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**Why the "lawmen" proudly proclaim it as their badge?**

**Because** through the ages, the star has symbolized a people not only of the Book but also of the Law.

**Because** the Law it symbolizes, set down more than 3,000 years ago, differentiates right from wrong.

**Because** it ties together all who believe in the Law, the dignity of the individual, and a just and righteous society—in America, in Israel, and in all other parts of the world.

**Because** this rich heritage of Jewish law of contracts, of torts, of property, of personal rights, of evidence and of legal ethics has given rise to much of the secular legal systems of modern countries—including the United States.

**Because** Judaism and justice are inseparable.

The members of The International Association of Jewish Lawyers and Jurists share this precious heritage. Formed in 1969, the Association now has members in 30 countries. Its World Congress every third year brings to Jerusalem more than a thousand Jewish lawyers and judges to join hands together in the sharing of this heritage and its promise for the future.

In 1983, the American members of the Association organized the American Section, with noble stated purposes. We invite you to join with us as we work towards translating these goals into reality.

*Membership in the Association is open to Lawyers and Jurists, law students, and students of Jewish Law, of whatever race, color, or creed, who identify themselves with the objects of the Association. The Association has among its members judges, professors and practicing lawyers of the highest distinction.*



AMERICAN SECTION  
600 NEW JERSEY AVENUE, N.W.  
WASHINGTON, D.C. 20001

THE INTERNATIONAL ASSOCIATION  
OF JEWISH LAWYERS AND JURISTS

Justice Justice Shall You Pursue That You May Live in the Land Which God Gives You  
*Deuteronomy 16:20*

**Ever wonder why the good guys wear a Star of David?**



## Genesis

It was in Jerusalem that the Association came into being, in August of 1969. Nobel Peace Prize Laureate Rene Cassin was named honorary president, and The Honorable Arthur J. Goldberg, former Justice of the United States, was elected president.

The first act of the new Association was to publish a ringing condemnation of the Baghdad hanging of 15 men without proper trial. Later years saw the Association speaking out for Soviet Jewry, calling world attention to treatment of Israel prisoners of war by Egypt and Syria, aiding in the defense of two young Syrian Jews accused of murdering two Jewish girls trying to escape from Syria, and protesting to the UN against the resolution equating Zionism with racism.

American members were instrumental in obtaining passage of the U.S. anti-boycott legislation aimed at Arab oil-producing countries that boycott commercial institutions having Jewish owners or dealing with Israel. In 1983, the American members organized the American Section of the Association, and took as their goals the following:

**To** work towards an international legal order based upon the rule of law in relations among all nations and people, and to promote human rights, civil liberties, and the principles of equality of persons and the right of all nations to live in peace, justice and security.

**To** promote and maintain cooperation and exchanges among Association members both here and abroad.

**To** promote the study of legal issues of special interest to the U.S., Israel and world Jewish communities.

**To** seek data on the legal and personal status of all persons in various countries, with special reference but not limited to the status of Jews, within the framework of the international declarations and conventions on human rights and international law.

**To** promote the study of the rich heritage of Jewish law, sharing this information with members and encouraging study of Jewish law in law schools.

**To** organize, promote and maintain legal assistance through the members and organs of this Section and of the International Association for deserving cases.

## The International Association of Jewish Lawyers and Jurists

### AMERICAN SECTION

#### Application For Membership

I hereby apply for membership in the International Association of Jewish Lawyers and Jurists. I declare that I approve the aims and objectives of the Association.

Particulars  
(Please type or print)

Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_ Zip: \_\_\_\_\_

Phone: Business ( ) \_\_\_\_\_

Home Address: \_\_\_\_\_

\_\_\_\_\_ Zip: \_\_\_\_\_

Phone: Home ( ) \_\_\_\_\_

Position: ☐ Judge ☐ Lawyer ☐ Law Student  
☐ Other \_\_\_\_\_

Admitted to the Bar \_\_\_\_\_ State \_\_\_\_\_

Please use my ☐ business ☐ home address.

Referred by (if applicable) \_\_\_\_\_

|                                      |       |
|--------------------------------------|-------|
| Annual Membership Fee, 1984: Regular | \$ 35 |
| Supporting                           | \$ 50 |
| Sustaining                           | \$100 |
| Student                              | \$ 10 |

Law School \_\_\_\_\_

Graduation Date \_\_\_\_\_

I enclose herewith the annual membership fee for calendar year 1984 for the category of membership indicated above.

Signature of Applicant \_\_\_\_\_

Date: \_\_\_\_\_

#### Make checks payable to:

International Assn. of Jewish Lawyers and Jurists or IAJLJ

#### Mail to:

International Assn. of Jewish Lawyers and Jurists  
600 New Jersey Avenue, N.W.  
Washington, D.C. 20001  
(202) 624-8083

## Member Benefits

As a member of the American Section of the International Association of Jewish Lawyers and Jurists, you will enjoy a number of privileges. Among these are:

- The knowledge that, by your membership, you are adding your voice and your stature to the constant battle for justice, freedom, human rights, civil liberties, equality and peace for your fellowman not only here at home, but throughout the world.
- Receipt of the periodical Bulletin of the International Association, which presents and analyzes legal/judicial issues of major import, authored by the finest legal scholars.
- The opportunity to meet and form friendships with fellow Jewish lawyers and judges in America and throughout the world, to exchange views with them, to share experiences, and to learn from mutual discussions how to cope better with relevant issues.
- A more detailed knowledge of the rich heritage that Judaic law has bestowed not only on the Jewish people but on the legal systems of numerous nations—not least of which is the United States.
- Receipt of the American Section's bulletin, which reports on issues and events of particular interest to American members, and offers a forum for expressing your views on any relevant topic.
- The opportunity to become educated as to the facts of legal issues of special interest in the U.S. and to the world Jewish communities. For instance; how often have you heard or read about "Israeli-occupied Jordan"? Do you know that Samaria and Judea were never legally a part of Jordan, but instead were territories conquered by Jordan in 1948? It is vital to be well-versed on such matters, so we can intelligently discuss them with our neighbors, assist in countering the false propaganda of others, and knowledgeably question media commentators who are ignorant of the true legal situation.
- Eligibility to attend the Association's triennial World Congress in Jerusalem.

# THE INTERNATIONAL ASSOCIATION: ITS PURPOSES AND ROLE

*Speech by*

Professor Sherman L. Cohn, President, American Section

at

The Annual Meeting, American Bar Association

Atlanta, Georgia, July 27, 1983



"Justice, Justice shall you pursue that you may live in the land which God gives you." This is the Commandment of Deuteronomy and the promised reward. But the commandment does not begin there and it is even more universal. One of the seven Noah Commandments, given to all peoples after the Flood, is to establish courts and judges among the people.

The Jews have taken these Commandments seriously from the very beginning. Moses in the wilderness judged among the people. When the burden became too great, he established courts among the clans and among the tribes, taking upon himself only the more difficult of problems which they could not resolve.

And so it has been through the ages. For the past 3,000 years, wherever Jews have lived, courts have been established. This was true not only in ancient Israel of the time of the Judges and the Kings and of the Talmudic era. But it was also true in the eras that followed: in Babylon, in North Africa, in Spain of the Golden Era, in the Medieval times of Europe, in the Ghettos of a score of countries. When disputes arose among Jews, there were courts to resolve them. While matters have changed a great deal since emancipation, even today in this highly emancipated land, there are Jewish courts of note.

These are not courts solely of ritual. Through the past 3,000 years, they have decided matters of contract, of tort, of property law; at times even having criminal jurisdiction. They evolved principles that we today would categorize as matters of procedure, of legal ethics, of evidence. They deal with matters of labor law

and social welfare law as well as disputes between husband and wife.

Thus, we have not only been people of the Book, but also people of the Law, who settled our disputes according to the Law, and looked to the law for *Shalom Beit*: peace in the house of our family and of our community.

We are American lawyers. With all of its problems and shortcomings, the American legal profession is and deserves to be proud of its achievement and its role in the development and protection of so much that we happily call American. Our Bill of Rights is a legal document that has been given content, form, and meaning by lawyers and judges.

We are Jewish lawyers, sharing a heritage of 3,000 years of which we should be equally proud. The International Association of Jewish Lawyers and Jurists is now almost 15 years old. It has members in 40 or so countries. Its World Congress every third year brings a thousand or more Jewish lawyers to Jerusalem to join hands together in the sharing of this heritage and its promise for the future. Recently, the over 500 American members of the International Association organized the American Section, with noble stated purposes.

As noted before, the Association works towards the establishment of an international legal order based upon the Rule of Law in relations among all nations and people, promoting Human Rights and Civil Liberties, the principles of equality of persons and the right of all nations and people to live in peace, justice, and security. We Jews are in the forefront of those who know the consequences when there is no Rule of Law, when Human Rights and Civil Liberties are violated, and when there is no peace, justice, or security. We have seen the State of Israel endure its entire existence with neither peace nor security. We have felt the force of pogroms and of the Holocaust. And in the modern, progressive city of Atlanta, Georgia, the memory of Leo Frank reminds us that these matters do not occur solely on foreign shores.

A few months ago, the papers carried a story about the Posse Comitatus, an ultra-right organization that preaches violence, that unabashedly says that it is the Army of Elijah to turn America back into a white, Protestant Christian country. Its leader calls for a holy war to save America from the Blacks, the Catholics, the

Communists, and the Jews. He has called for his members to make lists of Blacks, Catholics, Communists, and Jews for elimination in this Holy War. This is no idle threat: while the organization claims 2,000,000 members, federal authorities say it has between 2,000 and 10,000 members. But they are in training with automatic weapons in Wisconsin and in California. One must ask how many members did Hitler have when he began? And we must know that the Posse Comitatus does not stand alone; it is in addition to the American Nazi Party and others of that type.

We must remind ourselves of this, for we must know as Americans and as Jews that the battle for freedom, for liberty, and for human rights is never over. We must join together to work for the preservation of what is so precious in our lives here in the United States — and we have an obligation as human beings and as Jews to try to bring these blessings throughout the world.

Second, the International Association promotes the study of legal issues of special interest to the United States and to the world Jewish communities. These are issues concerning Israel and concerning Jews in the United States, in Latin America, in Russia, in Iran, and elsewhere. How often have you heard about Israeli-occupied Jordan? Have you ever thought that Samaria and Judea have never legally been a part of Jordan but instead were territory conquered by Jordan in 1948? We need to know such legal matters for our own sake, so that we can intelligently discuss such matters with our neighbors, so that we can knowledgeably question media commentators who do not know the true legal situation, and so that we can assist in countering propaganda of others. Lawyers are important opinion makers in this country. We as Jewish lawyers need to be educated fully on legal issues of interest to us so that we can play constructive and positive roles.

Third, we have a rich heritage of Jewish law of contracts, of torts, of property, of personal rights, of evidence. Over the centuries we have faced many of the same problems that are being faced today. And we have found solutions for that time and place. Most Jewish lawyers are not aware of this heritage. Moreover, Jewish law has often been a source for our secular American law. It is rather clear that the Anglo-American law of mortgages came out of Jewish law. And there is good evidence that our law of liens is also

of Jewish origin. We know that the Constitutional requirement of two witnesses to an act of treason is taken right from the Torah. There is a good argument to be made that the concept of trial by jury came out of Jewish experience. We know that English courts of the eleventh and twelfth centuries would often state expressly: "As the Jews would put it," and then quote a principle of Jewish law. Most of us are ignorant of these important contributions of our heritage. We should explore that heritage so that we may be proud of who we are as well as to find comparative solutions for similar problems.

There are now a dozen or more law schools in the United States that teach courses in Jewish law. Most are without adequate libraries or research materials. We should encourage those courses and help to furnish the research tools necessary to them.

Finally, the International Association is an attempt to open doors for each of us. As we travel from country to country, it is good to meet on a personal basis with other Jewish lawyers. As they come here, it is good to greet them. Every organization provides an instrument for its members to meet with each other, to associate, to share. We as Jewish lawyers need to know who we are and we need to share with each other. The International Association of Jewish Lawyers and Jurists provides a device to reach out to other Jewish lawyers who are not now affiliated in the Jewish community and to the thousands of Jewish law students, to provide them with a professional vehicle to become involved, to recognize who they are and to what they belong.

