Contending with Catastrophe:
Jewish Perspectives on September 11th
Edited by Michael J. Broyde

MICHAEL J. BROYDE, ED.,

CONTENDING WITH CATASTROPHE: JEWISH PERSPECTIVES ON SEPTEMBER 11TH

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בכ"ג באלול ה'תשס"א
(אחד־עשר בספטמבר)

This volume is dedicated to the
memory of the brave men and women
who were killed in the terrorist
attacks at the World Trade Center
on September 11th, 2001

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About the Beth Din of America

The Beth Din of America was founded in 1960 by the Rabbinical Council of America. In 1994, the Beth Din of America became an autonomous organization, headed by an independent board of directors composed of lay and rabbinic leaders, and has been recognized as one of the nation's pre-eminent rabbinic courts.

The president of the Beth Din of America is Mr. Eric S. Goldstein. The Beth Din of America is overseen by its rabbinic leadership, headed by the *Av Beth Din,* Rabbi Gedalia Dov Schwartz, and *Segan Av Beth Din,* Rabbi Mordechai Willig. Rabbi Michael J. Broyde and Rabbi Yona Reiss are members of the Beth Din. Rabbi Shlomo Weissmann is the director, and Rabbi Michoel Zylberman oversees the Halakhic aspects of *gittin* administered at the Beth Din of America.

The Beth Din of America's dispute resolution practice consists of arbitration (through the *din torah* process) and mediation of matrimonial, commercial and communal disputes. It handles a wide variety of matters, including cases involving wrongful termination, partnership dissolution, commercial transactions, real estate and construction, landlord-tenant disputes, synagogue and non-profit governance and matrimonial matters. In the area of dispute resolution, the Beth Din of America has been praised for successfully combining expertise in Jewish law and Jewish notions of peaceful compromise and justice, with a deep knowledge of secular law and commercial norms and strict adherence to Jewish and secular notions of legal professionalism and due process.

In the area of Jewish divorce, the Beth Din of America arranges hundreds of *gittin* (Jewish divorces) each year, including those coordinated with *batei din* (rabbinical courts) in Israel and other locations, and *gittin* originating and delivered to spouses in remote locations within the continental United States and elsewhere. Related to its *gittin* activities, the Beth Din of America is actively

involved in the resolution of *Agunah* cases involving recalcitrant spouses who refuse or are reluctant to give or receive a *get*. The Beth Din of America has promulgated a highly successful prenuptial agreement that has resolved numerous potential cases of *get* recalcitrance, as well as cases in which the husband or wife are missing (see www.theprenup.org) and has been described as the most promising resolution to the *Agunah* problem.

Firmly anchored in the principles of Halakhah (Jewish law), the Beth Din of America has earned a reputation for conducting its affairs with confidentiality, competence, fairness, and integrity. It provides a modern forum that interfaces effectively with contemporary society in a professional, efficient, and user-friendly manner. The Beth Din of America has thereby earned the confidence of Jews across the ideological spectrum.

For more information about the Beth Din of America, visit www.bethdin.org.

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Introduction

RABBI MICHAEL J. BROYDE

This book has two parts to it, and these reflect two aspects of the Jewish tradition.

The first section is about Jewish law, and it responds to a particular tragedy in a particular area of family law — the problem of the many individuals who went missing in light of the tragic events that took place on September 11th, 2001 — ten short years ago.

This part of the book focuses on technical matters of Halakhah that are both timeless and timely — timeless in the principles that they articulate and timely in the application of those principles to the world in which we actually live. Each of the essays in this section provides us with an accumulated picture of how the Beth Din of America addressed the many cases that came to it involving people who went missing on that day. (To protect the privacy of many victims of the September 11th terror attacks, names and identifying characteristics have been anonymized. Although the files of the Beth Din of America are generally confidential, we have reproduced here a sampling of redacted documents that are referred to in the various essays preceding these exhibits.)

The essays in this section follow a logical order, allowing the flowering of the process of Jewish law to be observed from beginning to end in a logical process, from the reflections of Rabbi Yona Reiss and the summary of the classical Jewish law by Rabbi Chaim Jachter, as well as the responsa translated from Hebrew for the first time in this volume of Rabbis Gedalia Dov Schwartz, Mordechai Willig, Zalman Nechemia Goldberg, and Rabbi Ovadiah Yosef, each of which is path-breaking in its own way, but in total presents a picture of a working religious legal system.

The second half of the book addresses matters of Jewish ethics and theology. In short, how should we, as a community and as individuals, respond to the presence of evil or the occurrence of tragic events? Each essay in this section offers a different perspective and response. From Rabbi J. David Bleich's presentation of the problems of saving lives by killing innocent people, to the theological reflections by Rabbis Norman Lamm and Aharon Lichtenstein, delivered on the first anniversary of 9/11, to a broader philosophic reflection by Professor David Shatz, each of these paint a detailed philosophic reaction towards the tragedy of September 11th, 2001.

Fittingly, the book concludes with a memorial prayer commemorating the victims of September 11th, 2001 and a prayer for the full recovery and heroic recognition of the first responders and emergency workers who bravely entered the burning towers of the World Trade Center. Both of these prayers were composed for this volume by Dr. Avi Shmidman and Rabbi Ben-Tzion Spitz, and translated by Gabriel Wasserman. The final prayer is for the safety of the United States Armed Forces around the world, and was composed shortly after September 11th, 2001 by Mr. Milton Moshe Markovitz at the request of Rabbi Fabian Schonfeld.

* * *

Many individuals deserve recognition for their diligent work in bringing this book to fruition. We are grateful to the sponsors of this volume, as well as to the leadership of the Beth Din of America, to its current president Mr. Eric S. Goldstein, who has spearheaded its growth, and to the previous president Mr. Sheldon Rudoff, who led the Beth Din of America after it was reconstituted in 1994.

The preparation of this volume was conducted at the Beth Din of America in New York and at The Center for the Study of Law and Religion at Emory University in Atlanta, where Menachem Butler did a superb job as project manager as he oversaw the preparation of this volume and coordinated all aspects of its production with the staff of K'hal Publishing, including Gitty Schachter and Levi Blumenfeld. The Emory University Research Committee supported the publication of this book with a research grant.

We extend our personal thanks to each contributing author whose assistance was particularly helpful, especially in the final stages of production.

We also thank the following individuals (in alphabetical order) who assisted throughout the preparation of this volume: Helen Axelrod, Josh Belinky, David Berger, Craig Berkowitz, Lindsey J. Blank, Michael Bleicher, Zahava Bogner, David and Ursula Blumenthal, Ari Enkin, Daniel Z. Feldman, Moshe Goldfeder, Alec Goldstein, Eric S. Goldstein, Peter Kahn, Dov Karoll, Aaron R. Katz, Chaim Meiselman, Burton D. Morris, Margueya Novick, Daniel Rapp, Shaul Regev, Jonathan D. Sarna, Yehuda Sarna, Moshe Schapiro, Don Seeman, David Shabtai, Rebecca Stein, Gil Student, David Strauss, Gabriel Wasserman, Shlomo Weissmann, Lewis Wienerkur, Leon Wieseltier, Elliot R. Wolfson, Chanie Zahtz, Reuven Ziegler, and Michoel Zylberman.

Michael J. Broyde
Atlanta, GA
September 11th, 2011

JEWISH LAW

Understanding Why There is Still a Classical *Agunah* Problem

RABBI MICHAEL J. BROYDE

> *"Anyone who frees a single* Agunah *is as if he has rebuilt a portion of ravaged Jerusalem."*
>
> *TESHUVOT HABAYIT CHADASH* (***CHADASHOT***, **64**)

The purpose of this volume, *Contending with Catastrophe: Jewish Perspectives on September 11th,* is to review and explain the literature that developed concerning men and women who disappeared — often, literally — into the rubble of destruction caused by the terrorist activity on September 11th, 2001 when the two towers of the World Trade Center were destroyed. As Rabbi Yona Reiss' reflections share with us, the Beth Din of America was thrust into the role of making determinations of death for many loyal to Jewish law, so as to allow people to go on with their shattered lives, mourn for the loss of their loved ones and trek on with what had become, for many, a sadder life. But, to those of us in the trenches of Jewish law, we understood that this type of tragedy — homicides in which bodies are frequently not recovered — raises questions central to Jewish law; problems that in Talmudic times were considered the *Agunah* problem: when and how should a determination of death be made for a person who is no longer here, and who we can only suspect is dead.

At some basic Jewish law level, these questions can be divided into two distinctly different technical problems of Halakhah. The first is specifically evidentiary: how much evidence is needed to prove actual knowledge of the death of a specific person? Is DNA evidence acceptable? Dental evidence? Recognition of clothes? Limbs — and if so, which limbs? In a situation in which there is no body, but there were eyewitnesses to death, the central question becomes "who may provide such testimony?"

