1916, Court nominees were confronted with little and often no opposition in the Senate. Brandeis' nomination, however, stirred a firestorm of controversy in the Senate. Why? The probable answer, in part, at least, is because he was Jewish. Respected conservatives, such as Henry Cabot Lodge and former President Taft, probably could not accept the fact that a Jewish lawyer could or should become a judge on the highest court in the land. This was despite the fact that Brandeis was an esteemed lawyer and achieved the highest grade average in the history of Harvard Law School. Brandeis was confirmed over opposition, by a vote of 47 to 22. Subsequently, other Jewish judges on the Court who, like Brandeis, have served admirably include Cardozo, Frankfurter, Goldberg, Fortas, Ginsburg and Breyer. Parenthetically, Cardozo is the only Jewish judge to serve on the Court who was nominated by a Republican president, Herbert Hoover.

Catholics are 24% of the U.S. population; Protestants are 53%; Jews are 1.5%; and Episcopalians are 1.7% (Episcopalians are part of the Anglican Communion, Church of England, which predates Martin Luther's Protestant Reformation). There have been 12 Catholics, including Sotomayor, and 7 Jews on the U.S. Supreme Court to date.

So why is Sotomayor's religion, i.e., Catholic, even being mentioned? Every decent American would agree that her religion does not factor into whether she is qualified to be on the Court. However, an entirely different question arises concerning her religion.

Sotomayor has become the sixth Catholic on a nine member Court of last resort for the entire nation. The other Catholics include Scalia, Kennedy, Thomas, Alito and Chief Justice Roberts.

A question arises as to whether those circumstances are a plus, a negative, or even a factor when one considers the constituency of the Court. Would one's answer be the same if the question were directed to the presence of six Jewish members instead of six Catholic members on the nine member Court? One could also expand the question to ask, "What if she would have become the sixth African-American on the same Court?"

The answer would not relate to whether Sotomayor is qualified to be on the Court because she is clearly qualified. Rather, the answer would relate to whether the President's selection of Sotomayor was a favorable choice considering the constituency of the Court at this time. Of course, while Sotomayor's Catholic background may influence how she personally feels about certain subjects, her Catholic background is not an indicator as to how she would decide legal issues. For instances, Justice Brennan and Justice Scalia are two examples of Catholic Supreme Court Justices. However, one would never believe that these two Justices had anything in common, let alone their religious beliefs, based on their respective opinions. After all, the former is considered a great Justice by liberals, and the latter is considered a great Justice by conservatives. Nonetheless, it is the "stacking" of six out of nine that is somewhat troublesome to some people when they have to answer whether Sotomayor was a favorable choice to become a member of this present U.S. Supreme Court.

*Dom Rizzi is a former Illinois Appellate Court Judge, and a former teacher at Loyola University Law School in Chicago, and at the University of Illinois, Chicago.*

## Judicial Evaluation Committee

REMINDER: the Judicial Evaluation Committee will be interviewing judicial candidates for the February primary starting October 13!!! Interviews take place either at noon (lasting about one & a half hrs), or 5 PM (lasting about 2 hours). Food (including vegetarian options) is provided.

**Please contact Susan Horn  
773-871-5425 or [donsuh@ameritech.net](mailto:donsuh@ameritech.net)  
for details and to sign up. Thanks!**

# U.S. Declarations of Use for Madrid-Based U.S. Registrations

by Joseph F. Schmidt, Julie A. Katz, Michele S. Katz,  
all of Husch Blackwell Sanders Welsh & Katz, Chicago, Illinois, USA

## Required Declarations

Owners of U.S. registrations obtained under the Madrid Protocol—take note. November 2008, which is five years after the United States joined the Madrid Protocol, marks the beginning of deadlines for maintaining Madrid-based U.S. registrations. Such registrations are subject to additional maintenance requirements, as discussed in more detail below. Therefore, if you are operating under the assumption that a Madrid-based U.S. registration can be maintained solely by renewing the Madrid registration with the International Bureau (IB) every ten years, you are operating under a false assumption that may be fatal to your U.S. registration. The consequences of noncompliance with the independent U.S. deadlines for filing a Declaration of Use (or Declaration of Excusable Non-Use) are cancellation of the U.S. registration before it is due for international renewal and the loss of valuable U.S. registration rights. (Note that the U.S. Trademark Act uses “affidavit” rather than “declaration.” The two terms often are used interchangeably. This article refers to “declarations,” rather than “affidavits,” because a declaration does not require notarization and, thus, is the more common and preferred form for filing.)

## Compliance with U.S. Deadlines

International registrations through the IB are valid for ten years, and can be maintained by filing for renewal every ten years. In order to maintain the U.S. extensions of Madrid-based registrations, however, the U.S. Trademark Act requires the periodic filing of a Declaration of Use with the U.S. Patent and Trademark Office (USPTO). A Declaration of Use verifies that the mark in question is currently in use in the United States for the goods or services set forth in the registration. If the mark is not in use because of special

circumstances that justify such non-use, the registrant may file a Declaration of Excusable Non-Use. A registration can be maintained only for those goods or services for which a mark is in use at the time of the filing of the declaration, unless a Non-Use Declaration is filed and accepted for those goods or services for which the mark is not currently in use in the United States. When must these declarations be filed with the USPTO in order to maintain Madrid-based U.S. registrations?

## The Sixth-Year Declaration of Use

Section 71(a)(1) of the U.S. Trademark Act, 15 U.S.C. §1141k(a)(1), requires that a Declaration of Use be filed with the USPTO between the fifth and sixth years after the date of the U.S. registration, that is, the date the USPTO grants the certificate of extension of protection. That date is not the date of the international registration. For many countries, the registration date is considered the date the application was filed, which for a Madrid application would be the date the application was extended to the United States if it was not part of the original filing. It is important to note that unlike the situation with a traditional U.S. registration, there is no grace period for filing this sixth-year Declaration of Use. The Declaration must set forth those goods or services recited in the extension of protection on or in connection with which the mark is in use in commerce in the United States. A specimen showing use of the mark for the goods or services, as used in the United States, must be filed with the Declaration of Use.

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## The Young Lawyers Happy Hour

by Sarah Abrams

Decalogue's first event of the new year for young lawyers and law students was a resounding success! The event was planned by the Decalogue Board and co-chairs of Decalogue's Young Lawyers Division, Bill Gray, Michelle Steiman and Sarah Abrams. Over fifty young lawyers and law students flocked to the Hubbard Street bar, Theory, to mingle after work on September 1, 2009.

The event attendees also had an opportunity to enter a drawing for a one-time mentoring session over lunch with one of six Illinois judges. One drawing winner remarked: “Seriously???? I'm having lunch with Hon. Greiman!!! That's great! Thank you!”

While leaving, many of the young lawyers expressed interest in joining and getting involved with Decalogue because of the opportunities it provides to its members. Decalogue's Young Lawyer committee looks forward to many more successful events in the future.

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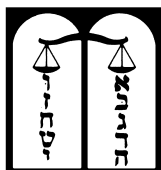
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Due date for articles and ads for the Winter 2009 issue is December 7, 2009

Contact: Aviva Patt

DecalogueSociety@gmail.com



Decalogue Society of Lawyers  
39 South LaSalle, Suite 410  
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[www.decaloguesociety.org](http://www.decaloguesociety.org)