The American Section of the Association is formed, with officers and a national board consisting of some of the more prestigious Jewish judges and lawyers from across the country. National committees are now being organized. Local activity is beginning. We are planning a national Membership Annual Meeting on April 29th and looking to the World Congress of members of the International Association to be held in Jerusalem in August of 1984.

We invite you to join with us. In whatever way you can contribute, it is a needed help. The shame is not to contribute, to allow others to fight the entire battle. As the Torah puts it so well: it is not your job to finish the Temple, but you have the responsibility to lay the next brick. Indeed, that is all any of us can do.

# The JEWISH LAWYER

The International Association of  
Jewish Lawyers and Jurists  
American Section



VOL. 1 NUMBER 2

JULY 1984

## Inside this issue...

### President's Page

Professor Cohn reports on our progress thus far and the challenges before us . . . . . 2

### Annual Meeting

Membership Meeting Report . . . . . 3

Leo Frank Resolution . . . . . 4

Perspective: How Christians View Israel and American Jews  
by Honorable Marie Lambert . . . . 5

Lessons of The Holocaust  
by Justice Haim Cohn . . . . . 7

American Media Treatment of Israel  
by Frances Bernstein, Esq. . . . . 8

The Role of the Media  
by Prof. David Sidorsky . . . . . 9

### Trials and Tradition

by Mark F. Lewis, Esq. . . . . 12

### Constitutionality of the New York Get Law

by Marc Gertler . . . . . 14

### This Year in Jerusalem:

Program of the Sixth International Congress of Jewish Lawyers and Jurists . . . . . 18

# From the President...

## Shalom,

The first Annual Meeting of the American Section held in New York on April 29th, was a great success. We had about 150 attendees from as far away as St. Louis, Denver, Arizona, and California. The program was truly first rate and enthusiastically received. Justice Jerome Hornblass and his committee (Judge Marie Lambert, Judge Seymour Fier, Elaine Sheps, Frances Bernstein, and Vince Catalfo) did a fine job and are deserving of the appreciation of all of us.

We now look forward to the Sixth International Congress of the International Association in Jerusalem at the end of August. It appears that we will have a sizeable group attending from the United States, though with the problems of getting out announcements that group will not be as large as it might have been. The program is excellent. Certainly, the opportunity to meet with the distinguished Israeli governmental officials on a professional and social basis is an opportunity not to be missed. Also exciting is the opportunity to meet with Jewish lawyers and judges from 20 or more countries. If you still can go and have not yet made your reservations, please do so promptly.

At this writing, we also anticipate two functions at the Annual Meeting of the American Bar Association in Chicago, August 3rd and 5th. Following last year's successful example in Atlanta, we will sponsor a Friday evening oneg (this year at Anshe Emet Congregation in Chicago). And then on Sunday, we will sponsor a brunch at which we will be privileged to hear Justice Joseph Gordenhersch of the Illinois Supreme Court on "Judaic Influences on American Law." Each of these functions will be cosponsored by the Decalogue Society of Lawyers of Chicago and the National Jewish Law Students Association Network. The brunch will also be cosponsored by Spertus College of Judaica. Please come if you are in Chicago and please invite anyone whom you know to be going to Chicago for the ABA.

Speaking of the National Jewish Law Students Association Network, this has been an important area of our contribution this year and should be an even more important area in the future. The JLSAs grew up in the past half dozen years or so at various campuses around the country spontaneously, in reaction to the Black Law Student Associations, the Asian Law Student Associations, the Hispanic Law Student Associations, etc.

Georgetown even has an Armenian Law Student Association and an Irish Law Student Association, as well as a (fundamentalist) Christian Law Association. In 1983 a group from some of the law schools gathered at Harvard and called for a national conference of Jewish Law Student Associations to be held in Washington. The organizers of that conference came to us for help, and we were pleased to respond. We helped with programming, with speakers, and with funding. Along with B'nai B'rith's Hillel office, we helped make it happen. 250 law students from some 40 campuses gathered to discuss all types of Jewish issues. The speakers included our International President, Justice Haim Cohn, a member of the International Council, Irwin Cotler, a member of our American Section Board of Governors, David Saperstein, and myself. To have experienced the enthusiasm and the warmth of youth was a heartwarming experience.

We can be of further help. The JLSAs at the individual campuses can use our assistance in programming, in finding speakers, in meaningful visits to law offices, and in other ways helping them fulfill their goals. But this must be done on a local level, community by community. This is an exciting way of helping to hold on to our youth. But it takes local activity by our members to do it. The challenge and the opportunity are there. The question is: are we ready?

This is the question we must ask on various levels of activity. This year we have concentrated organization, on a few national projects (e.g., our Annual Meeting and ABA functions) and on playing our part in the International Congress. Now we must begin to focus on activity of our own. We have many committees. Few so far have been active. We have some groups of members in local areas who have stated an interest in organizing local chapters. None has really gotten started. We must find the way to begin activity in a meaningful manner. That must be the goal of this next year.

I look forward to seeing as many of you as possible in Chicago and in Jerusalem.

Shalom,

Sherman L. Cohn, President  
American Section

## The JEWISH LAWYER

Vol. 1 Number 2

July, 1984

THE JEWISH LAWYER is published by the American Section of the International Association of Jewish Lawyers and Jurists for the information of its members. Contributions of articles which would be of interest to the readership are welcomed. Please submit any material to the Editor, Michael Binder, 17117 W. Nine Mile Road, Suite 1745, Southfield, Michigan 48075.

Statements and opinions expressed in editorials or articles do not necessarily reflect those of the IAJLJ.

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## American Section First Membership Meeting

The First Meeting of the members of the American Section was held April 29, 1984, in New York City. Approximately 150 persons attended.

The membership meeting approved a revised American Section Constitution. The American Section Constitution was initially adopted at an organizational meeting of members on May 2, 1983, in Washington, D.C. It was amended from the floor in many places and for that and other reasons had some difficulties of clarity and consistency. Moreover, other difficulties were noted in working with the Constitution and by counsel who was working on a 501(c)(3) application. A Constitution and ByLaws Committee consisting of Judge Jair Kaplan, chair, Leon Ulman, and Judge Alvin Lieberman, after several months work, presented a revised Constitution to the 1984 Annual Meeting. It was adopted unanimously.

The Nominating Committee, consisting of Judge Michel Levant, chair, Judge Jair S. Kaplan, Judge Jerome K. Soffer, and Professor Daniel Kane, presented nominations for the Board. There was one vacancy on the Board caused by the death of Judah Stone. The terms of eight members of the board expired. Professor Dov I. Frimer announced his resignation from the Board as he was making aliyah. And under the new Constitution, the Board of Governors authorized an expansion of the Board to 36 members in addition to the five elected officers. Upon the nomination of the nominating committee and upon the nominations from the floor, the following members were elected to the Board (the date following each name is the expiration date of his or her term):

Judge Avery Cohn (87)  
Eastern District of Michigan  
Detroit, Michigan

Robert Felton, Esquire (87)  
private practice  
Mincola, New York

Judge Seymour Fier (87)  
Federal Administrative Law Judge  
Little Neck, New York

Arnold Froster, Esquire (87)  
Shica & Gould  
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Warren Freedman, Esquire (86)  
private practice  
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Northern District of Illinois  
Chicago, Illinois

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San Francisco, California

Judge Ira Raab (86)  
Small Claims Arbitrator  
Woodmere, New York

Rabbi David Saperstein (87)  
Director, Religious Action Center  
Washington, D.C.

Judge Arnold Shulman (87)  
private practice  
Decatur, Georgia

Professor Sherman L. Cohn, President of the American Section reported on the state of the American Section. He reported that we not only survived but that our membership had more than doubled in the past year. The year was spent on organization and on spreading the word. Meetings of groups of lawyers and judges have been held in several cities where they could learn of the Association, of its goals, and of its accomplishments. Several of our Board members and several of other members of the Association were instrumental in scheduling and arranging these meetings and we owe each of them a great deal of appreciation. We have had the first issue of our Section publication, **The Jewish Lawyer**, and much thanks should go to Michael Binder of Southfield, Michigan, who was selected for the position and carried it out magnificently. We have held an essay contest for law students. A board of judges went over the papers and there is a winner, who will be presented with his award at the luncheon. We have joined in sponsoring the first National Conference of the Jewish Law Student Network, held in Washington D.C. on March 30th through April 1st. We contributed funds and helped in the programming and in arranging speakers. The newly elected co-chairs of the Network, Susan Goldberg of

Georgetown and Craig Zetley of the University of Wisconsin are with us and will speak at the luncheon. We sponsored a reception and speech at the Annual Meeting of the Association of American Law Schools in San Francisco. The reception was for teachers of Jewish Law among the law schools and those who were interested in that area. Some 50 persons attended. But we have had difficulties in encouraging our substantive committees to organize and to begin activity. There lies our challenge for this next year. We also look forward to the Sixth International Congress of the Association in Jerusalem at the end of August. The program looks to be excellent and it is our hope to have a larger delegation of Americans attend. Professor Cohn then paid special tribute to Justice Jerome Hornblase and his committee for their hard work in organizing this Annual Meeting and for their fine achievement.

Judge Seymour Fier reported on the proposed International Law Center in Jerusalem. Land has been obtained, near the home of the President of Israel. Plans have been drawn and construction is about to begin. The Bar of Israel has raised half of the funds necessary. They are looking to us and to other Jewish lawyers and judges throughout the world to finish the financing. The Center will house the offices of the Israeli and Jerusalem bars and the International offices of this Association. It will also have a place for all lawyers to stop in and be greeted and to meet others. There will be a library with basic material from many lands on microfilm. It will be a place to study, to relax, to meet others, and, if need be, to work. We must find the way to do our part.

Arnold Forster proposed that the American Section take an active role in many of the issues before the United States. He spoke of an avowed Fascist running for President, and of legislation pending that would be inimical to freedom of religion as specific examples. He proposed that, if existing committees did not pick up these issues, and others like them, and make our reasoned voice be heard, a new committee be appointed for that purpose. A resolution to that effect was introduced and passed.

A resolution was introduced concerning Leo Frank. In Georgia today there is a move to pardon him and clear his name, even so many years later. The resolution called for this American Section to speak up in favor of that exoneration. The resolution was passed unanimously.

President Cohn noted that it was time for the program of the day to begin. He also noted that there was no more business before the meeting. The meeting was adjourned.

**Highlights of the Annual Meeting  
of the  
International Association of  
Jewish Lawyers and Jurists, American Section**

**Sunday, April 29, 1984 • New York Hilton Hotel**

The First Annual Meeting presented a distinguished panel of speakers who addressed the topics of the day. Lawyers and judges from throughout the country were in attendance. All of the participants were very proud of 1984 Annual Meeting Committee chaired by Justice Jerome Hornblass and whose able committee included Frances Bernstein, Vince Catalfo, Judge Seymour Fier, Judge Marie Lambert, and Elaine Rudnick Sheps.

This issue of *The Jewish Lawyer* presents edited highlights of the day-long program. The recording of the proceedings was unfortunately substantially inaudible or less than precise. The excerpts reprinted here, have been edited under the scholarship and hard work of a committee chaired by Judge Seymour Fier. *The Jewish Lawyer* is hopeful it can reprint the remainder of the proceedings in the next issue.

## **The Leo Frank Story**

Leo Frank, a Jew, was lynched by a mob in Milledgeville, Georgia, on August 1915, after conviction for a crime that the trial judge and the chief prosecutor later stated that they did not believe that Leo Frank committed. On Sunday, April 29, 1984, the American Section of the International Association of Jewish Lawyers and Jurists, meeting in New York, called for the State of Georgia to exonerate Leo Frank by a posthumous pardon. A copy of the resolution follows below.

The Georgia State Senate in 1982 asked the Georgia State Board of Pardons to give serious consideration to granting such a posthumous pardon. The Georgia Senate noted that Frank "was convicted in an atmosphere charged with prejudice and hysteria." In December 1983 the Board of Pardons refused the posthumous pardon on the ground that Frank's innocence had not been proved "beyond any doubt."

In February 1984, the Black-Jewish Coalition of Atlanta,

Georgia, declared: "In order to refuse the application for a posthumous pardon, the State Board of Pardons and Paroles had to invent a new standard of proof . . . requiring that Frank's innocence be proved 'beyond any doubt' (instead of beyond 'a reasonable doubt')." The Black-Jewish coalition stated that in so doing the State of Georgia "compounded its early transgressions." the Coalition concluded: "It is a source of continuing shame to our State that it has been unable to muster the righteous indignation to remedy such gross injustice."