The second question is even harder: how ought Jewish law address situations where there is no definite evidence that a specific person died in the World Trade Center — no clothes, no DNA, and no dental records — rather, all that one has is a set of facts that indicates that a specific person was at the location of the tragedy and appears to have perished in the disaster, but specific physical proof that this person is dead is absent. All three of these questions are the central themes of the many chapters in the first section of this book.

The second section of this book is of a different nature, albeit just as important, and that is the moral and philosophical issues raised by tragedy — what ought to be the proper response by rabbinic Jews to wholesale suffering? Here too, the terrible events of September 11th, 2001 are a reflecting pond for the values of the Jewish tradition. This section, too, reflects on the disasters of that day in light of the long Jewish tradition concerning theodicy. Similar to the first half of the book, the issues raised here are problems that the Jewish tradition are sadly familiar with, and of which 9/11 is but one of a long list of events we can consider as examples — but yet, like the technical halakhic issues raised by the *Agunah* problem, the moral and philosophical problems raised by our response to the evil done to good people remains a central focus of how Godly people function in our society.

This brief introduction is an attempt to explain why these questions are so important to Jewish law: Why was there a classical *Agunah* problem of missing husbands, and why did the Talmudic rabbis want to make so certain that husbands were dead before they allowed wives to remarry — in short, why did the Beth Din of America even get involved? Maybe these ought to just be secular law determinations?

To understand that question one really needs to understand Jewish marriage law.

Understanding the Nature of Jewish Marriage Law

The nature of marriage in the Jewish legal tradition is different from that of other mainstream legal or religious system in that marriage law (and end of marriage law) are private contractual rights, rather than public rights. Thus, in the Jewish view one does not need a government "license" to marry or to end

marriages. Private marriages — a contract to marry between two people — are fundamentally proper, and governmental or even hierarchical regulation of marriage is the exception rather than the rule. Even a rabbi is not really needed as a matter of technical Jewish Law to marry in the Jewish faith (even as there is an ancient custom to have one present).

This view stands in sharp contrast to the American model of marriage in which one needs a marriage license issued by the government to get married and which treats a private contract to marry or divorce as the classical examples of an illegal and void contract; the Catholic view, which treats marriage as exclusively sacraments requiring ecclesiastical cooperation; or the European view, which has treated marriage and divorce as an area of public law.[1]

This view of entry into and exit from marriage as contractual doctrines is basic and obvious to those familiar with the rudiments of Jewish law. While the Talmud imposes some limitations on the private right to marry (such as castigating one who marries through a sexual act alone, without any public ceremony[2]) and the later codes impose other requirements (such as insisting that there be an engagement period[3]) and a quorum of ten men present, basic Jewish law treats marriage as one of private contract requiring the consent of both parties.

The Talmudic view of the end of marriage is also private, in that marriages can end either through divorce, which is a private contract between a husband and wife or through the death of either spouse. Courts — even rabbinical courts — cannot grant either spouse a divorce from each other; nor can they end marriages though a decree of divorce, like a secular court can. Furthermore, a court cannot declare a person who is living to be dead.

Thus, the problem of the classical *Agunah,* the woman whose husband has disappeared, cannot be solved by a court decree ending the marriage. Either a *get* (Jewish divorce) has to be given, or a determination of death has to be made. Indeed, absent a determination of death or the granting of a Jewish divorce, Jewish law is systematically incapable of ending the marriage, even in cases in which what seems to be basic notions of fair play would mandate that the women be given permission to remarry. Consider, for example, the widely dis-

cussed Talmudic problem of a man on a ship in the open seas which sinks, and (at least in pre-modern times) no one knew where the husband was, and whether he was alive or not. The Talmud makes it clear that such a woman cannot remarry absent evidence of her husband's death. But, one might ask, why cannot a court simply annul the marriage — like an American court would do — and the answer is noted by the late *Rishon,* the *Shitah Mekubetzet,* in passing:

> One should ask why a woman ought to be an *Agunah* if her husband drowns in boundless waters — shouldn't the rabbis simply annul her marriage? The answer is that the rabbis cannot annul marriages unless the man gave his wife a *get*.[4]

The theoretical problem flows directly from the very nature of Jewish marriage: private marriages cannot be ended by judicial determinations that the marriage is over unless the husband is provably dead or a bill of divorce has been written.

Nor should one think that Jewish law approach creates end of marriage problems and other legal systems that allow marriages to end without such difficulties are without problems. Consider the following heart-rending case from World War II:

> When the Japanese bombed Pearl Harbor, my Uncle Tom Gordy and about thirty other sailors were stationed on Guam .... Tom and the others were captured about a month after the war began, and taken to Japan as prisoner. Tom's wife, Dorothy, and their three children left San Francisco and came to Georgia to stay with my grandparents.... In the summer of 1943, the International Red Cross notified Dorothy officially that Tom was dead and she began receiving a widow's pension....After a year or so, she married a friend of the family who had a stable job and promised to care for her and the children. Two years later, when the war ended and American troops entered Japan, they found Tom Gordy still alive! ... Tom wrote me about his situation and said that he still loved his wife and children and wanted to be with them. Dorothy quickly decided to have her second marriage annulled,

> but Tom was very weak, and unable to resist his mother and sisters who convinced him that Dorothy had betrayed him and committed adultery while he was a prisoner of war. He got a divorce...[5]

The problem is then clear — in situations in which the husband or wife has disappeared, the central question is one of dividing up the misery in a responsible way. With how much evidence and how long after the disappearance of a person can a person be assumed dead? The decision by the United States government to determine that Tom Gordy was dead and Dorothy can remarry, even absent any physical evidence proving that fact, seemed at the time to be a compassionate decision to Dorothy — but shortly thereafter turned out to be a decision that was a source of enormous suffering to both of them.

Jewish Law Concerning Missing Husbands

Jewish law established a set of simple rules that will be elaborated on at great length in the course of this volume, whose purpose was to prevent, as much as possible, cases like that of Tom Gordy. In essence, three rules where codified:

- Death of a husband could be determined by actual physical evidence.
- Witnesses to death were also a valid method of determining death, and sometimes even a single witness was sufficient.
- Death could be determined by placing the husband, with certainty, in a situation in which no one could survive, such as a burning furnace.

However, death could not be determined by statistical evidence that most or nearly all people in any given situation died (called the *mayim she'ein lahem sof* rule); absent specific evidence that this husband in question was dead. Furthermore, of course, the courts cannot end a marriage unilaterally, such as by annulment.

Exactly in this context — where it seems statistically likely but factually unprovable — the Talmud uses the term *Agunah* to refer to a woman whose husband has disappeared, leaving her "chained" to a marriage that exists in name only, since the absent husband is unable to return and yet cannot be determined to be dead.

While it is true that in response to the problem of the disappearing husband the Talmudic Sages elaborated on and liberalized the rules and type of evidence needed to announce that a person who had disappeared was actually dead, they took care not to permit evidence that did not address this particular person. This solution allowed a chained woman to free herself from her chains through widowhood. However, it entailed certain risks, because if there was some error and her husband who was thought dead returned, her status as a widow would be in error. If she had subsequently remarried on the basis of that status, her second marriage would be void, resulting in the children from that marriage being illegitimate and leaving her with the status of either an intentional or unintentional adulteress. It was and is beyond the power of the rabbis to declare the husband dead if he is not and thereby nullify his marriage.[6]

It is worth noting that while the Talmud repeatedly discusses the problems of disappearing husbands, and proposes a number of leniencies in different areas of evidence law, the Talmud (or any later codes) never proposes that annulment be a solution to cases of spousal abandonment.[7] Indeed, even in the very troubling Talmudic case where two witnesses come forward and attest that a woman's husband is dead, and a Jewish court accepts that testimony and grants the woman the right to remarry upon which she acts, the Talmud cannot find any recourse for this woman or her children from the second marriage if the testimony was incorrect and her first husband returns. The best that the Talmud can provide is that she can return to her first husband, since her adultery was predicated upon a rabbinical error.[8] Annulment, if possible, would be a proper solution, since this is a case of judicial error. Yet the absence of this proposal is itself important evidence of the inability of Jewish law to end marriages through annulment.[9]

Indeed, throughout rabbinic history, rabbis have struggled to apply these three basic rules to a variety of situations, struggling to make the proper determination that the husband is actually deceased. Before the reader enters into the various essays about the details of how that determination was made for people who went missing on September 11th, 2011, one can detect a flavor of how such determinations can be made by looking at two significant responsa of the twentieth century, one by Rabbi Moshe Feinstein of America dealing with

men who disappeared in the Holocaust, and one by Chief Rabbi Yitzchak Isaac ha-Levi Herzog concerning a bridge that collapsed in Rome, leaving many dead and missing men.

Rabbi Moshe Feinstein opens his discussion of husbands who disappeared in Auschwitz and in other concentration camps by noting that according to Torah law when a person disappears into a large body of water (*mayim she'ein lahem sof*) where it is impossible to ever to know for certain that this person is dead, Torah law considers this person as dead, since it is statistically very likely that the person perished. However, as noted by the Talmud, the Rabbis decreed that one has to be strict on this matter, since given the seriousness of the prohibition of adultery, one should not allow a woman to remarry based only on a single piece of statistical evidence, no matter how statistically likely this is. However, Rabbi Feinstein notes, based on the analysis of *Rabbeinu Yerucham* (*Nitiv* 24:3) that the Talmudic sages only mandated that one be strict in this matter when *individuals* fall into such bodies of water. However, when large numbers of people disappear in such tragedies, the Talmudic sages did not decree to be strict, and allowed one to be lenient based merely on the general Torah rule that one follows the majority. Rabbi Feinstein notes that he finds this reasoning "novel, and very proper."

Rabbi Feinstein adds to this analysis a number of additional factors. First, he notes the famous view of Rabbi Eliezer of Verdun (quoted, and rejected by the *Mordechai* in *Yevamot* 92) that the Talmudic sages who decreed that a woman not remarry when her husband disappeared even in unbounded water only applied for a short period of time. However, Rabbi Eliezer of Verdun insists that once an extensive period of time passes, even such a woman may remarry. In addition, he adds the view of *Terumat Hadeshen* (*Pesakim* 139) as magnified by Rabbi Moshe Sofer (*Chatam Sofer, Even HaEzer* 48) that the Rabbis of the Talmud were only strict in the case of unbounded water because in their time a person could wash up on a foreign shore and have no way to communicate that he was alive or to actually return home. However, when dealing with a person whose sudden appearance would be widely noted, and could communicate home, the Rabbis would not have made this decree. Since already in the time of the *Terumat Hadeshen* (who died in 1460) and *Chatam Sofer* (who died in 1839),

technology was such that people could more readily communicate, Rabbi Feinstein, writing in 1947, states, "Even more so nowadays, where even more so the mail is rapid and in general information spreads quickly as compared to the time of *Chatam Sofer* is 5571 (1810), this point need not be elaborated on; and even more so given the many newspapers in many counties. Add to that the fact that....every Jew is requesting from every other Jew who is alive [that they share information about who is alive]. From this we can say with great likelihood that anyone who we have not heard from was killed. Since every person is in this category, there is no reason for any general decree preventing remarriage and such people can marry *lechatchela*."[10]

Consider the modern addition to that line of reasoning stated by Rabbi Nathan (Nota) Greenblatt in a responsum written to the Beth Din of America concerning one of the missing husbands from the tragedy of September 11, 2001.

Rabbi Greenblatt writes:

> In my humble opinion it seems there is another compelling reason to permit [the *aguna*] based on the extreme changes which have arisen in recent years with the way life is managed in this country and in all other developed countries. At this time it is not possible that a person can disappear and not know where he is. Even those that wander and sleep in the streets have a social security number registered with the government in order to receive benefits and to be treated by a doctor or in the hospital, etc. Even if one wants to open a bank account, it is not possible anymore without a social security number. When this terrible tragedy occurred, the government took the particulars of the missing person (as were submitted by the families, including pictures and other details) and government agencies took these details and began searching for these peoples in the cities and forests and every location, at an expense of millions of dollars, looking in every corner, as perhaps some individuals may have lost their memory due to the terrible trauma. These tremendous efforts devoted to searching after the victims in a manner was unprecedented and was also because of

the government's obligation regarding compensation payments to the families who were affected, as well as to the injured themselves.

The changing reality from Rabbi Eliezer of Verdun to the modern times is a central feature of this analysis.

Rabbi Feinstein summarizes his view in a short responsum found in *Iggerot Moshe, Even HaEzer* 4:58, which deals with a happily married woman whose husband was taken off by the Nazis for a work detail on August 1, 1942 and never returned. The husband knew about his wife's family in America, and how to contact them and he was never heard from again. Rabbi Feinstein notes six grounds to be lenient and permit the wife to remarry.

- The secular government issued a death certificate noting that he had been in Auschwitz and perished.
- The husband knew of his relatives in America, and how to contact them. Lack of contact indicates death.
- The man in question never returned even to his home in Belgium to inquire about his family.
- The view of *Chatam Sofer* and *Terumat Hadeshen* quoted above that nowadays there is no status of never ending water since communication is always possible.
- The view of Rabbi Eliezer of Verdun, that the mere passage of time eliminates the rabbinic decree against unbounded water.
- One need factually not be afraid that the man is in Russia where communication is restricted, since he was in Belgium. Thus, one need not be afraid of kidnapping.

Rabbi Herzog was asked concerning a man who went to work every day over a bridge.[11] One day the bridge collapsed, and all the bodies were washed away. The man never returned home, but we have no specific evidence even that this man was on the bridge when it collapsed. But we do know that crossing the bridge at that general time was his practice.

First Rabbi Herzog notes, based on *Taz, Yoreh Deah* 69:24, that a general practice followed by a person regularly has the status of a strong presumption that can justify matters even of Torah law, and that since that is the case, we can assume that this man was on the bridge when it fell. In addition, Rabbi Herzog notes that, as a general proposition, when a man lives in marital bliss with his wife, and leaves for a trip intending to return, and time passes and nothing is heard from him, that **alone** removes the woman from the status of being a married woman as a matter of Torah law, as clearly stated by *Nodah Beyehuda, Tenyana, Even HaEzer* 2:47. Rabbi Herzog adds his own view that in time of urgent need, maybe one can perhaps rely on Rabbi Eliezer of Verdun that after the passage of time, death is assumed.[12]

Both of these responsa, written in the middle of the last century, are prototypical of how Jewish law addresses matters of abandoned wives in situations in which tragedy has struck and it is reasonable to suppose that the husband is dead — but yet, that which is reasonable, needs to be proved. Jewish law reflects a certain approach to the problem at hand that would perhaps strike someone unfamiliar with the workings of Jewish law as strange. What is surprising is that there is no global solution to these cases — each case needs to be looked at one at time, to examine the factors that that are present that allows one to make the claim that in this particular case, based on these particular circumstances, this woman is free to remarry.

Conclusion

This brings us back to a basic thrust of Jewish law in the area of family law. Jewish law courts and Jewish law authorities in the area of family law are case by case driven, and do not seek to adjudicate many situations under broad general rules, exactly because unless one examines each case one at a time, there is a deep possibility that mistakes will be made in specific individual cases and that would be a tragedy, as the sad story of Tom Gordy in World War II tells us.

Indeed, a more general message about tragedy is present also. People who watch tragedy on the television or experience it through reading about other people's sadness in a newspaper, think that tragedy is highly impersonal — as if all the victims have the same story and can be lumped together under a single rule or story.

The Jewish tradition understands all too well that tragedy is personal, experienced one at a time, even if it is repeated hundreds or thousands of times over — but each one is its own sad situation and needs to be dealt with individually.

This book is about ten such individual tragedies.

NOTES

1 This should not be misunderstood as denying the sacramental parts of marriage (of which there are many); however the contractual view predominates in the beginning-of-marriage and end-of-marriage rites. This is ably demonstrated by Rabbi J. David Bleich, "Jewish Divorce: Judicial Misconceptions and Possible Means of Civil Enforcement," *Connecticut Law Review* 16:2 (Winter 1984): 201-289.

2 Even though such an activity validly marries the couple; *Rav mangid aman demakadish bebiah, Yevamot* 52a; *Shulchan Aruch, Even Haezer* 26:4.

3 *Shulchan Aruch, Even Haezer* 26:4.

4 *Shitah Mekubetzet*, Ketubot 3a.

5 Jimmy Carter, *An Hour before Daylight* (New York: Simon & Schuster, 2001), 252-253.

6 For more on annulling marriages, see Michael J. Broyde, *Marriage, Divorce and the Abandoned Wife: A Conceptual Understanding of the Agunah Problems in America* (Hoboken, NJ: Ktav Publishing House, 2001), chaps. 2 and 4.

7 Even *Maharsham* 9, which is the most far-reaching proposal for using annulments, is predicated not on direct annulment power, but on a decree of Rabbi Gamliel relating to improper conduct in divorce. This technique (which is of great controversy) can be used only with the cooperation of the husband and wife. For a detailed discussion of this issue, see Tzvi Gartner, *Kifiya BeGet* (Otzar ha-Poskim 5758), 118-120.