The American Section of the International Association of Jewish Lawyers and Jurists, reviewing all of this evidence, appealed to both houses of the Georgia State legislature to pass legislation that would "exonerate Leo Frank of the charge of having murdered Mary Phagan, thus belatedly restoring his good name and thereby removing from the State of Georgia the stain of having been a party to the gross injustice done to Leo Frank."

### **Resolution**

**Resolution:** adopted April 29, 1984, Annual Meeting of the American Section, International Association of Jewish Lawyers and Jurists, New York, New York.

**Whereas** the Georgia State Senate in its resolution 423 in 1982, noted that Leo Frank "was convicted in an atmosphere charged with prejudice and hysteria" in 1913 and that Frank's sentence has been commuted by then Governor John Marshall Slaton, and that thereafter Leo Frank had in August 1915 been lynched by a mob in Milledgeville, Georgia, and therefore urged the Georgia State Board of Pardons and Paroles to "give serious consideration to granting a pardon to Leo Frank posthumously," and

**Whereas** that Georgia state board of Pardons had on December 22, 1983, denied such a pardon on the ground that the innocence of Leo Frank could not now be proved, and

**Whereas** we as American lawyers and Jurists know that in the American system of jurisprudence it is not innocence that has to be proved but guilt, that the defendant is presumed innocent until proved guilty in a fair trial, and since the "atmosphere [was] charged with prejudice and hysteria" during his trial in 1913 and therefore there could not have been a "fair trial," and since the trial judge himself, Leonard S. Roan, is on record as having stated his belief in the innocence of Leo Frank, and since William M. Smith, chief prosecutor, is on record as having informed Judge Roan that in his opinion Leo Frank was innocent, and

**Whereas** in Atlanta, Georgia, on February 10, 1984, the Black-Jewish Coalition, of which Atlanta city Councilman John R. Lewis is the co-chairman, and Georgia State Senator Julian Bond is one of 37 members, declared: "In order to refuse the application for a posthumous pardon the State Board of Pardons and Paroles had to invent a new standard of proof...requiring that Frank's innocence be proved 'beyond any doubt' (instead of beyond 'a reasonable doubt'), the State compounded its early transgressions. It is a source of continuing shame to our State that it has been unable to muster the righteous indignation to remedy such gross injustice. Only by exonerating Leo Frank can Georgia remove the stain of this tragic episode.

**THEREFORE, BE IT RESOLVED** that the American Section, consisting of lawyers and judges from throughout the United States, appeals to both houses of the Georgia state legislature at their next sessions to pass legislation that would exonerate Leo Frank of the charge of having murdered Mary Phagan, thus belatedly restoring his good name and thereby removing from the State of Georgia the stain of having been a party to the gross injustice done to Leo Frank.

## Perspective: How Christians View Israel and American Jews

by Honorable Marie Lambert

**ELAINE SHEPS:** Judge Marie Lambert is a lawyer whom I have grown to admire, love and respect. She is not Jewish, but I think she has been honored by more Jewish organizations than any lawyer or jurist in this State.

Surrogate Marie Lambert has always made precedents. She graduated New York University Law School when there weren't too many women. She was first in her class and Editor of the Law Review. When she went into private practice, she moved into the trial arena. When Marie Lambert was trying a case in the Supreme Court, the lawyers gathered and entered the courtroom to listen to this great woman. While she was a trial lawyer, she became active in the New York State Trial Lawyer's Association and became the first woman president of that association. When Marie Lambert ran for Surrogate in New York and won, she was the first woman Surrogate in the State of New York and has brought us all honor.

Today is a very particular day, a very special day for Marie to speak. This is a day when we remember the

victims of the Holocaust. Many years ago, Marie Lambert was a lawyer to whom the refugees came. These refugees, penniless, came for help to stay in this country, their refuge. Marie represented refugee after refugee, money was not an issue. None she represented was ever sent back. It was her contribution to the Jewish community. Marie told me she is speaking later to an Italian association, and she said, you know, all I have to do is just change the words from Jewish to Italian. It's really not that different.

Her talk today concerns a very important topic. How we as Jews, how we as lawyers and Jews are viewed by the Christian society. How they see the State of Israel, how they see us, which is so important because sometimes, we may be blinded, we see so much of ourselves. We have to see someone else who has another view, and who better than our dear, good and devoted friend, so honored and beloved by all of us, Judge Marie Lambert.

**JUDGE LAMBERT:** Elaine, Mr. Chairman, Mr. Ambassador, members of the Judiciary, fellow members of the legal fraternity, and friends all. I am deeply honored to have been invited to come here to speak to you. Judge Hornbliss opened this meeting by stating that although he is a jurist, he is a Jew. He was born a Jew and will continue to be a Jew. I happen to have been born a Christian. I am not of the Jewish faith. I am Catholic. But I really consider myself, by my views, my feelings, my friendships and my loyalty to be a partial Jew. I can never be a full Jew, but I could be a partial Jew. As a matter of fact in Jewish law many of the precepts which we follow in the personal injury field were taken directly out of Jewish law: Ideas of compensation for those who are injured thru no fault of their own.

Today, less than forty years after the Holocaust and the systematic murder of six million Jews, we as Christians, even more than Jews, see a rampant rise in anti-Christian antisemitism. Having heard the cry (and I was alive during World War II) "never again," it's frightening to see the insidious growth of the anti-Jewish propaganda. Lest we forget what it really meant, let us look back just for a moment and think what six million Jewish lives really are. You know, we use the word six million

and today six million doesn't really portray what it is. It is nearly the total population of New York City. It is twice the population of Israel. Destroyed by the Holocaust. How soon the world, the media, and even many of who were alive at the time



Honorable Marie Lambert

have forgotten. In our wildest imagination did we ever think that we would live to see the day when a candidate for the prestigious office of President of the United States would refer to a whole people as "Hymies". Can you imagine the uproar in the press, if it were another group that were attacked. Finally, after the denials by that candidate that the

statement was made when confronted with unrefutable evidence that the statement had been made, we have a belated statement that the statement was made. The admission was coupled with excuses and explanations followed more specifically by threats against the reporter who revealed the evidence and the statements. The very next day after the New York primary, swastikas appeared on the doors in Co-op City. The candidate had repeatedly stated that he is tired of hearing about the Holocaust.

I hear all of the snide attacks and believe me, they are something: "Our support of Israel is accomplished by the Jewish control of the media." "The Banks controlled by the Jews are causing the oil prices to skyrocket." "The Jews are causing us to make enemies of the Arab oil countries." "Israel is responsible for the rising costs of gas and heating oil." "Israel is the aggressor." These are the stubble and situations which we hear day after day in "legal discussions." Being "fair." Who started the 6 day war? Was it Israel? Or was it the Arabs? Has any other country been asked to give back territory it acquired through bloodshed?

Who murdered the Israeli athletes? That was a frightening day  
(continued on pg. 6)

## Perspective: How Christians View Israel and American Jews

(from pg. 5)

in my life because my husband, my son, and I, happened to be visiting in Lebanon on the day it happened. That morning we were hustled on a plane and told to leave. We left our luggage behind because we were told that our lives were in danger. Who initiated the acts of terrorism? For the Jews and Israel is it okay to turn the other cheek? No one else does!

I stand up loud and clear when I hear comments against Catholics, against Italians, and because I was raised a Christian, I stand up loud and clear when I hear anti-semitic remarks. Shortly before I ascended the bench, although I had been elected, I happened to visit in Acapulco and Houston. I attended several dinner parties and I heard statements that made me shudder. When one is speaking with the elite in the oil community, one hears things. There was a subtle attempt to influence me as a judge. I can speak out. The dinner conversation focused on the PLO and how it would best serve the interest of the United States to punish Israel and abolish it as a homeland for the Jews. There was absolutely no understanding of the true fact, that Israel stands as a bulwark of democracy in the Middle East. It is in the interest of the United States to keep Israel strong.

What is anti-semitism? How does it manifest itself in the many insidious ways? Think of what it means to the Jews today to have an Israel. Had there been an Israel, a holocaust would have been impossible. The Jews would have had a homeland. We could never have a Holocaust of the Italians. We had a homeland, even though I left Italy when I was nine months old, if tomorrow they were to expel me from the United States, Italy would take me back.

"We should vote non-Jewish because the Jews vote for their own." That's the second attack. How did Mario Cuomo become the governor of this state? I'll give you some statistics. In Manhattan, there are 20,000 Italian households; there are 120,000 Jewish households. How was I elected Surrogate of New York County if the Jews voted Jewish.

Think about those comments in their just perspective. Statements are made and nobody listens to them, to analyze them; they just accept them.

"The Jews are the aggressors so we must condemn them." Where have they been the aggressors?

"The Jews are different." They dress differently, their backgrounds are different, their sabbath is different. I remember when I was a little girl in school, I looked different. I didn't look like an American, white anglo-saxon Protestant. I looked like an Italian girl. My clothes looked Italian, I dressed like an Italian. I went to a different kind of church. My knees were always dirty on Sunday mornings. So I looked different. We went to the park to have picnics. We were different. Does that mean that we should have been exterminated?

The most interesting statement is "The American Jews take their orders from Israel." Nothing could be further from the truth. Have any of you ever sat down and talked: if you have ten Jews you have ten opinions.

"They are not patriotic." Isn't it frightening when you stop to think about these statements? They don't say them to you, but they do say them to Christians.

Zionism is equated with racism. I'll tell you a little story out of school. At the time that statement was made by Mexico, I was President of the New York Trial Lawyers and we had planned a trip to Mexico. I didn't ask the Board of Directors, I didn't consult with anybody, I cancelled the trip. And when I cancelled the trip, everybody said how could you do that? I said it was very simple, we just weren't going. We do not have to patronize a country that equates Zionism with racism.

I could go on today with my examples, but I think I've given you enough. There are those among us today who think that the only problem with the final solution was that it was not finally imposed. This year at a time when we have presidential elections, we have heard about leadership, we have seen the pandering to the Jewish vote.

Where are we headed? Let us ponder for a minute or two on that question. If all of us as lawyers,

Judges, leaders of the community, and members of the community ignore the growing anti-semitism in our midst, who will speak out against it? It reminds me of a story. There was once a Protestant minister who lived in Germany during World War II. When the Nazis came to the Jews he did not complain because he was not Jewish. When the Nazis came for the homosexuals he did not complain because he was not a homosexual. When the Nazis came for the Catholics, he did not complain because he was not Catholic. Finally, when the Nazis came for the Protestant minister, there was no one left to complain. It's a good lesson to remember.

A reporter of whom we should all be ashamed because he was born Jewish, but started early in life to deny his Jewishness by changing his name, left a portion of his estate to the PLO. It was not how much money was involved. It was a principle that would be established. Never did I think when I became a Surrogate that I might have an opportunity to strike out against terrorism. I raised the issue of whether such a bequest was permissible under New York law and whether it would be violative of public policy.

The editorial comment was predictable but terribly disappointing. I was accused of violating the constitution. A prominent newspaper that prides itself on the spirit of free inquiry grudgingly admitted that the legal questions were intriguing but opined that we were better off not knowing the answers. Would the reaction have been the same if the bequest had been to the Ku Klux Klan or the Nazi Party (which still exists in the United States)? Does a judge have a duty to inquire as to whether an organization is legally constituted and whether it is terrorist in nature?

The testimony was most interesting and maybe you might like to know that the PLO consists of every individual who has an Arab background. They have a governing body consisting of about 14 or 15 people. No terrorist activity is undertaken by the PLO without the permission of the governing body.

# Lessons of The Holocaust

Luncheon Remarks by

**Hon. Haim H. Cohn**

Deputy President Emeritus

Supreme Court of Israel

and

**President, International Association of Jewish Lawyers and Jurists**

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I may say that we are all very deeply indebted to Professor Sherman Cohn for the greatness he has given to our Association. It is indeed a matter of great prestige for the Association as a whole that Sherman Cohn should grace it and preside over the American Section. I can only say that it has been a very wise and very discriminating choice.

I hope to see you all again in Jerusalem during the last week of August. I know that many of you, many familiar and so many friendly faces, among you have become personal friends and in contact with me since you participated in this and the other Congress in Jerusalem. I hope that our hope and expectation will be fulfilled and that the number of this year's Congress from the United States will be multiplied.