8 See *Shulchan Aruch, Even HaEzer* 17:56-57.

9 See for example, *Pitchei Teshuva, Even HaEzer* 17:56-57.

10 *Iggerot Moshe, Even HaEzer* 1:43.

11 *Heichal Yitzchak, Even HaEzer* 2:9:2.

12 In the end, Rabbi Herzog defers to the Vilna Gaon who strongly opposed this approach and will not rely on this point alone. Finally, he adds that one must accept the view of *Rama* found in *Even HaEzer* 17:16 that probabilities are cumulative and one may permit a woman to remarry even though no single reason is statistically persuasive, so long as the totality of the evidence has made it clear that the husband is in fact extremely likely to be dead.

The Resolution of the World Trade Center *Agunot* Cases by the Beth Din of America: A Personal Retrospective

BY RABBI YONA REISS

What happened on September 11th, 2001 has been described by Rabbi Gedalia Dov Schwartz, the *Av Beth Din* of the Beth Din of America, as the Towering Inferno of our times. What began as a sunny Tuesday morning was thrown into turmoil by radio reports about a plane crash on the top of the northern World Trade Center tower, and then by escalating reports that incrementally unfurled the horror of the monumental attack that had been staged by diabolical terrorists upon American soil. Those of us who had set out for work in lower Manhattan soon discovered that public transportation had been suspended, phone lines had become scarce, and smoldering bellows of smoke filled the air. By the time the smoke cleared days later, thousands of people were dead, and those of us who were alive were walking around in a daze.

In the middle of the night sometime in late September 2001, I had a dream in which my maternal grandfather appeared. Although he had died five years earlier at the age of 89, he seemed very much alive, vigorous and vivacious, the way he had been until his final illness. His face was radiant with life as he walked with another man, whom I recognized as his late father-in-law, up the sidewalk towards the home where I had grown up in Monsey, New York. They knocked on the door and I opened it, waiting anxiously to welcome my surprise guests. What a wonderful sight to behold my grandfather in his compact splendor, his white mustache neatly groomed and his gray suit finely tailored, with a twinkle in his eyes and smile on his lips. At that point in the dream, he outstretched his hand towards mine. It was a breathtakingly exciting moment, until I suddenly realized that all sensation had left my body, and only then did I understand. They had come to greet me in their world, not mine.

Still ensconced in the dream, I slammed the door in a panic. I desperately tried to access the feeling in my limbs, but none came. I tried to scream out but no voice emerged from my lungs. Finally, the dream ended and a scream emerged from my throat. The feeling of sensation returned to my hands and I opened and shut them repeatedly without allowing for a moment of surrender.

My scream awakened my wife, who was thankfully not accustomed to my shrieking in the middle of the night. She saw the frantic motions of my hands, and asked what was wrong. Still too frightened to explain, I asked her to hold my right hand. I grasped her hand and clung to it intensely for several minutes, sweating profusely, hanging on for dear life.

This is the memory that comes to mind in depicting the emotional anguish that gripped me, and surely many others, in the days following the World Trade Center tragedy, even as we at the Beth Din of America tried to remain cool-headed in dealing with the technical details of its ramifications. After witnessing the deaths of so many vibrant and vital individuals, of businessmen in suits toppling one hundred stories to certain death, life had become frighteningly fragile, and the nightmare of that September evening reflected the ghoulish reality that had become our world. In a sudden, unexpected terrorist attack, the largest building in New York City had suddenly and unceremoniously toppled to the ground, paralyzing the city and terrifying the country. The terrorists who hijacked two planes to crash into the Twin Towers had hijacked our lives forever.

From the vantage point of the Beth Din of America, the largest rabbinical court in the United States, where I had assumed the position as Director in the summer of 1998, the halakhic ramifications of the tragedy slowly began to dawn upon us. The Talmud in Tractate *Yevamot* discusses cases of women whose husbands are missing at sea, and are presumed dead but cannot be proven to have perished. These women are described as *Agunot*, chained or "anchored" women, who are unable to remain in their previously happy marriages because their husbands are missing, but are also prohibited to remarry because their husbands cannot be proven dead. Out of sensitivity for the plight of such individuals, the Talmud prescribes various procedures that relax normal eviden-

tiary rules in order to enable a rabbinical court to pronounce that the husband has in fact died and the wife is permitted to remarry. However, the procedures and rules governing resolution of cases by a rabbinical court are complex and require finely-honed expertise.

While the bulk of our experience dealing with *Agunot* at the Beth Din of America related to the more contemporary model of *Agunot*, namely women whose husbands were alive and well but simply unwilling to provide their wives with a *Get*, a Jewish bill of divorce, it became clear to us that we needed to familiarize ourselves very quickly with the more arcane case of *Agunah* described in the Talmud. Together with the Rabbinical Council of America (RCA), and the Orthodox Union (OU), both affiliated and sponsoring organizations of the Beth Din of America, we circulated a bulletin to synagogues and organizations throughout the Orthodox Jewish Community several days after the tragedy, broadcasting our availability to deal with any tragic situations of missing husbands within our broader community.

One of the most important figures in identifying the critical role of the Beth Din of America in addressing the needs of the community during this time, and coordinating with affiliate organizations to make sure that the requisite infrastructure was in place, was Rabbi Steven Dworken z"l, the Executive Vice President of the Rabbinical Council of America. In his characteristically unassuming and low-key fashion, he played a vital role in the first days following 9/11, ensuring both the proper dissemination of the joint statement from the RCA and the OU regarding the role the Beth Din of America was ultimately to play, and bringing me in my capacity as its Director to an emergency meeting of the Jewish Community Relations Council (JCRC) to discuss strategy regarding the handling of Agunah cases across the spectrum of the Jewish community.

Present at the JCRC meeting were Rabbi Michael Miller, the executive director of the JCRC, Dr. Jay Levinson, a forensic expert from Israel who would prove to be an important liaison between the Beth Din of America and the rabbinical authorities in Israel who unfortunately had significant experience dealing with the identification of bodies following terrorist attacks, Rabbi Mayer Rabinowitz, chairman of the Joint Bet Din of the Conservative Movement, Rabbi

Steven Dworken, myself, and several other key representatives of different Jewish organizations.

At that meeting, the key outside presenter was Dr. Jay Levinson who spoke about his own experience dealing with Israeli rabbinical courts regarding identification of bodies, including the great sage Rabbi Shmuel Wozner of Bnei Brak, who had written a responsum to him regarding the reliability of DNA evidence. Little did we realize at the time, although we did anticipate the possibility at this meeting, how significant DNA identifications would be for many of the victims of the World Trade Center tragedy. Dr. Levinson offered his services to those around the table and offered to be a liaison to the Israeli Rabbinical Courts.

It was suggested that each individual *beit din* service members of its own constituent community, so that for example the Beth Din of America, an Orthodox *bet din*, would service the Orthodox community, and the Joint Bet Din of the Conservative movement would service members of the Conservative Jewish community. I noted that the Beth Din of America served as a rabbinical court for all segments of the Jewish community, that we had the additional advantage of being accepted by all streams of Judaism, and that we would be prepared to work with all parties to deal with any case that required *beit din* resolution. In fact, this is exactly what happened in the days, weeks and months ahead, as the Beth Din of America was presented with cases from both inside and outside the Orthodox Jewish community. We worked diligently and respectfully with all members of the Jewish community to ensure the optimal treatment of each situation brought to our attention, from both a halakhic perspective and a human perspective.

As the cases began to be submitted to the Beth Din of America for resolution, and we had to deal on a daily basis with the enormity of the human tragedy, I asked my local rabbi of the Riverdale Jewish Center, Rabbi Jonathan Rosenblatt, for some guidance from an emotional and pastoral perspective regarding how to counsel women who had lost their husbands, parents who had lost children, and families who had lost their loved ones. Rabbi Rosenblatt counseled me to recognize the limitations inherent in trying to provide comfort, and to let the

mourners take the initiative in identifying what was important to them, and what they needed most from the Beth Din of America.

It happened that one of the first cases to come to us involved a young man from the Riverdale Jewish Center. He had just started working for a law firm in the South Tower of the World Trade Center and, according to internal firm reports of the tragedy, was one of the heroic figures who remained inside in order to ensure that others within his firm would leave the South Tower safely after the North Tower was hit. Tragically, his solicitous concern for others kept him inside the South Tower at the time it was attacked and when it eventually collapsed.

In all, the Beth Din of America was approached by ten individuals, nine women and one man, who had lost their spouses in the tragedy and sought halakhic resolution. We also kept a log of other cases which were brought to other *batei din* and rabbinical authorities, including two cases presented to the Belzer Dayan in the days immediately following the tragedy (recorded in *Ohr Yisroel* 27 [Nissan 5762] (2002), another case documented by Rabbi Yechezkel Roth, the Satmar dayan (in his pamphlet *Lechem An"i*), and a case involving the Lakewood Bet Din (documented in the *Yeshurun* journal). On several occasions, additional cases were brought to our attention involving unmarried individuals, with the questions focusing more exclusively upon issues of mourning and burial, as applicable, following identification of a body or a sense of despair that the remains would never be found. A review of each of these cases, including those decided by other rabbinical courts, helped provide a valuable frame of reference for the ten *Agunah* cases that were handled by the Beth Din of America, constituting a majority of all of the cases presented to rabbinical courts for resolution in the aftermath of 9/11.

Of the cases presented to the Beth Din of America, one involved a man who had been on the American Airlines plane that crashed into the North Tower, one involved a Port Authority officer who was presumed to have been on the first floor of the South Tower at the time of its collapse, three involved men who worked for the firm of Cantor Fitzgerald, located on the highest floors of the North Tower above the point of collision, one involved a man who worked for

the firm of Marsh & McLennan, located immediately beneath Cantor Fitzgerald and also above the point of collision, two involved individuals who worked for the Department of Taxation and Finance on the 86th-87th floors of the South Tower, above the point of collision into the South Tower, and one involved a person who worked for a law firm located above the point of collision in the South Tower.

It was morbidly fascinating to note that in the North Tower, which was attacked first (at approximately 08:46) but collapsed last (at approximately 10:28), everyone above the point of impact (on the 92nd floor) perished. In the South Tower, where the terrorist-guided plane collided at approximately 09:02 in the area of the 78th floor but in a zig-zagged fashion, there were several individuals above the point of impact who were able to escape alive before the building collapsed at 09:58 through one smoky staircase that remained passable.

Remarkably, in four of the cases presented to the Beth Din of America, the couple's only child was born either immediately prior to 9/11 or in the months following 9/11. The case involving the Riverdale family was one of the cases where the wife was pregnant with the couple's only child at the time of the tragedy. The tremendous concern felt for the widow extended to the welfare of the unborn child as well. It was imperative that the widow be spared any unnecessary stress and be allowed to begin the healing process a soon as possible. One issue was the requirement under Jewish law that when a husband's remains have not been found, the wife should not commence the formal mourning process before a *beit din* had made a final determination that she is free to remarry. It was recognized that the *beit din* process could take several months in terms of responsibly gathering evidence, and compiling final decisions from universally respected Jewish law authorities. Accordingly, the Beth Din of America advised Rabbi Rosenblatt that he was permitted to rely upon those opinions that allow mourning to commence as soon as the case has been submitted to the Beth Din of America for ultimate resolution. In similar fashion, we provided guidance to Rabbi Meir Rebibo of the *beit din* in Paris with respect to when mourning should begin for the French parents of another one of the World Trade Center victims (See Document A).

The heart-rending case of the heroic man from Riverdale served as a model for the protocols that the Beth Din of America developed in dealing with the cases presented for resolution.

The first point of entry in dealing with a case was usually being contacted by the local Rabbi. Among the community rabbis who presented cases to the Beth Din of America, in addition to Rabbi Rosenblatt, were Rabbi Jacob Reiner, Rabbi Jacob J. Schacter, Rabbi Yaakov Luban, Rabbi David Chanofsky, Rabbi Michael D. Shmidman, Rabbi Yaakov Sprung, Rabbi Joseph Singer, Rabbi Shlomo Weissmann (the current Director of the Beth Din of America), Rabbi Michael Gisser (the Director of Jewish Affairs and Israel Programs at Fairleigh Dickinson University), and Rabbi Lazer Avtzon (a Chabad Rabbi).

Afterwards, we framed a short letter to be signed by the widow, authorizing the Beth Din of America to be in touch with governmental agencies, business associates and any other necessary contacts in order to be able to collect a thorough file of evidence from which to perform a proper halakhic analysis (See Document B).

We then arranged for a meeting of three members of the Beth Din of America, constituting an official rabbinical court entity, to meet with the widow, and any other available witnesses, at a convenient place and time. The members of the rabbinical court typically consisted of myself, Rabbi Mordechai Willig, Rabbi Daniel Rapp, our then rabbinic-intern Rabbi Elliot Moskowitz, and sometimes included the participation of one or more of the local rabbis, or other members of the Beth Din of America, including the *Av Beth Din*, Rabbi Gedalia Dov Schwartz. In addition to the data accumulated at these meetings, I would be involved, in my role as Director of the Beth Din of America, in numerous follow-up meetings and phone conversations with eyewitnesses, coworkers at the husband's firm, and members of the Office of the Chief Medical Examiner of the City of New York regarding any possible physical identification of the person, whether through fingerprint evidence, dental records, DNA or otherwise.

Some of these follow-up conversations were with individuals who were at locations where there were no survivors, such as the firm of Cantor Fitzgerald in the North Tower, but who had left the building early that day for various reasons, such as to attend a meeting outside of the office. Other conversations were with people who had escaped from the South Tower through the express elevator bank on the 78th floor (the approximate location where the plane collided). These individuals, reacting out of consternation over the collision in the adjacent North Tower, left their offices above the 78th floor, took the local elevators down to the 78th floor, and entered into the last express elevators known to have gone down before the plane hit the South Tower. In at least one case, an eyewitness saw one of the victims standing in the lobby being told by a well-intentioned officer that the safest decision was to return to his office on the 86th floor. In the case of the man who had boarded the American Airlines plane, we spoke extensively with airline personnel to confirm protocols and records indicating that he had received a boarding pass and could be presumed to have boarded the plane (See Document C).

An essential task in each investigation was to compile the information as quickly as possible. In the days immediately following what has notoriously become known as 9/11, there was an incredible sense of unity and cooperation in the air throughout New York City. Many individuals and firms were quick to share accounts and records upon a moment's notice based on a collective sense that the residents of New York City and even the United States as a whole had become a closer-knit family as a result of the tragic circumstances. As the months passed and the general spirit of togetherness became less steadfast, it became increasingly more difficult to elicit full-fledged cooperation. Fortunately, we were able to compile a vast record of testimonies and information during the first number of weeks, so that we could focus more intensely during the months ahead on the halakhic analysis of the relevant data.

All of the conversations and data relating to this follow-up work were assiduously recorded and regularly updated in an extensive log that was kept on file at the Beth Din of America. In order to comply with halakhic requirements of *Kabbalat Edut* (acceptance of testimony) in front of a duly convened rabbinical court with respect to all testimony, we then assembled an additional meet-

ing in front of a Beth Din panel, consisting of Rabbi Mordechai Willig, Rabbi Daniel Rapp, and Rabbi Hershel Schachter, in which I presented all of the additional evidence that had been compiled throughout the investigation and recorded in the official log of the Beth Din of America

There were certain accounts following the tragedy that proved to be particularly helpful in assembling and organizing the information. While a number of newspapers provided extensive breakdowns detailing the times and locations of the collisions of the planes into the North and South Towers of the World Trade Center, respectively, and the times of their collapse, the most accurate and helpful summary was probably the detailed diagram provided in *The New York Times* the day after the terrorist attack (See Document D). It described in meticulous detail the firms on each of the different floors of the buildings, including the estimated number of victims and survivors, and the location of each of the plane crashes. Although the estimate of the total number of victims was subject to change and revision in the weeks ahead, the basic breakdown was astonishingly accurate, and the final tally of close to three thousand deaths at the World Trade Center, was ultimately consistent with the floor-by-floor estimates contained in the original *New York Times* graph.

The daily newspaper *USA Today* (December 19, 2001) also engaged in a very extensive analysis of the details of the tragedy in a report that appeared several weeks following 9/11 (See Document E). After a number of e-mail exchanges, our *dayan* (rabbinical judge) Rabbi Daniel Rapp arranged a meeting between the authors of the article and ourselves, in the offices of The Federal Reserve Bank of New York, to compare our notes to those of the authors of the article. Certain information gleaned by the authors of the *USA Today* article, such as which elevators on the 78th floor in the South Tower did or did not provide a possible escape route of the one viable staircase, was key to our investigative work. I recall at that meeting that the authors of the article commented to Rabbi Rapp and me that the data compiled by the Beth Din of America appeared to exceed in its meticulous detail the amount of extensive information that they had compiled for their comprehensive article. Indeed, the investigative work of the Beth Din of America was featured in a number of newspaper articles, including in *The Wall Street Journal* and *The Daily News.*

Our factual investigation typically included an analysis of the missing husband's itinerary on the day of the tragedy, an interview with the person or people who saw him or spoke to him last, a confirmation that the husband was actually in the World Trade Center at the time when it collapsed, an examination of whether he was in a location from which it would have been impossible to escape (such as the upper floors of the Northern Tower after it was struck), and an ongoing investigation of whether any physical evidence had been compiled by the medical examiner's office that would confirm his demise. In this regard, it is essential to mention the tremendous cooperation that we received from the medical examiner's office, particularly from Mr. Shea Ribowsky, the chief medical assistant to Dr. Charles Hirsch, the chief medical examiner, who was in touch with our office regularly, always informing us of every new identification made, and granting us access to the records of any individual for whom we had been authorized by his widow to conduct the halakhic investigation (See Document F).