I am also very gratified with the law schools in the United States where Jewish Law has been added as a new discipline and, as they say, it has become vogue. Now there are chairs of Jewish Law and Institutes of Jewish Law growing in the Law Schools in the United States. Everywhere, I heard of the interest of people and not only Jews, but people in general. Lawyers and law students proclaimed the growth in Jewish Law. Everywhere I heard the demand for teaching power, for researchers to do work in Jewish Law. Everywhere I heard the demand for teaching power, for researchers to do work in Jewish Law. I think these are developments of which the International Association of Jewish Lawyers and Jurists can claim responsibility. If we have succeeded in establishing this world-wide clinic, it is mainly in promoting the Jewish Law Student Association and the Oxford Center for Post-Graduate Studies and codifying and editing The Jewish Law. It is a publication of which we are justifiably very proud.

My friends, today we are commemorating the disaster and hedonism of the Holocaust. I think it will only be fitting and appropriate that I devote my short remarks to you this afternoon to the lessons that we must all learn from that Holocaust. We must all learn from that traumatic experience of the Jewish people.

The first lesson of the Holocaust, ladies and gentlemen, is that there is no difference and no discrimination between believers and non-believers, practicing Jews and non-practicing Jews. There is no distinction between Jews who have intermarried and those who are orthodox; between Jews who have been converted to another religion and those who are no longer Jewish by designation. There is no difference between the bigot and the racist; no difference between the learned and the unlearned.

Jewishness does not express itself necessarily in any way. Jewishness is born with us. Impressed on us. Sealed

upon us. Nobody can escape it. And this leads to the second lesson of the Holocaust: Jewish Solidarity.

We are all together in suffering and we must stand together in fighting. And being responsible towards and for each other. In standing up not only for individual rights for ourselves, but for the rights of every Jew and every Jewish group. Most importantly, for the rights and for the survival and prosperity of the Jewish State.

The third lesson that we have to learn from the Holocaust, my friends, is the vital and important need for watchful groups. We Jews from Germany who lived through the years in which the Nazi movement developed until it came to power, we closed our eyes and no wonder that the Jews the world over did not open their eyes. Nobody in Germany would have believed anything like that would ever be possible in Germany, this most enlightened and most civilized of all countries in the world. German Jewry prospered as it did not prosper anywhere else. The greatest Jewish scholars taught and were revered. The Jews of Germany demonstrated a catechism which was unrivaled in any other country. It is an open question whether the Holocaust could have happened also outside of Germany, whether or not it can still happen anywhere.

We must learn from the German experience that we have to be watchful every single day of our lives. In Germany it started with anti-Jewish neighbors, anti-Jewish books and authors and works of art. It started with financial and commercial boycotts. It started with street demonstrations. Nobody paid any attention.

You have to watch for any sign of persecution because you cannot know what will be in the end. Since you cannot individually watch out with any prospect of accuracy, you must collectively watch. And that is one of the great purposes of this Association. This Association is dedicated to see to it that there is no such thing as a Holocaust, as a general persecution of Jewry, can ever happen again. And to recruit the legal profession in every free country to stand up and fight everywhere that any human right, any minority right is, in any way, jeopardized. If we do not fight at the outset, the whole thing will develop and grow. You may have again missed the train.

In this country, great work has been done in this respect by many great organizations. World Jewry hungers for its rights. The A.D.L. of B'nai B'rith has done the work of watchfulness. We are not treading on virgin soil. The very fact that this country is filled with eminent and excellent Jewish lawyers is the reason that the legal profession boasts of so many Jews who occupy places of eminence in their ranks. It acts as a typical case of

(continued on pg. 11)

# American Media Treatment of Israel

By  
Frances Bernstein, ESQ.

In an article in the Fall 1983 issue of THE PUBLIC INTEREST, entitled "Learning to Say No to the Press," Michael A. Ledeen wrote:

**"Every morning in Washington, our leaders begin their day by reading a Press Summary (prepared separately by each department, by the way). This generally precedes the reading of the classified Intelligence Summary and speaks volumes about the power of the press, for it is the Press Summary, for the most part, that will establish the problems that the Government will address during the next dozen hours."**

Ledeen then goes on to point out that the leaders of the press, who weren't elected by anyone, think this is eminently proper. He quotes journalists in Lebanon who were shocked that the Israelis did not stop bombing, because the press was reporting it on the American Media and causing them a loss of good will.

We will start this part of our program by watching a 20 minute segment from the tape "NBC in Lebanon". Now this was originally a full one-hour tape prepared by the American's For Safe Israel whose Executive Director, Peter M. Goldman, is responsible for the contents. I take full blame for the parts we decided to put in and for what we have excluded.

I would just like to suggest that, as you watch it, you think of what Michael Ledeen said about who sets the agenda for our government and what happened in late summer and early fall of 1982. American arms and Israeli soldiers had won a fantastic victory. We can never forget what happened to the Syrian missiles — knocked out with electronic measures. Syria was reeling; its air force was destroyed; the PLO and infra-structure had been shattered. There was a good chance Syria could be pushed out of Lebanon, and the agenda of our government was to put pressure on Israel to enter into what turned out to be a meaningless agreement with Lebanon because Syria was not pushed into being a party to it. Now some of the reasons for this approach by our government was because the Saudis in the background were saying "don't worry, Syria will come along." We have to ask ourselves: was this agenda, was this pressure on the Israelis, partly a result of what happened over the summer when the media reported on "the events in Lebanon."

I do want to mention one point that isn't brought up too clearly in the film, but goes to one of the legal issues now before us. There is now a bill pending in Congress to amend the Federal Communications Act and the idea is to eliminate the Fairness Doctrine. The press complains about the Fairness Doctrine and they usually use as the example that if they want to have a debate say, between two major party candidates, they have to allow equal time to seventeen other minority candidates who really aren't valid candidates. This prevents them from doing it at all. However, the provision, Section 315 of the Act, which Senator Hatfield's bill would eliminate, is the very section

that requires that the media would have to operate "in the public interest" and "to afford a reasonable opportunity for discussion of conflicting views on issues of public importance."

One of the incredible things about the 1982 situation was that John Chancellor gave commentary night after night which was clearly commentary, not news. All his comments were all anti-Israel. In the entire 600 hours of coverage, he did one session with Tom Brokaw but he read three letters, responding. All letters were from Jews. When NBC interviewed people, any American Jew they interviewed was always hostile to the Israeli position. It is amazing they could not find a single American Jewish leader who had anything good to say about Israel. We had 200 retired U.S. Admirals and Generals sign an ad in the New York Times about what was good about what the Israelis had done. A mission did go into Israel that we did clip out of the tape with congressman Wilson, who has never been a friend of Israel. There is a fantastic interview of his saying "We've been had" and how the Israelis were being greeted as liberators everywhere and that the Lebanese were telling them "yes, we took casualties but it was worth it to get rid of the PLO." Wilson was not interviewed on NBC. When McClosky went in there and talked about how we ought to make friends with the PLO, he appeared on NBC. This was a violation of the Fairness Doctrine. And there might be redress. If the doctrine is removed from law, this can only get worse.

Now all that happened in 1982 and of course it's now 1984. But I think our country as well as Israel is paying the consequences for this, but this is only a symptom of the question that Professor Sidorsky will be addressing. To what extent has the press become a law unto itself, protected under the aegis of the First Amendment, but in ways to which that Amendment never used to apply — for example, the privilege of not revealing sources.

We all work under Thomas Jefferson and the theory of the marketplace of ideas, but in this country you have a handful of media that sets the agenda and sets the tone for everyone else. I think it's a question that has to be addressed by us, as lawyers as well as citizens, because when people start raising the flag of First Amendment, we are the only people who can come to some sensible conclusion that there is an area of responsibility here.

Before I turn it over to Professor Sidorsky, I would like to read one more quote from Michael Ledeen's article:

**"The media's mythology generally derives from the first Amendment which, in the interpretation the journalist insists upon, means licensed to say almost anything about anyone regardless of the cost and the standards of evidence applied. The current version of the First Amendment gives the media all of the prerogatives of a secret intelligence agency: they decide what constitutes evidence, they protect (or expose) the nature of their sources**

(continued on pg. 11)

# The Role of the Media

By  
Prof. David Sidorsky

In part, I am preaching to the choir on a Saturday afternoon; I guess that is a tradition. My purpose is not to review the way in which the Jewish community was treated by the media in 1982, but to look generally at the problem of the role of the media in our culture.

When we think of the traditions from our childhood, we are really dealing with a staid newspaper. You may see first an obituary and then a weather report. It is interesting that if no one published a weather report there would still be storms. The media reports and the event is there and, in that sense, that's the traditional model of the reporter.

Now, of course, that changes entirely when you have the type of situations you now have on major television networks. You have far more correspondents all over the world who in real time can give you more stories. In the New York Times they give you thirty stories of which the Editor chooses, say, nineteen. If you are doing television news, then you have to get camera crews in first. Then, of course, you are in effect creating the picture of the reality you want.

Let me illustrate in the Middle East and note this level of distortion. Seven wars are actually going on. There is a war between Morocco and Algeria which had big atrocities in Senegal in the summer of 1982. The atrocities were so large that the President of Senegal refused to go to Libya because the Libyans were behind the Algerians and the International Conference of African States was therefore cancelled. So that meeting couldn't take place because of the Senegal massacre during the Moroccan-Algerian war. That is one war.

In addition to the Moroccan-Algerian war, there is the Libyan-Chad war. The Libya-Sudan war is yet a third war. The Somali-Uganda war is a fourth war. The North Yemen and South Yemen war is a fifth war. The Iran-Iraq war is a major war, and of course the Israeli-Lebanese war is not in the same league. So there are seven wars taking place in the summer of 1982. One got reported; six did not. Why?

The reason six of the seven wars did not get reported is news reality. We can't get the cameras to Iran or Iraq; nobody is really interested in reading about the North and South Yemen war. The picture of reality — the definition of reality, then becomes not what is given, but what is taken.

There has never been such a degree to which the element of the definition of reality, the setting of the agenda, the definition of what is real, is shaped by the media. In the particular case of Israel and Lebanon, you have a very minor Middle Eastern turbulence compared to the Iran-Iraq war, compared to even the level of civilian bombing in Somali-Uganda or the number of refugees. Then there is the Afghan war, with another 2 million refugees, but this is outside the Middle East. However, by comparison, Lebanon is a comparatively minor flare-up.

You could have defined it depending on how you reported it. For example, the war of Israel against the PLO; that is one definition. You could have defined it as the war

of Israel against the terrorist organization. That should have had some newsworthiness because, after all, those terrorist camps contained the one who tried to assassinate the Pope and who was trained in Bulgaria. You could have defined it as a war between Israel and the elements in Lebanon, including not only the PLO but other elements, to help end the civil war. You could have defined it, strategically, as a fight for control of the Port, the Airport and Damascus highway. You could have defined it as the war against Soviet arms and involvement. Instead, the media defined it as a war between Israel and Lebanon that was newsworthy. If it had received the alternate definition or, if the other wars were a part of social reality, you would have had different outcomes.

So the first point I want to make is that we are facing interesting and new situations because, for technological and for social reasons, the role of the media, which historically was to report on events, has been transformed into a definer of reality and a shaper of the agenda.

The second point is that most of this is innocent in the sense of how you sell newspapers. There are other

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**"The role of the media, which historically was to report on events, has been transformed into a definer of reality and a shaper of the agenda."**

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elements here, Jewish issues which are subliminal and very disturbing. But the issue could be put into its most innocent form if you take, for example, this city. New York, as many of you know, has roughly five murders a day, day in and day out, 365 days a year. And then you think of a woman like Mrs. Harris who killed Dr. Tarnower. She received the publicity equivalent of perhaps 200 to 400 murders. It isn't that they are anti Mrs. Harris or pro Dr. Tarnower. She became a story. Shana Alexander is writing a book about it. There is a television documentary about it. The school Mistress from the fancy school who killed her Jewish lover and so on. Alright, that's the nature of the news. No reason to be outraged. What would you want to read about — five plain murders everyday? I accept it and I think we all should.

The interesting point then is eight Arabs killed on the West Bank is 1300 lines of copy in the New York Times. 16,000 Iranians killed got 130 lines. Both took place in the same week, but that is the news business.