The Beth Din of America was one of the organizations that received daily faxes from the medical examiner's office informing us of any new identification (See Document G). The medical examiner's office also granted us access to visit its premises directly to go through any pertinent files.

The protocols established for the halakhic analysis included an assiduous review of pertinent sources, many contained in the *Shulhan Arukh, Even Haezer,* Chapter 17, and the voluminous commentaries and responsa literature pertaining thereto, with the underlying Talmudic passages mostly contained in the latter part of Tractate *Yevamot.* The Talmud distinguishes between two types of cases of missing husbands: the case of a husband who is seen sinking into *mayim she'ein lahem sof* (a boundless area of water), where there is a slight possibility that the man may have emerged from the water elsewhere and the wife is therefore not permitted to remarry absent additional evidence or considerations, and the case of a man who is seen sinking into *mayim she'yesh lahem sof* (water with clearly visible boundaries), where it is assumed that the man has drowned if the observer does not see him emerge within a reasonable time frame.

Much of the analysis of the missing husband cases can be boiled down to the question of whether the degree of evidence satisfies the *mayim she'yesh lahem*

sof criteria, establishing a certainty or near-certainty of death, or whether the evidence meets the *mayim she'ein lahem sof* threshold, which would indicate only a probability of death, but not the degree of certainty required for a halakhic determination that the wife can remarry. Certain other types of circumstances are treated according to Halakhah as essentially analogous to the *mayim she'yesh lahem sof* scenario, such as the case of *kivshan ha'esh* where the husband is seen entering into a fiery furnace from which there is no possibility of escape. In the case of the World Trade Center, a good deal of our focus centered upon whether a particular individual was in the equivalent of a *kivshan ha'esh* type of situation (such as if they were in the area above the point of collision in the North Tower), or if the individual was in a *mayim sheen lahem sof* type of situation (such as if he was in the South Tower in a location where there were some people who did manage to escape), and whether there were other considerations that could be utilized, such as a multiplicity of probable circumstances that would lead to the conclusion that he had died, that could be marshaled to lead to a halakhic determination of death.

In this respect, the standards are more rigorous according to Jewish law to warrant a determination that a married man has died than a determination of death for a married woman or an unmarried man, because of the overriding concern according to Biblical law that a woman not enter into an adulterous relationship with another man (it is only according to rabbinic law that a man may not be married to multiple women at the same time). Accordingly, if the equivalent of *mayim she'ein lahem sof* criteria could be established demonstrating a probability of death in the case of a missing woman, this would be sufficient for the Beth Din of America to rule that the husband is permitted to remarry. Thus, the one case brought to the Beth Din of America relating to a missing wife was subject to simpler criteria than the other nine cases relating to missing husbands.

However, the case scenarios of each of the cases remained nuanced and different, in terms of the location of the husband, the reliability of the evidence placing the husband in one of the airplanes or one of the Twin Towers either before or after the time of the plane collisions, the possibility of escape, and the halakhic import of any physical identification of the person's body or belong-

ings. All of these factors required careful and meticulous halakhic research based on the assembled data.

Approximately one month after the tragedy, a *Yom Iyun* (day of learning) was assembled by the Beth Din of America, the Orthodox Union, the Rabbinical Council of America, and Yeshiva University, which took place at the Washington Heights campus of Yeshiva University, and focused upon certain halakhic ramifications of the tragedy. An extensive presentation was given on that day by the world-renowned *Rosh Yeshiva* and *Rosh Kollel* at Yeshiva University, Rabbi Hershel Schachter, who spoke about many of the fundamental principles according to Jewish law relating to reliance upon probabilities and *t'rai rubi* — double probabilities, in the context of the halakhic literature over the centuries relating to missing husbands. By that time, the Beth Din of America had met with many of the widows, and our log already consisted of extensive data, much of which benefited from the ensuing halakhic discussions. A good portion of the content of the various presentations at the *Yom Iyun* was memorialized in a pamphlet put together shortly after the event by Rabbi Elly Krimsky (See Document H).

I was invited by my colleague Rabbi Zvi Sobolofsky to present a review of some of the halakhic issues on Thanksgiving weekend 2001 at his synagogue, K'hal Adath Jeshurun, in Paramus, New Jersey. The content of this shiur, which includes a discussion of the responsum by Rabbi Yaakov Meskin of Burlington, Vermont concerning the case of a woman whose missing husband had been a passenger on the Titanic, provides a more detailed background of the halakhic considerations that formed a basis for our analysis and a framework for the official *teshuvot* that would subsequently be issued by the Beth Din of America. A recording is available at YUTorah.org.

Sometime thereafter, there was a memorable late-night meeting that took place in a synagogue adjacent to the medical examiner's office, Congregation Adereth-El on East 29th street in Manhattan, thanks to the gracious accommodations provided by Rabbi Gideon Shloush, the rabbi of the synagogue. Present at the meeting were representatives of the Beth Din of America, Mr. Ribowsky, Dr. Howard Baum of the medical examiner's office and an expert on the

science of DNA identification, and members of the *beit din* of Lakewood, New Jersey, who were dealing with a case of their own.

It is worth mentioning the context of the case that was being scrutinized by the Lakewood *beit din*. In their case, there had been a determination that the missing husband was in the World Trade Center prior to the plane collision, but a question arose as to whether he could have left the building beforehand.

Although this type of detail may seem trifling, the requirement according to Jewish law, as mentioned, is for certainty or near certainty in the determination that a man is dead in order to enable the wife to remarry. Even in dire situations, if there is a possibility for escape, this can sometimes foreclose an easy determination that the man had in fact met his demise.

This is why cases involving victims from the South Tower were generally more challenging than cases involving men who worked in the North Tower. As described above, almost every victim from the North Tower worked in a location above where the plane collided (at approximately the 92nd floor) into the building, and based upon the trajectory of the collision which essentially severed the top of the building from the point of collapse, could not have possibly escaped the flames and eventual collapse of the building, other than by leaping to certain death. Therefore, as long as there was a determination, based on phone conversations or e-mail exchanges, that the person was located in his office after the time of the collision, a determination could essentially be made according to Jewish law that the wife was permitted to remarry because her husband had sadly perished. However, in the South Tower, even after the plane collision into that Tower, there was still one staircase that remained viable, and from where several individuals were able to escape. Accordingly, in all cases involving men who worked in the South Tower, it was not sufficient to confirm that they were in the building at the time of the collision; supplementary data was required as well, preferably in the form of physical evidence indicating their demise.

Even in the North Tower, if a person was not clearly identified as having been in the building after the time of the plane collision, additional investigation

was necessary. Halakhah does not permit reliance upon probabilities, unless it can be demonstrated that the probabilities approach a near certainty. This was borne out in several cases following the World Trade Center tragedy where a person who was reputed to have been killed was discovered alive. These types of cases ranged from outright insurance fraud, where, for example, the murderer of his wife filed for benefits from his prison cell claiming that his wife was a victim of the 9/11 tragedy, to a more nuanced case where a man who had been a street vendor outside of the Twin Towers and was presumed dead by his family following the collapse of the buildings, was discovered many months later in a New York area hospital, disoriented but very much alive.

Modern technology has muted some of these concerns. In olden days, it was significantly easier for a person to "disappear," whether voluntarily or involuntarily. With advanced communication methods, such as phones, faxes, electronic mail, and a myriad of surveillance devices, it is much more difficult for a live person to become lost in the modern age. Medieval Jewish commentators already took note of this phenomenon, and later authorities from two hundred years ago noted in their respective eras how much more advanced communication technologies had become, and how this reality invariably increased our ability to draw inferences from somebody's prolonged disappearance. Certainly, in today's era, with much more sophisticated technologies, and instant communication methods around the globe, contemporary Jewish law authorities are in agreement that there is evidentiary value to the notion of *avad zichro* — that a person has been missing for a certain period of time, particularly if there is no indication that the person was otherwise looking to flee from his marriage or place of residence.