You might have a false definition of a professional point of view of what constitutes the news, but there is a point here that is important. In the case of Mrs. Harris, nobody in the police precinct then draws up the duty roster to treat that neighborhood as dangerous. Parents don't tell their children not to go into that Scarsdale neighborhood at night where Mrs. Harris killed Dr. Tarnower. In other words, the realistic decisions as to where to go are made independent of news coverage. (continued on pg. 10)

## The Role of the Media

(from pg. 9)

In the case of Israel-Lebanon, the news affected the real world response. I mean, unfortunately, people at the State Department admit that in the U.S. we panicked because of the media report. When asked why the U.S. should be unhappy about having an Israeli army controlling the Beirut-Damascus road at the high point, looking down at Damascus rather than having a Syrian-Soviet army looking down at the Americans, a spokesman said that sounds very nice if you think strategically. It may be something else if you have a Congressman calling you every ten minutes asking you what you are doing about getting the killing off the television. Then you act differently and you panic and you respond to the media, not to the reality.

Now this is a point that is very significant: The pictures always tell us. Brutus had learned from Marc Anthony: I'll show you Caesar's wounds. That having been done, whatever the outcome of the battle does not matter. The report of the battle is what is decisive. Now there are good parts to this and there are bad parts to this. If you share the viewpoint of the media on some of these issues, then that is good news. This was the key point and the crucial way in which to get the Israelis out of Lebanon and off the Damascus highway. If you share the point of view of the media, it is of vital significance to be able to exploit the picture that is given. The question at hand is clearly who should set the agenda in American policy.

Especially in Israel, you have a peculiar case. Israel is, to this extent, an anomaly. The Israeli media, even when they are hostile to the government, publish local news like local media always do. People aren't interested in foreign news. There is still basically an isolation in this country. Foreign news is when you have a disaster, when you have a crisis, when you have a special affinity. Israel is probably unique in having both the intensity, continuity, and the coverage of local events. Then the agenda is a foreign agenda. In other words, the whole range of things which leavens the five murders a day in New York, namely the fact that there are weddings and engagements and Hadassah meetings, doesn't occur with the things that we have in the foreign coverage day after day.

This concludes the second point. The first is that there is a news interpretation of a definition of reality. Second, what are the indications of this. The indications of this are that the media has the role of setting the agenda particularly in foreign policy of our country and that interpretation of reality determines the outcome.

Question: what can we do about it? With several exceptions, the government is unable, over the long run, to exercise control. The interesting question becomes a single exception of control of media access through a very short term event. Let me illustrate. The obvious illustration is to learn a lesson from the Tet Offensive of Vietnam. The British government learned a lesson from the Falklands. It is far away. It takes a couple of days or weeks to get the news back. Therefore, the events will not be covered in real time. All the reporters will be along, file all their stories, but it will come in after the battle is over. So, at the sinking of a British ship, it would be painful on the third day of the war, but you'll learn about it

after the war is won. It is safe to say, this control of real access is unjustified.

The issue of control is the control of access in real time. Let me give you an example. The New York Times editorialized a little while ago about the fact that before the New York State primary was over, at 4:00 p.m., the exit polls were all telling you what was going to happen and projecting the outcome. This affected the votes, and the New York Times argued with the exit polls that results should not be projected until after the polls are closed. This is the stock problem because reporter becomes participant to the outcome. On the other hand, the man who arrives at the projection polls at CBS told me when we discovered that all of the Gallup Polls say it is a close election and our exit polls by noon show that it is a landslide, what are we supposed to do, sit on the data? We would be guilty of bias then too.

I don't know the guidelines for control of access in real time where the reporter becomes a catalyst participant in the event. If you are at a riot, do you put it on the television screen so that another person will go out to riot, or do you say no and wait.

Now what about the manipulations? The riots on the West Bank would get on television the same night and the damage was done. Another report came back to the writers, don't stop until we get a resolution. So, in other words, the report of the event became one of the stimulants for keeping the event going up to a certain time for the reporter. And everyone in this audience must know that various demonstrations take place timed for the evening news.

Must you be manipulated in that way? In the Falklands case, of course, Margaret Thatcher said war is such a serious business and I am not going to let somebody else set my agenda. War is too serious for that. Therefore, the reports of the war came out after the battle was won. In Grenada, the United States did exactly the same thing because it allowed the accidental bombing of the hospital to be in real time. The reports on the war came on afterwards.

Another very tragic situation is taking place in Israel right now on the question of real access because you have a touch-and-go negotiation on the hostages held by the PLO. They hold Israeli prisoners. Presumably, if the word gets out, if there is such a word, it is all hypothetical that Israeli soldiers killed two terrorist prisoners. One, the prisoner exchange is obviously off; and, two, wouldn't the PLO be required to kill 2 Israeli prisoners whom they hold? Access in news time is a hard problem for a democracy to solve.

Is it true about excessive concentration of power? Jean Kirkpatrick claims that because the media manipulates the picture, because they define reality, because they are manipulative, we have had an enormous concentration of power, which in a technical political sense, is irresponsible and will be accountable to no one. Is Kirkpatrick's claim about the excessive concentration of power of the media true?

The first answer would be that it is not true because the standard response is that there is competition. If, for example, the Iran-Iraq war had 16,000 deaths in the week of March 21 to March 28, 1982, and there were eight people killed, Jews and Arabs, on the West Bank, and the New York Times would give 1500 lines for the eight people and

(continued on pg. 11)

## The Role of the Media

(from pg. 10)

100 lines for the 16,000, then the Wall Street Journal or the Post, or someone else will jump in and correct it and scoop them. Seven medias—New York Times, Washington Post, CBS, NBC, ABC, Newsweek and Time—are the unique media. The answer, I'm afraid so far, is that the elite prestige media set the agenda to define reality for all of the media.

The second historic way to combat excessive concentration of power is peer review and professional ethics. Unfortunately, what counts is not what is historically correct but a story which works. A classic example is the story which presented Fidel Castro as a young aspiring idealistic revolutionary. That made Castro. It turned out the whole story was wrong. The writer got a Pulitzer Prize. It happens often.

Some of our internal standards of the media are corrupted by celebrity. If you publish something that is completely wrong, but which gives a great deal of celebrity, you get a promotion. And then a few years later on, if the whole theory was wrong, there is another promotion. In other words, the criteria for professionalism has to do with newsworthiness. Indeed, when you tell a reporter to cover the Iran-Iraq war because it is so much more important for American interests than a minor event in Israel and Lebanon, that isn't newsworthy. Therefore, peer review does not work.

The other reason why peer review does not work is because journalism does not have a history of professional ethics. A reporter feels an unfair demand by being bound by professional ethics. As a working reporter, the reporter says I tell the story, I know the story today, I don't know what happened yesterday or what happens tomorrow. I am a working journalist. But if you say we want professional ethics, you must realize that you are working with the new class. You are working with a group which defines ethics as part of an adversary culture. So, in this adversarial culture, we have not just the eyes and ears, but the agenda setting the culture. ■

## American Media Treatment of Israel

(from pg. 8)

**and methods, they decide when to pay for information, and they carefully control the declassification procedures to suit their own interests. We are quickly discovering that there is no Freedom of Information Act for the media. They want the government's secrets to be accessible to them, but their own secrets are to be withheld from the public."**

The government must operate under the Sunshine Law, but the media operates under the Shield Law.

Professor Sidorsky, who is a very well-known Professor of Political Philosophy at Columbia University, has written essays on human rights, has been very involved in the field of this whole question of media responsibility so I will let him report on what he thinks the problem and the prognosis is. Without further ado, Professor Sidorsky. ■

## Lessons of The Holocaust

(from pg. 7)

**noblesse oblige.** Your eminence obliges.

Even with your great numbers which we view with great satisfaction on the one hand, and, on the other hand, with ever-increasing expectations and anticipation of the the growth of the American Section of this Association. I do hope that in the years to come, the membership of this organization will be in the 10,000's. I would like to think that no self-respecting Jewish lawyer in the United States would be missing from the ranks of this Association. That no Jewish lawyer who has some feeling of his roots and of his solidarity obligation to the Jewish people as a whole could leave his place in the Association vacant.

If I may say a final word on the particular aspect of solidarity between the Jews of the United States and the Jews of Israel and also to the solidarity of the Jewish Lawyers in the United States and the Jewish Lawyers in Israel. I would say that we really belong to one family. This solidarity is really nothing but an expression of heavenly ties where brother feels responsible for brother and father for father. So the Jews of the United States and the Jews of Israel must stand and fall together and feel responsible for each other. Responsible to the group and responsible for the world. We're all human beings; we will always have something to criticize. And the criticism does not only go one way from the United States, believe me. The criticism is a very important and a very legitimate part of family ties. But this solidarity of Jewish Lawyers everywhere has found its tangible expression in the International Association of Jewish Lawyers and Jurists. Please, ladies and gentlemen, make this association truly representative. Make it truly viable and make it a loud and efficacious voice of what is best and eternal in Jewish legal tradition. Thank You.

## Remarks of Justice Hornblase After Justice Cohn's Speech

Today is Yom Hashuah. Every year on this date, I attend moving Memorial services at Temple Emanuel. Indeed, Ambassador Rosenne left our conference in order to address the mourners at Temple Emanu-El. I am delighted that Judge Cohn was able to pointedly bring to us an eloquent message of Yom Hashuah.

Now I would like to say to Judge Cohn, on behalf of the second generations of survivors, that there are other messages for the world. A further message is that when the world wanted to turn Jews into beasts because so many in the world became bestial — we insisted and we are today and we will always be human beings. The world that wanted to make darkness and evil to be the prevalent theme of the world — we insisted on light and goodness. The world that insisted on hatred — we never gave up our hope of the love of very human being with another human being. In a world that has no faith — we are faithful. In a world without hope — we are people of hope.

Finally, in a world that would like to forget, the second generation and all of us here, we will always, always remember. Would you please rise as I recite in memory of the six million men, women, babies, boys and girls, who were taken in cattle cars, in a world that didn't hear the cries of our sons and daughters and didn't see the burning flesh of our parents and grandparents, let us recite together the El Mole Rochamim for them. ■

# Trials and Tradition

by Mark F. Lewis, Esq.

Tampa, Florida

**"How do we keep our balance? That, I can tell you in one word — TRADITION!"**

**Tevye**

Tevye was certainly right in his assessment of the value of tradition to the maintenance of the Jewish way of life. In times of oppression and poverty, tradition can be the most important force in helping a person to keep his sense of balance in a troubled world.

Tevye's contemporaries had it easy in at least one sense. Their village was isolated, and despite pressures from the Czar, they were able to freely practice their traditions among themselves in their day to day lives. In our heterogeneous country, the land of "free exercise" of religion, adherence to tradition can sometimes come up against other competing values, with the results being decided not by a Bet Din or other religious source, but rather Federal courts. Three recent cases concerning the question of Jews who wished to wear yarmulkas in public show that the doctrine of free exercise is not as absolute as we may wish.

In 1981 the Federal District Court for the District of Columbia decided the case of **Goldman v. Secretary of Defense**, 530 F.Supp. 12 (D.D.C. 1981). Goldman, a psychologist and a Captain in the Air Force, was an Orthodox Jew who for over four years had worn his yarmulka along with his uniform. He was informed that this practice was against military regulations, and, unless he stopped, a letter of reprimand would be placed in his file. The Air Force claimed that, by wearing a yarmulka in this way, Goldman was "weakening the will and fighting ability of the Air Force." *Id.* at 16.

The court felt that the fears of the Air Force were unwarranted, and enjoined the issuance of the reprimand letter. In reaching its decision, the court held that since "plaintiff's insistence on wearing a yarmulka is motivated by his religious convictions, [it] is therefore entitled to First Amendment protection." *Id.*

While this may seem to be an important victory, its effects were apparently short-lived and perhaps limited to the specific facts of Goldman's case. In 1982, another judge from the same court reached the opposite result in **Bitterman v. Secretary of Defense**, 553 F.Supp. 719 (D.D.C. 1982). In this case the constitutionality of the military dress code regulation was brought into question by Bitterman, an Orthodox Air Force Traffic Controller who, after learning of the **Goldman** decision decided that he, too, wanted to wear his yarmulka while on active duty. In its decision, the court tried to conduct a precarious balancing test. It acknowledged that, in order to overshadow a First Amendment right, the regulation must protect a substantial government interest. Yet to help tip the scales in favor of the regulation, the Court also noted that it must give deference to the military and the importance to the country of maintaining an efficient Air Force. Bitterman's actions here, the court rules, were detrimental to that goal. The regulation, which the court deemed to be the "least intrusive means to achieve a substantial governmental interest," was constitutional.

In reaching this result, the court did give some con-

sideration to Jewish law sources. It cited Appel's **Concise Code of Jewish Law** for the proposition that one is allowed to go bareheaded when one's livelihood is involved. *Id.* at 725. Perhaps more significant was its observation that the wearing of a head covering is the product of tradition and is not rooted in the Bible or other mandatory source. Because it concerned a **preference** rather than a **requirement**, it was apparently given a less protected status.

One wonders if Bitterman, or any similar individual, makes such distinctions among the practices of his daily life. In fact six years earlier a judge of the same court, in allowing a Jewish chaplain to keep his beard (as ordained by Leviticus 19:27) indicated that he was persuaded by the fact that "the wearing of beards, although not required, is a well-established religious tradition among members of the Jewish faith." **Geller v. Secretary of Defense**, 423 F.Supp. 16, 17 (D.D.C. 1976) *See also* **Moskowitz v. Wilkinson**, 432 F.Supp. 947 (D.Conn. 1977) (Orthodox inmate allowed to keep beard, even though some Jews don't object to shaving.)

Whether head-covering is a preference or a requirement is one question. The significance of the **yarmulka** itself was addressed in the case of **Menora v. Illinois High School Association (IHSA)**, 527 F.Supp. 637 (N.D.Ill. 1981). Members of a Yeshiva high school basketball team desired to play their games while wearing yarmulkas, and challenged the Association's ban on headgear. Prior to the institution of this regulation the players had worn yarmulkas secured by bobby pins. Although IHSA expressed its concern with the potential for injury caused by someone tripping on a fallen yarmulka, no evidence of any such injury was presented to the court. In striking down the rule as it applied here, the trial court delved into amateur sportswriting: "the balancing process produces no contest — in basketball terms IHSA loses by too many points to make keeping score worthwhile." *Id.* at 646.

Alas, this victory was soon to be snatched away, when the appeals court vacated the lower court's decision. **Menora v. Illinois High School Association**, 683 F.2d 1030 (7th Cir. 1982). The lopsided balancing test was wrong, the court stated, since the claims of the competing parties were not irreconcilable. The Association was not arguing against all headgear here, a position which would have put it in, to use the court's term, "constitutional quicksand." But the players' claims concerning yarmulkas and bobby pins were not supported by Jewish law. Or, as stated by the court: "bobby pins do not implicate First Amendment values." *Id.* at 1034. The claims of both parties could be harmonized by the plaintiffs' devising a "method of affixing head covering which will prevent it from falling off during basketball play." *Id.* After the U.S. Supreme Court denied plaintiffs' petition for certiorari (103 S.Ct. 801 1983) the case was remanded, and the problem was resolved when the parties agreed to allow the players to wear yarmulkas affixed with hairclips sewn into them.

Thus adherence to tradition does create some problems in modern American society, problems which can often be

(continued on pg. 13)

### Perspective: How Christians View Israel and American Jews

(from pg. 13)

Think about it! Every act of terrorism is an act which has been approved by the governing body of the PLO.

Should my decree have been silenced because it became a source of editorial attacks on the judiciary? Most interesting that despite the fact that there was nothing happening in the PLO case at the time, there was an election for the other Surrogate. The New York Times chose that day when they were endorsing a candidate for Surrogate to start their editorial with an attack upon me for my stand on the PLO case. Then there was a line, and then there was support by the New York Times for a candidate for Surrogate. Was this an insidious attack by a newspaper to warn any other Judge in my position of what they could expect, were they to take such a stand?

And believe me, when I did what I did, Professor Aronson was sitting in my office and I was discussing with my law secretary that I intended to raise the inquiry as to whether they were entitled to the bequest and as to whether I should give the bequest to a terrorist organization. Professor Aronson warned me that my inquiries

and my raising this question would endanger my very life because of the terrorist attacks that had occurred. He said, you know Judge, maybe you don't owe it to yourself because you have the right to take whatever risks you want to take. But don't you owe it to your son not to take the risks? I said, I think I should discuss this with my son. I picked up the telephone and I called Gregory in Washington and I presented the problem to him. My son answered, and I'm so proud of it: "Mother, could you live with yourself if you allowed terrorism to counter your beliefs if you gave them the money?" I said I could not, and Greg said you have answered the question.

It was during that PLO case that I was reminded of the principles of a great leader who, in many ways, I have emulated: Golda Meir. She said if you are satisfied that you have touched the moral dimension, criticism should not matter. That is what leadership is all about.

Incidentally, the money did not go to the PLO; it went to the International Red Cross. It will not be used for terrorism. I feel that I took an

important issue, interjected into it the moral question and made a decision. The money should not go to an organization dedicated to the elimination of a national group. Should we as judges fan the fuel and help it along? You see it as the swastikas, the desecration of the synagogues and the temples, the attacks on Jewish children, the torment, the snide remarks. Judges, lawyers, leaders of the community and articulate people help to mold all those who come in contact with us. We help to formulate the law. It is our sacred duty to the individual to wipe out every segment of anti-semitism no matter where it appears or in what form it takes. What started with a very small group of Nazis in the 30's ended up with families being wiped out. And it will never happen again.

I represented many of the hundreds of holocaust victims and I prevented their deportation. Their stories still bring tears to my eyes. We must commit ourselves to the principle that anti-semitism cannot flourish and it will never happen again. We must be constantly aware that together, as Christians and Jews, we can begin a long, long road of educating the public against anti-semitism today and anti-Christianity tomorrow. Thank you.

### Remarks of Justice Hornblass after Judge Lambert's Speech

**JUSTICE HORNBLOSS:** All of us seek to be people of compassion, people of understanding, sensitivity and love. Judge Lambert is a profound example. She is a righteous gentile not only by cancelling the trip to Mexico

and not only by her strong stand in the PLO case, but by her actions, her attitudes and her thoughts. She doesn't have to be the way she is, but she selected it because she knows it is the right way.

Our sages taught: "In a place where there are no men, where there is evil and debauchery and immorality and devilish-like attitudes and behavior, try to be a man." Judge Lambert, you are a "man" in a place where there are very few men. We salute you.

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### Trials & Tradition

(from pg. 12)

resolved by steadfastness and thorough legal preparation. But lest one think that practicing Jews are always at a disadvantage, consider the case of **People v. Meyers**, 85 Misc. 2d 1068, 382 N.Y.S. 2d 277 (Sup. Ct. 1976), which involved an encounter that the Judge declared could only happen in New York City. Here, one of New York's finest was approached by two Hasids who described, in some detail, their observation of two black males who were on the street with guns. The officer stopped Meyers and, after searching him, found a loaded automatic pistol. Meyers' attorney moved to suppress the fruits of the search, arguing that it was based on nothing more than an anonymous tip. The court rejected this claim. It noted that the officer had observed the Hasids in their "clerical

garb" which enhanced, in his eyes, the reliability of their information. The search was justified because the officer could rightly rely on his belief that the Hasids "would not bear false witness against thy neighbor." 382 N.Y.S. 2d 277, 279.

Thus, just as the fiddler on the roof was able to perform a balancing act, so too must both American Jews and American courts strive to maintain that delicate balance between tradition and assimilation, and between free exercise and substantial government interests, however they may be defined. It is hoped that this short article will help those involved in such questions to see how, in this limited area, the issues have been framed, argued, and resolved.

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## American Section Annual Law School Essay Contest

In August 1983, Section 253 of the New York Domestic Relations Law was added to provide that any party who commences a proceeding to annul a marriage or for a divorce must allege in a verified complaint that he or she has taken or will take prior to the entry of final judgment all steps solely within his or her power to remove any barrier to the defendant's remarriage following the annulment or divorce. The law provides, among other things, that the term "barrier to remarriage" includes any religious or conscientious restraint or inhibition imposed on a party under the principles of the denomination of the clergyman or minister who solemnized the marriage by reason of the other party's commission or withholding of any voluntary act.

The provision was intended to solve a problem created by the interrelationship of Jewish law and New York civil law. Traditionally, Jewish law does not regard a secular divorce as sufficient to dissolve a marriage. It requires that the husband give the wife a document referred to as a "**get**".

The essay contest asked the writer to assume that he or she is a law clerk to a United States Supreme Court Justice who has requested the writer to brief the sole issue as to whether or not the provision is prohibited by the United States Constitution. Both sides of the issue were to be discussed and reference to specific cases and citations kept to a minimum.

The paper by Marc Gertler of Boston University School of Law was selected as the winning essay. In addition to a \$300 cash award, the law school received a text on Jewish Law. The panel of judges awarded second place to David M. Porter of the University of California at Davis and third place to Ron Maroka, also of the University of California at Davis.

The panel of distinguished judges included Justice Sheila Prell Sonnenshine of Santa Ana, California, and Rabbi David Saperstein and Nathan Lewin of Washington, D.C. The American Section and the National Jewish Law Student's Network are indebted to the contest judges and applaud all the contributors for their fine work.



### WINNING STUDENT ESSAY

## Constitutionality of The New York Get Law

by

Marc Gertler

Boston University School of Law

### I. The Problem and the Law

Jewish law prohibits a woman from remarrying unless her husband prepares and hands to her a document known as a **get**. Both parties to the divorce must appear before a rabbinical panel for counseling in order for the **get** to be granted.

In recent years, many Jewish husbands have refused to grant **gets** to their wives. A woman in such a state of limbo is termed an **aguna**. Under Jewish law, she is neither married nor divorced. Her remarriage is considered bigamous and adulterous. Children born her are considered illegitimate. If such a woman wishes to remarry, a potential spouse might refuse.

In response to the plight of such women, the New York Legislature passed section 253 of the New York Domestic Relations Law entitled "Removal of Barriers to Remarriage." A party seeking to terminate a marriage allege that he or she "has taken or will take . . . all steps solely within his or her power to remove any barrier to the defendant's remarriage" (section 2). "Barriers to remarriage" include "any religious or conscientious restraint or inhibition imposed on a party to a marriage, under the principles of the denomination of the clergyman or minister who has solemnized the marriage" (section 5).

Even if a party submits such a statement, the court must refrain from issuing a final judgment if the clergyman who solemnized the marriage certifies that the plaintiff has failed to take all steps within his power to remove these barriers (section 6). Any person who knowingly submits a false statement shall be criminally liable for perjury (section 7).

The **get** law violates both freedom of religion clauses as well as broader First Amendment principles. It not only burdens free exercise and the right to conscience, but also breaks down the wall of neutrality between church and state required by the establishment clause.

### II. The Right to Conscience

#### A. Freedom of religion

Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith or where it denies such a benefit because of conduct mandated by a religious belief, thereby putting substantial pressure on adherents to modify their behavior and to violate their beliefs, a burden upon free exercise exists. The state may justify such a burden only by showing that it is the least restrictive means of achieving some

(continued on pg. 15)

compelling state interest. **Thomas v. Indiana**, 450 U.S. 707, 717-718 (1981).

The right to conscience, inherent in both the establishment clause and free exercise clause is most directly implicated when the government imposes an affirmative duty on an individual, as opposed to criminalizing or otherwise burdening activity. It is more offensive to force a person to act against his principles, the individual is forced to support an idea he deeply opposes; inaction, which is far more ambiguous, is less burdensome on one's conscience.

Perhaps the greatest difficulty in discussing the **get** law in a free exercise context is to determine whether it actually infringes on the plaintiff's **religious** freedom. The plaintiff, whose divorce has been denied might challenge the constitutionality of the law by arguing that at the time of his marriage, he either believed in the tenets of traditional Judaism or was sufficiently indifferent to acquiesce to them. Now, however, as a matter of conscience, he has abandoned those tenets. Does the affirmative compulsion to grant a **get** really burden a "religious" belief?

The Court has held that religious beliefs need not be consistent, comprehensible or logical to merit First Amendment protection. The belief need not even be shared by other members of that religion. Where the claim is "so bizarre, so clearly non-religious in motivation," however, it is not entitled to protection. **Thomas**, 450 U.S. at 714-715. There is a fine line between finding that someone possesses an irrational religious view and concluding that the claimant is insincere. A religious view might seem incredible, if not preposterous, to most people. But if that doctrine is subject to trial before a jury charged with finding its truth or falsity, then the same can be done with any religious belief. **U.S. v. Ballard**, 322 U.S. 78, 87 (1944).