Still, the probative weight of the evidence that a person is missing is amplified if there can be a showing that the person was present when a terrible tragedy occurred, and diminished if there is not even a showing that the person was present at the location of the tragedy. Similarly, it was necessary to examine every detail of each person's narrative in order to ascertain whether the totality of evidence was sufficient to make a halakhic determination of death, and even then, as to whether the evidence was independently sufficient or also required a lapse of time based on partial reliance upon the *avad zichro* consideration.

In the case of the Lakewood *beit din,* the halakhic analysis revolved around both a factual determination as well as two halakhic questions. The factual question was whether, based on the frequency of elevator access where the person worked, there was a possibility that the missing husband in question could have actually left his floor before the building was hit by the plane. Even if he could have entered the elevator, there needed to be a factual analysis as to whether the elevator could have arrived at its destination prior to the plane collision, and if not, whether the man would have been helplessly trapped in the elevator until the building collapsed.

The first halakhic question was whether one could work with the assumption that one is presumed to remain in the place where they had been located minutes beforehand. Since there was evidence, based on phone communications, that the man in question had been in his office a few minutes prior to the plane collision, and he was located in a place from where escape would have been impossible after the collision, the question is whether or not there was a halakhic presumption that the person remained in the same place. Despite the complexity of this analysis, this question was considerably easier than a comparable case that the Beth Din of America encountered.

The comparable case of the Beth Din of America related to a missing husband who was known to work on a floor in the North Tower where he would have definitely perished had he been located there at the time of the plane collision into the North Tower. However, there was no hard evidence that the man had even been in the building that day. Although the World Trade Center had swipe card records of all workers who entered into the building on a daily basis, the records for the month of September were wiped out at the time of the collapse of the Twin Towers, and there was no back-up available. Through the cooperation of the Port Authority of New York & New Jersey, the Beth Din of America was able to procure the swipe records of this individual for the month of August, which helped to establish at least a pattern of his arrival each morning (See Document I). In addition, the Beth Din of America discovered through this man's widow that he purchased his Metrocard for the subway from his credit card. Through the credit card information, the Beth Din of America was able to obtain the code of the specific Metrocard used by the missing husband,

and a full record of his Metrocard use each day courtesy of MTA New York City Transit (See Document J), including the fateful day of September 11th. Based on his pattern of taking the train at the Port Authority Bus Terminal each day on 42nd street, including on September 11th (See Document K), and his usual arrival time at the office following the time of boarding the train as reflected in the August records of MTA New York City Transit, the Beth Din of America was able to approximate his time of arrival at the World Trade Center on September 11th, and calculate, based on evidence compiled regarding typical elevator travel times to the office, his probable time of arrival in his office shortly before the moment of the plane's fatal collision into the building.

From both a factual and halakhic perspective, the data accumulated in each of these cases was significant, and there were Jewish law sources that provided precedents for partial or full reliance upon this type of evidence. However, the second halakhic question, for which we assembled during that late night meeting at Congregation Adereth-El, would enable, in relevant cases, all of the other evidence to be buttressed by one of the most incredible developments in modern technology. In the case dealt with by the Lakewood *beit din*, the individual was ultimately identified through DNA analysis of body remains found at the World Trade Center site. What probative value is placed upon DNA identification?

Halakhah places significant value upon iron-clad physical evidence. The Rabbis distinguished between what is termed a *siman muvhak* — a piece of physical evidence that is so reliable that the margin of error is less than one in one thousand, and a *siman beinoni* — a distinctive but less reliable type of physical evidence. While one could rely upon a *siman muvhak* to render a positive identification of a corpse, one cannot rely solely upon a *siman beinoni* — a lesser form of evidence, and certainly not what is known as a *siman garua* — a form of identification that is typically found among many people. The Talmud and its commentaries provide guidance as to the different classifications of forms of physical evidence. An extra limb may constitute a *siman muvhak*. A certain color and size pants, worn by many people, is merely a *siman garua* and not independently reliable as a source of identification.

In recent years, Jewish law scholars have classified different forms of contemporary identification into these different categories. For example, an identifica-

tion based on fingerprints or dental records is considered sufficiently clad as to constitute a *siman muvhak*. Personal objects would not generally be sufficient, because they might have been "loaned." However, personal objects that are not typically loaned, such as a wallet or ring, may constitute reliable evidence if there are multiple objects of such sort found in one place, especially if combined with other circumstantial evidence.

In at least one of the cases of the Beth Din of America, the medical examiner's office was able to make a positive identification based on dental records. In that case and similar cases, the Beth Din of America reviewed the process of identification with the medical examiner's office and examined the records. Suffice to say, the medical examiner's office followed meticulous processes, testing and re-testing so that the margin for error was essentially eliminated from a statistical perspective, enabling reliance upon such identification as a *siman muvhak*. In one heart-wrenching case, a pair of pants with crushed body parts was discovered, with multiple pieces of personal evidence, including glasses, a wallet with a driver's license and credit cards, and a ring, enabling for halakhically sufficient identification, coupled with the evidence placing the man above the point of impact in the South Tower.

However, the method of identification that became much more prominent as body parts became scarcer, was DNA analysis. In DNA analysis, cells from body tissue were examined and compared in their coding and formation to similar cells found on a toothbrush or comb of the presumed victim. The margin of error is often assessed scientifically at less than one in a million, or one in a billion, and sometimes less than one in a quintillion, based on the uniqueness of the coding in the cells that are examined. In order to rely upon these probabilities, the members of the Beth Din of America and the *beit din* of Lakewood needed to gain a better understanding both of the science behind DNA and also the methodology behind DNA identification by the medical examiner's office. Among the questions pondered that night was whether identification not visible to the naked eye constituted a *siman* at all, and whether DNA identification constituted one *siman muvhak* or merely a more questionable combination of many *simanim beinonim* because the identification depends upon a combined analysis of multiple loci of DNA sequences. Following an extensive

presentation and question and answer session, both *beit din* entities emerged better equipped to think more precisely about this question, and confer with additional halakhic authorities, as appropriate.

The factual, scientific and halakhic analysis of the Beth Din of America ultimately led to a carefully considered and groundbreaking responsum by our *Av Beth Din,* Rabbi Gedalia Dov Schwartz, addressing each and every case in the context of a framework addressing the totality of the tragedy. Rabbi Schwartz's responsum was ultimately published in *HaDarom*, the Hebrew language journal of the Rabbinical Council of America, and is available in English translation in this volume.

The next part of our protocol, once our own internal responsum had been generated, was to glean the consent and approbation of other universally respected halakhic authorities. This is a traditional precaution that was taken throughout the centuries by rabbinic authorities dealing with missing husband cases because of the severity of the prohibition of adultery and the consequences of future illegitimate children if a decision was made by one rabbinic authority that was disputed by other rabbinic authorities. Therefore, in accordance with time-honored protocol, the Beth Din of America engaged in correspondence with leading authorities throughout North America and Israel in order to receive consent to its determinations. In this fashion, the Beth Din of America obtained additional permissive rulings from Rabbi Ovadia Yosef of Jerusalem, Rabbi Nota Greenblatt of Memphis, and Rabbi Zalman Nechemia Goldberg of Jerusalem, as well as a supplementary article by Rabbi Mendel Senderovic of Milwaukee. We ensured at a minimum that each case resolved by the Beth Din of America received at least one additional concurrence from a world-renowned *posek* (authority in Jewish law).

The most extensive treatment from an outside authority came from Rabbi Zalman Nechemia Goldberg, a member of the Rabbinical High Court in Jerusalem, who dealt with virtually every case presented in correspondence with Rabbi Mordechai Willig, the *Segan Av Bet Din* of the Beth Din of America. An English translation is presented in the present volume. This correspondence, together with the responsum of Rabbi Ovadia Yosef and the article by Rabbi

Mendel Senderovic, was ultimately published in the fourth volume of the *Kol Zvi* journal of the Bella and Harry Wexner Kollel Elyon at Yeshiva University. The responsum of Rabbi Ovadia Yosef also appeared in volume ten of his seminal work *Yabia Omer,* and Rabbi Goldberg's response to Rabbi Mordechai Willig was also published in volume twelve of the *Yeshurun* journal.