The plaintiff's belief need not be consistent or rational. Arguably, he could even still be a practicing Orthodox Jew rejecting what he feels to be certain archaic ceremonies. The Court usually would be bound to assume the sincerity of his belief. To question the sincerity of religious beliefs, which by definition are unprovable matters of conscience, would be dangerous.

Should the plaintiff's belief, however sincere, be protected under freedom of religion? The court has developed a functional definition of religion. The importance of the belief to the observer, rather than its substance, has become critical. In **Torasco v. Watkins**, 367 U.S. 488, 495, n.11 (1961), the Court noted that religion need not be founded on the existence of God and that Buddhism, Taoism, Ethical Culture and Secular Humanism are all indeed religions. In **United States v. Seeger**, 380 U.S. 163, 176 (1965), the Court defined religion as "[a] sincere and meaningful belief which occupies in the life of the possessor a place parallel to that filled by . . . God." Religion is what an individual takes seriously without reservation. It might be quite independent of traditional ideas about God. It is one's "ultimate concern." **Id.** at 187.

In determining whether the plaintiff's objection to giving a **get** reaches the level of "ultimate concern" the claim itself is given great weight. **Seeger**, 380 U.S. at 184. The Court even accepts a certain amount of confusion by the claimant. In **Seeger**, the conscientious objector was far from certain that his objection was

indeed religious. On the selective service form, he put the word "religious" in quotations. In **U.S. v. Welsh**, 398 U.S. 333 (1970), the objector even crossed the word out. If the plaintiff terms his belief to be religious, these cases support a strong presumption that it indeed is so.

The state does not have the right to compel anyone to commit a religious act. To compel a man to help propagate religious views which he disbelieves is tyrannical, and even forcing him to support his religion is unlawful. **Everson v. Board of Education**, 330 U.S. 2, 13 (1947). Yet, the **get** law does just that. The plaintiff cannot break from his faith without sacrificing fundamental rights. The **get** law thus burdens the freedom of conscience inherent in the establishment and free exercise clauses.

## B. Broader Prohibitions of Compelled Expression

In **Board of Education v. Barnette**, 319 U.S. 624 (1943), the Court held unconstitutional a state regulation requiring students to salute the flag. While the parties challenging the statute based their objections on religious beliefs, rather than treat this case under free exercise and exempt a particular group, the Court struck down the regulation. The Court found the regulation especially repugnant because it imposed an affirmative duty to partake in a ceremony. It thus violated the students' right to conscience.

In **Wooley v. Maynard**, 430 U.S. 705 (1976), the Court held that New Hampshire cannot require people to display its state motto, "live free or die," on their license plates. The Court noted that "[t]he right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.'" **Id.** at 714. Again, the Court did not find it necessary to examine the religious nature of the claim in finding it to be of a First Amendment nature. The plaintiff has a First Amendment argument regardless of whether his claim of conscience is religiously based.

## C. The State's Interest

The state may justify a law that burdens First Amendment interests by showing that such law is the least restrictive means of achieving a compelling state interest. Under the establishment clause, this interest cannot be of a religious nature. There is no compelling **secular** purpose that will justify the burden placed on the plaintiff by the **get** law.

Most individuals cannot marry or divorce without invoking the state's judicial machinery. Given its virtual monopoly, state barriers to these proceedings are constitutionally limited. **Bodie v. Connecticut**, 401 U.S. 371 (1971), and **Zablocki v. Redhail**, 434 U.S. 374 (1978) hold that the mere assertion of the state's longstanding interest in marriage is not sufficient justification for such barriers.

What compelling and legitimate state interest is there in protecting the beliefs of some family members from divisions of conscience made by other family members? The Court has held in **Planned Parenthood v. Danforth**, 428 U.S. 52 (1976), that neither the interest of a parent of a pregnant minor nor of the husband of a pregnant wife is sufficient to overcome the woman's right to terminate her pregnancy. Certainly family members might have strenuous religious objections to an abortion. Indeed,

(continued on pg. 16)

they might feel that murder is being committed. The Court, however, never discussed the family's interest in religious terms and the opinion does not indicate that any religious or conscience arguments were offered by the state. The law has little to say in private disputes involving matters of conscience.

While a woman who is an **aguna** may believe that any subsequent marriage constitutes bigamy and adultery, this belief does not warrant the curtailment of a fundamental right. There is no basis in law for her belief. To give credence to that belief would seem, in itself, to violate establishment clause principles. While **Zablocki** establishes that there is a fundamental right to remarry and the state cannot freely interfere with this right, **neither the husband nor the state has taken the right away from the defendant**. **Zablocki** should be read as protecting the individual from the state's monopoly on marriages. The case hardly suggests that the state should or could pass affirmative laws to protect an individual's "right" to remarry under conditions which she finds appropriate. Given the many religious beliefs in this country, affirmative laws which support these beliefs by burdening the rights of others are troublesome, to say the least. *See, e.g., TWA v. Hardison*, 432 U.S. 63 (1977).

In *McGowan v. Maryland*, 366 U.S. 420 (1960), the Court upheld Sunday blue laws by showing that they were not religious but merely health laws. Since the only real compelling state interest in the **get** law is relieving the consciences of **aguna** women, upholding the law as secular would indeed be difficult.

Furthermore, any more generalized interests the state might assert would seem insufficient to outweigh the plaintiffs' right to conscience. The **Danforth** Court, for example, did not find the state's interest in preserving family unity compelling. Any such assertion in support of the **get** law would be quite weak, as the family is already divided. The state, furthermore, would be hard-pressed to argue any interest in supporting the institution of marriage. The statute itself forbids the remarriage of someone who would otherwise be entitled to do so. An **aguna** woman is legally permitted to remarry regardless of the bill. It would be difficult to imagine what state interest would be of sufficient overriding concern to outweigh the right to conscience asserted by the plaintiff.

### III. The Intrusion of the Church into State Affairs: The Establishment Clause

The **get** law affords organized Orthodox Judaism unique power. Conferring governmental power on any church conflicts with establishment clause principles and must be tested under that clause. The law must satisfy three criteria: it must have a secular legislative purpose; its principle or primary effect may neither advance nor inhibit religion; and it must not foster an excessive government entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

*Larkin v. Grendel's Den*, \_\_\_ U.S. \_\_\_, 103 S.Ct. 505 (1982) indicates that the **get** law cannot pass constitutional muster under either the effect or entanglement prongs of this test. The Court struck down a statute which vested the power to veto liquor license applications for premises within a 500 foot radius of a church or school in those very institutions. While an

absolute legislative ban on liquor licenses would have been constitutional, the effect of the statute was to grant churches veto power over government licensing authority. The statute did not require any standard or reason for church decisions. For example, the church might have favored licenses for members of its congregation or adherents of its faith. The Court held that discretionary governmental powers cannot be delegated or shared with religious institutions and that "few entanglements could be more offensive to the spirit of the Constitution." *Id.* at 512. The Court also noted that the mere appearance of a joint exercise by church and state provides a significant symbolic benefit to religion. The statute thus had the principle effect of promoting religion.

In his lone dissent, Justice Rehnquist argued that as no church considers supporting its members' liquor license applications to be part of its theology, even if a church vetoes licenses in a discriminatory manner, the church's religious power would not increase. Since such a decision would be "strictly temporal," he argued, to allow the church that discretion does not violate the establishment clause.

The **get** law confers upon organized Judaism this veto power. "Barriers to remarriage" include inhibitions imposed under the "principles of the denomination of the clergyman." There are, however, major religious differences within each of the major Jewish denominations (e.g., Orthodox, Conservative and Reform). One clergyman might not believe a **get** is necessary. Another might argue that a **get** is required but that the plaintiff has done all within his power to grant one. Yet another might believe that a **get** is unnecessary, but that if the spouse would like one, it is a clergyman's duty to support her. Moreover, religious views are not easily categorized. People married in Orthodox ceremonies might feel free to remarry without a **get**. Others who are not ordinarily observant might wish to be indulged. To confuse things further, many clergymen work for congregations that have different nominational beliefs than they have. Whether there is a barrier to remarriage and whether a **get** is required is not at all clear. Even if no discretion or confusion existed, the law would still mandate religion to dictate civil matters, i.e., provide a veto power. No church can be given power over people who do not wish to submit to it.

The law also provides symbolic benefit to religion. Even if the plaintiff swears he has removed all barriers, if the clergyman who solemnized the marriage asserts otherwise, he is believed and no divorce judgment is entered. Perhaps the intent is for the clergyman to serve as an expert witness of sorts. Yet to presumptively accept the credibility or even the religious view of one witness on the basis of religious training is to unduly respect that training. The clergyman is hardly a desirable expert witness. He knows the parties and might have personal biases. Justice Rehnquist, in his **Grendel's Den** dissent, tried to dismiss this sort of concern as irrelevant to the establishment clause because it does not, in itself, support religious activity. Giving the church discretion in "temporal" areas, however, certainly increases its power. The threat in entanglement is not only the church's forcing religion upon citizens, but its attaining secular power as well. The church cannot participate in state affairs. Since the **get** law authorizes such an intrusion, it violates the establishment clause. (continued on pg. 17)

#### IV. State Intrusion into Church Affairs

One major purpose of the neutrality demanded by the establishment clause is to prevent the trivialization of religion. The primary effect of a statute may neither promote nor inhibit religion. The history of governmentally established religion indicates that people lose respect for a religion which relies upon the government to spread its faith. *Engels v. Vitale*, 370 U.S. 421, 431 (1962). What creates and binds a religious group is a common belief in something that cannot be proven. People who adhere to a faith and follow its tenets do so voluntarily. Similarly, those who belong to a religious organization do so voluntarily. A major strength of religious groups lies in this voluntariness. Religious leaders attain a legitimacy that political leaders could probably never attain. They do not compel the observance of their beliefs and rituals; they only persuade. Without the power of the state to fall back upon, a religious leader must strike a deep chord—the “ultimate concern.”

That is not to suggest that the church is not without its own forms of coercion. Religious tribunals might penalize people who willingly accept those penalties. Peer pressure may be exerted in numerous ways, not the least of which is religious rhetoric. These options are available to Jewish communities wishing to discourage or punish recalcitrant divorcees refusing to grant *gets*. When a church must utilize state machinery to achieve its desired results, it has failed. The crucial element of voluntariness is gone.

Because voluntariness is considered so fundamental to organizational activity, a plaintiff who feels that he has been treated inequitably by his religious community is without recourse. Courts do not interfere in church disputes. *Watson v. Jones*, 80 U.S. 679 (1879). The Constitution protects religious communities from state interference in their internal policy decisions, even when the policy is intended to benefit that community. *Kedroff v. St. Nichols*, 344 U.S. 94 (1952). Such interference is as much an invasion of free exercise as would be a statute dictating actual religious practice.

The policy of “deference” espoused in *Watson* and *Kedroff* and other decisions is no longer the only judicially acceptable policy. A majority of the court believes that a state may reject “blind deference” and apply “neutral principles of law,” i.e., attempt to resolve certain disputes in secular terms. All justices agree that judicial involvement must be kept to a minimum. The only disagreement goes to how this is best accomplished. See *Wolf v. Jones*, 433 U.S. 545 (1979).

The determination that the Jewish community needs help with the *get* problem indicates that the state has recognized that the leadership of a particular religious group has failed. A group whose very legitimacy stems from the voluntariness of its membership is forced to rely on state machinery. It is a violation of that group’s autonomy to interfere with its attempts to resolve the problem. The legitimacy of that group has been weakened considerably. Although the *get* problem has been of great concern to the Jewish community, the law faces much opposition in that community.

The involvement of the state in the religious activity might trivialize the activity in several ways. The ritual of granting a *get* loses much of its religious significance and becomes merely a secular act. In fact, for the act to pass

constitutional muster, it must be considered secular. By turning a religious act into a secular one, the law makes the act more mundane. One of the purposes of the establishment clause is the prevention of such trivialization.

State enforcement might result in diluting the act in a more practical sense. Satisfying the state provision will become more important than satisfying the religious requirements. Courts examining the facts might hold that the plaintiff has done all in his power to remove barriers to remarriage despite a clergyman’s assertion to the contrary. Clergymen might shape their “expert” opinion to what the secular law dictates. A plaintiff who does not really object to granting a *get* might attempt to avoid its inconvenience by asserting that he has done all within his power. He might feel less remorse in defying his religion if a court holds that he has done all he could. If a clergyman has testified that the plaintiff has not met the religious requirements, a plaintiff might bring his own clergyman to assert that the requirements have been met. Any of this would degrade the religion.

Finally, the siding with some groups within a religion over others violates the free exercise of the “losers.” Factions of a community have the right to maintain internal struggle. This law might be seen as a victory for Orthodox Judaism over Reform. It thus violates the free exercise rights of the Reform Jews who might feel that *gets* are antiquated or sexist rituals, as well as the establishment clause because it promotes Orthodox Judaism.

#### V. Conclusion

The *get* problem is a serious one in the Jewish community; it should be resolved by that community. Since the *get* law violates the establishment and free exercise clause as well as other First Amendment principles, the Court must strike it down.

NATIONAL JEWISH LAW STUDENTS' NETWORK  
1640 Rhode Island Avenue, N.W.  
Washington, D.C. 20036

[202-857-6552]

Prof. Sherman Cohn, President  
American Section - International  
Association of Jewish Lawyers and Jurists  
600 New Jersey Avenue, N. W.  
Washington, D.C. 20001

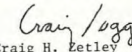
Dear Sherman:

We, the National Co-Chairs of the National Jewish Law Students' Network, are delighted that the International Association of Jewish Lawyers and Jurists has agreed to support our organization. Although the Network is just starting to develop, we believe that the Network will provide an opportunity for Jewish law students throughout the country to become active in the Jewish community. The support and assistance of the International Association will be invaluable in creating a visible and viable organization.

We look forward to working with you and the American Section.

Sincerely yours,

  
Susan G. Goldberg  
National Co-Chair

  
Craig H. Eetley  
National Co-Chair

SG/CZ:rae



# **Sixth International Congress of Jewish Lawyers and Jurists**

## **PROGRAM**

### **MONDAY, AUGUST 27**

#### **Afternoon**

Registration

#### **Evening**

Opening Session at Binyanei Ha'ooma.  
Welcome Reception by Mr. Justice Haim Cohn  
President of the International Association,  
at the Hilton Hotel.

#### **Greetings**

**The Hon. Justice Meir Shagmar**  
President of the Supreme Court of Israel

**Mr. Moshe Nissim**  
Minister of Justice of Israel

**His Excellency Mr. Robert Badinter**  
Ministry of Justice of France

**Professor David Libai**  
President of the Israel Bar

**Mr. Arye L. Dulzin**  
Chairman of the Executive of the Jewish Agency  
and World Zionist Organization

**Mr. Teddy Kolleck**  
Mayor of Jerusalem

#### **Keynote Address**

**The Honorable Samuel J. Roberts**  
Chief Justice of the State of Pennsylvania

#### **Lecturers**

Prof. Sherman L. Cohn,  
Georgetown University Law Center  
Washington, D.C., President of the American Section  
Dr. Nathan Lerner, Faculty of Law,  
Tel-Aviv University, Israel  
Mr. F. Ashe Lincoln, Q.C. London, England

#### **Afternoon**

##### **SECOND PLENARY SESSION:**

##### **"Good Faith in International Relations"**

##### **Chairman**

The Honorable Justice Cecil S. Margo, South Africa,  
Deputy President of the Association

##### **Lecturers**

The Honorable Justice Dorothy W. Nelson, Court of  
Appeals, Los Angeles, California  
The Honorable H. Aubrey Fraser, Director of  
Legal Education, Kingston, Jamaica

#### **Evening**

Visit to the Israel Museum and  
Reception by the Mayor of Jerusalem

### **TUESDAY, AUGUST 28**

#### **Morning**

##### **FIRST PLENARY SESSION:**

##### **"Good Faith in International Law"**

Luncheon with the Prime Minister of Israel

##### **Chairman**

Sir Zelman Cowen, Oxford University, England,  
former Governor General of Australia

### **WEDNESDAY, AUGUST 29**

#### **Morning**

##### **THIRD PLENARY SESSION:**

##### **"Good Faith in Private Law"**

##### **Chairman**

The Honorable Justice Jorgen Gersing  
Supreme Court of Denmark, Copenhagen

##### **Lecturers**

Professor Daniel Friedman, Faculty of Law,  
Tel-Aviv University, Israel

Professor Paul Baris, Faculty of Law,  
Bar-Ilan University Israel

Mr. A.R. Castan, Q.C., Melbourne, Australia

Mr. Baruch Gross, Advocate, Tel-Aviv Israel

Luncheon with the Minister of Defense, Moshe Arens

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## Afternoon

### FOURTH PLENARY SESSION:

#### "Good Faith in Public Law and in Personal Relations"

##### Chairman:

Mr. Abraham Kramer  
Chairman of the British National Section

##### Lecturers:

The Honorable Judge Wade McCree,  
University of Michigan Law School,  
Ann Arbor, U.S.A.  
The Honorable Judge Hadassa Ben-Itto,  
District Court, Tel-Aviv, Israel  
Prof. Nahum Rakover,  
Deputy Attorney-General of Israel

## Evening

Reception by the Minister of Justice,  
Moshe Nisim at the Knesset.

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## Lecturers:

Professor Claude Klein:  
"Developpements Recents du Controle Juridictionnel  
de l'Administration",  
"Recent Developments in Judicial Review of  
Administrative Actions"

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## SOCIAL EVENTS FOR ACCOMPANYING PERSONS

### TUESDAY, AUGUST 28

#### Morning:

Visit to Bezalel Art & Craft Center and Rockefeller  
Museum

#### Afternoon:

Luncheon with the Prime Minister

### WEDNESDAY, AUGUST 29

#### Morning

Visit to Wizo, Na'amat and Hadassah Institutions

#### Afternoon

Tea with Israel Ladies Committee

### THURSDAY, AUGUST 30

Visit to Hadassah Medical Center (Chagall Windows),  
to a Community Center in the New Section of  
Jerusalem and to the Israel Museum.

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## GENERAL INFORMATION

### Venue

Binyanei Ha'ooma is Jerusalem's Convention Center,  
and is within walking distance of the Jerusalem Hilton,  
the new Sonesta Hotel and other hotels.

### Climate

Jerusalem is famous for its dry and pleasant weather in  
summer, sunny during the day, and cool in the evening  
(20°-30° C/ 67°-86° F) — no rain. In Tel Aviv the  
climate is warmer and more humid than in Jerusalem.

### Languages

Conference languages will be Hebrew and English with  
simultaneous translations

### THURSDAY, AUGUST 30

Business meeting and Resolutions.  
Meetings of National Sections of The International  
Association of Jewish Lawyers and Jurists Council  
Meeting  
Reception by His Excellency, the President of the  
State of Israel, at the Presidential Residence.

## Evening

Congress Gala Dinner  
Host: Professor David Libai,  
President of the Israel Bar

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### FRIDAY, AUGUST 31

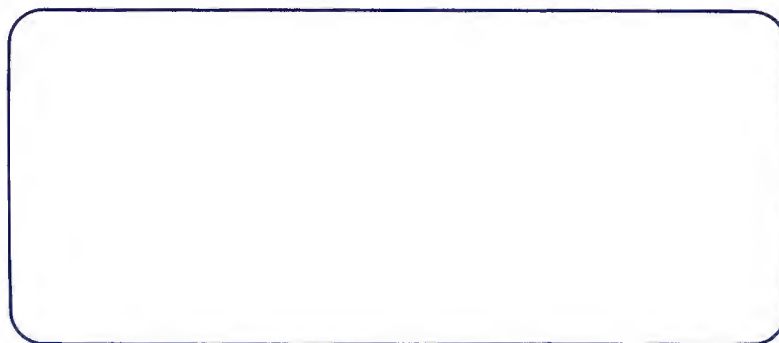
Law Seminar on "Current Legal Problems" at the  
Faculty of Law, Hebrew University, Mt. Scopus,  
Jerusalem.

##### Chairman:

Professor Joshua Weisman  
Dean of the Faculty of Law, Hebrew University,  
Jerusalem

**The**  
**JEWISH LAWYER**

600 New Jersey Avenue N.W.  
Washington, D.C. 20001



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**CALENDAR  
OF EVENTS**

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**AMERICAN BAR ASSOCIATION**

**Chicago, Illinois**

**AUGUST 3 — 8:00 P.M.**

Friday evening service followed by Oneg  
Anshe Emet Congregation, 3760 North Pine Grove Avenue  
(a short taxi ride from the convention)

**AUGUST 5 — 11:00 A.M. to 1:00 P.M.**

Brunch and Lecture  
Spertus College of Judaica, 618 South Michigan Avenue  
(right in the convention area)

**Lecture**

The Honorable Joseph H. Goldenhersh  
Justice, Illinois Supreme Court

**Topic**

Judaic Influence on American Law

**INTERNATIONAL CONGRESS  
OF JEWISH LAWYERS AND JURISTS**

**Jerusalem, Israel**

**AUGUST 27 - 30**

A detailed program is listed in this issue.



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verwijzen

הארגון הבינלאומי של עורכי-דין ומשפטנים יהודים  
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS  
AMERICAN SECTION

**INTERNATIONAL PRESIDENT**

Justice Haim Cohn  
Jerusalem, Israel

**PRESIDENT, AMERICAN SECTION**

Professor Sherman L. Cohn  
Washington, D.C.

**HONORARY PRESIDENT**

Justice Arthur J. Goldberg  
Washington, D.C.

**VICE-PRESIDENT**

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Myron W. Kronisch, Esquire

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Samuel Bergman, Esquire  
Robert Felton, Esquire  
Judge Seymour Fier  
Arnold Forster, Esquire  
Warren Freedman, Esquire  
Judge Jacob D. Fuchsberg  
Justice Theodore R. Kupferman  
Allan R. Lipman, Esquire  
Professor Roy M. Mersky  
Judge Ira Raab  
Elaine Rudnick Sheps, Esquire  
Ruth T. Wigor, Esquire

**PENNSYLVANIA**

Judge Paul M. Chalfin

**WASHINGTON, D.C.**

Professor Peter B. Edelman  
Melvin C. Garbow, Esquire  
Judge Ruth Bader Ginsburg  
J. Mark Iwry, Esquire  
Max M. Kampelman, Esquire  
Nathan Lewin, Esquire  
Rabbi David Saperstein

May 1, 1985

Dr. Marshall Breger  
Special Assistant to the President  
for Public Liaison  
Old Executive Office Building  
The White House  
Washington, D.C. 20500

Dear Dr. <sup>Marshall</sup> Breger:

At its recent Annual Meeting in Washington, D.C. the American Section of the International Association of Jewish Lawyers and Jurists adopted a resolution commending the role of the United States government, and specifically the current Administration, in the rescue of Ethiopian Jews from the Sudan.

On behalf of the American Section it is my pleasure to convey a copy of this resolution to you for your personal knowledge, and for the use and publication that you may deem appropriate.

Sincerely,

Sherman L. Cohn  
President  
American Section

Enclosure



הארגון הבינלאומי של עורכי-דין ומשפטנים יהודים  
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS  
AMERICAN SECTION

RESOLUTION

ADOPTED March 24, 1985 at the Second Annual Meeting of the International Association of Jewish Lawyers and Jurists in Washington, D.C.

WHEREAS world Jewry recognizes the importance of the airlift of Ethiopian Jews to alleviate the suffering of Ethiopian Jews in Ethiopia, and the importance of the settlement of Ethiopian Jews in the land of Israel,

NOW THEREFORE BE IT RESOLVED THAT the International Association of Jewish Lawyers and Jurists, American Section:

- 1) Extends its sincere appreciation and commendation to the United States Government, including Vice President Bush and the Department of State, for their determination and persistence in securing the rescue of Ethiopian Jews from refugee camps in the Sudan;
- 2) Commends Israel and other governments for assisting in the rescue of Ethiopian Jews, and urges the continuation of such efforts;
- 3) Supports Israel in its efforts of absorption of Ethiopian Jews, and;
- 4) Encourages all Americans to support in time and in financial effort the absorption in Israel of Ethiopian Jews.

Sherman L. Cohn, President  
American Section