With respect to the question of DNA analysis, the Beth Din of America concluded that it was comfortable relying upon the position of Rabbi Wozner, authorizing reliance upon direct DNA identification as "close to a *siman muvhak*" together with the other strong evidentiary data that had been accumulated. However, both Rabbi Schwartz and Rabbi Goldberg also indicated that if necessary, DNA evidence could be relied upon exclusively. Exclusive reliance was justified based on one of two arguments: either that DNA identification constitutes a *siman muvhak*, or, as Rabbi Goldberg argued, that DNA identifications could be relied upon based on *t'viyas ayin*, i.e., the halakhic dispensation to identify a person through visual recognition of their general countenance even without focusing on any particular feature. According to Rabbi Goldberg, identification through DNA comparison is a scientific form of *t'viyas ayin*, of visual recognition of the uniqueness of an individual.

Two members of the Lakewood *beit din* and *Kollel*, Rabbi Eliyahu Levine and Rabbi Shmuel Gersten, also wrote articles arguing in favor of treating the amalgamation of DNA evidence as akin to a *siman muvhak*. These articles can be found in volume twelve of the *Yeshurun* journal, published in 2003, together with their permissive responsum in the case brought before them, relying in part upon the DNA identification. The aforementioned volume of the *Yeshurun* journal also contains a correspondence between Rabbi Levine and Rabbi Goldberg relating to the content of his responsum to Rabbi Willig.

Following the composition by Rabbi Schwartz and the other rabbinic authorities of the detailed responsa explaining the halakhic reasoning in each and every case, the rabbinic board of the Beth Din of America, consisting of Rabbi Schwartz, Rabbi Willig, Rabbi Michael Broyde (who contributed invaluable halakhic research on a regular basis from his home in Atlanta) and myself, penned letters to each of the widows officially certifying that the Beth Din of America

had concluded that their husbands were deceased as a matter of Jewish law and that they were free to remarry. Based on the Jewish law requirement that the mother of an infant child wait a certain amount of time before remarriage (according to the strict law, two years, but susceptible of mitigation in various cases), the Beth Din of America included relevant language addressing this possible limitation in the four cases where babies had just been born to the mothers (See Document L).

Additionally, in two of the cases, the husbands died without any biological children, and the widows were therefore considered "linked" according to Jewish law to their brothers-in-law, who according to the Torah in Deuteronomy, either had to "marry" them through a ceremony known as *Yibum*, or, since *Yibum* is not practiced anymore in the *Ashkenazic* Jewish community, perform *Chalitza,* a ritual ceremony involving the removal of a specially designed shoe by the widow from the brother-in-law's right foot, thereby severing ties between them and enabling her to marry somebody else. On May 30, 2002, the City of New York arranged a memorial ceremony for the families of the victims of 9/11. Following that ceremony, the two widows who required *Chalitza* came to the offices of the Beth Din of America at 305 Seventh Avenue, together with their respective brothers-in-law, and we discreetly performed the *Chalitza* ceremony so that they would be able to take care of this final halakhic ritual to provide closure to their ordeal.

Both the widows and the brothers-in-law displayed a remarkable strength of character in engaging in this ceremony after the ordeal they had suffered, conducting the ritual with fortitude and faith. In one of the *Chalitza* ceremonies, the brother-in-law was still a lad in his teens, mourning the loss of his newly married brother. In 2010, I was invited to attend and speak at a wedding party, and was greeted by the groom who reminded me that he had been the teenager who performed *Chalitza* before the Beth Din of America during that emotional day in May 2002. Without pinpointing the incident, I mentioned in my speech that evening that I knew from first-hand experience that the groom was a person of tremendous inner strength and sterling character.

On May 29, 2002, at the annual convention of the Rabbinical Council of America (one day before the *Chalitza* ceremonies were performed), Rabbi Schwartz and I made a joint presentation to the RCA Rabbis concerning the work of the Beth Din of America in dealing with the 9/11 *Agunah* cases. A recording is on the website of the Rabbinical Council of America (www.rabbis.org), under Rabbinic Resources.

On the one-year anniversary of 9/11, the Museum of Jewish Heritage in Lower Manhattan put together a program entitled "*Yahrzeit* — 9/11 Remembered" and featured as part of their display the work of the Beth Din of America in resolving the *Agunah* cases (See the inside flap of this volume's back cover). Featured at the display were the letters prepared by the Beth Din of America for the widows to sign authorizing the Beth Din of America to conduct the necessary factual research in their cases, as well as the official *p'sak* letter, the final authorization letter by the Beth Din of America concluding the case and permitting the widow to remarry (See Documents M and N).

Most of the letters to the widows were sent within six to eight months of the terrible tragedy of 9/11. The last letter was sent at approximately the time of the third *yahrzeit* to the widow of one of the victims from the South Tower who was seen at work on 9/11 but never identified through any means of personal identification. This last case, although revealing a clear probability of death, required at least a partial reliance upon the principle of *avad zichro* due to the existence of an escape hatch in the South Tower (although there was a strong presumption that this individual did not escape due to his not having been sent to the triage station assembled for those who descended down the smoky staircase, and not having been found in any of the local hospitals), and, in accordance with our protocols, the Beth Din of America waited until it received a concurring decision of leniency from the great sage Rabbi Nota Greenblatt (the Beth Din of America had already received a tentative concurrence from Rabbi Zalman Nechemia Goldberg in this matter which also became effective when the full concurrence arrived from Rabbi Greenblatt), to complement Rabbi Schwartz's erudite responsum.

In late 2002, the Beth Din of America was contacted by David Pollack of the JCRC about certain educational benefits that could be made available to chil-

dren of widows from the World Trade Center tragedy (See Document O). Accordingly, the Beth Din of America contacted a number of the widows at that time to convey the information. However, the general approach taken by the Beth Din of America was to respect the privacy of those involved and, in the spirit of Rabbi Rosenblatt's advice, let them provide us with the guidance with respect to the amount of intervention by the Beth Din of America in their lives they deemed desirable.

All of the *teshuvot* (responsa) prepared by the Beth Din of America were published in anonymized form in order to protect the privacy concerns of the families affected by the tragedy. In January 2003, as the issue of *HaDarom*, vol. 72-73, with the responsum of Rabbi Gedalia Dov Schwartz, was about to go to press, we discovered that due to an editing error, a number of actual names were mistakenly included in the article prepared for publication. I pointed out this problem to Rabbi Dworken, who in his typically sensitive and sensible fashion, expressed concern about the pain that could be suffered by the families, and immediately called the publisher to instruct him to correct the article, regardless of any additional cost. Perhaps Rabbi Dworken's efficient style of administration emerged from his awareness that any day could be his last following a heart attack that he had endured years earlier. In any event, this gesture of sensitivity towards the families who lost loved ones in 9/11 was one of his final executive acts for the RCA. That evening, Rabbi Dworken succumbed to a fatal heart attack at the age of 58. World Jewry had lost one of its truly great leaders.*

In ensuing years, the Beth Din of America continued to be contacted about other halakhic issues relating to the tragedy, such as whether it was permissible for *Kohanim*, Jews with priestly lineage who are enjoined not to come into contact with dead bodies or significant fragments of dead bodies, to traverse the former World Trade Center site. After it was determined by city authorities that there were no significant fragments of bodies left in one place that had not been uncovered, Rabbi Gedalia Dov Schwartz ruled that *Kohanim* could once

* The position of Executive Vice President of the Rabbinical Council of America was eventually filled by Rabbi Dr. Basil Herring, who admirably continued Rabbi Dworken's legacy of promoting and sustaining the work of the Beth Din of America.

again visit the area. However, when plans were broadcast to collect all of the unidentified fragments of bones, skin and tissue that had been collected in the medical examiner's office and to gather them in one central memorial site to be located in the new structure to be built on the former World Trade Center grounds, I had to contact a representative of the Lower Manhattan Development Corporation to note that such an accumulation of body parts could make it prohibitive for *Kohanim* to work in a new building that would include such a site. At the time, I was reassured that the plans were to build the memorial site in a separate stand-alone building that would not intersect with any other structures. However, since the time of that call, many changes have taken place with respect to building plans on the site, and it may be necessary for the Beth Din of America to continue (together with other Jewish organizations) to maintain some vigilance with respect to this issue.

Ten years after the tragedy, I continue to think back to the Torah's account of *Aharon HaKohen*, who when confronted with the death of two of his sons during the prime of their lives, reacted through silence, "*Vayidom Aharon*." And yet, when a question arose regarding the probity of eating or foregoing the offerings that had been brought on that day, Aharon had no compunction against speaking up to explain why it would be inappropriate for him and his surviving sons to consume certain sacrifices during their day of mourning. It is clear that the Torah does not prescribe complete silence in the wake of tragedy, but rather requires a focus upon conducting properly the processes for healing. Accordingly, Aharon's legacy dictated that we not try to provide philosophical explanations for the tragedy, but rather focus on finding and implementing a framework under Jewish law for the resolution of the Jewish law questions that arose. Ultimately, in the Jewish tradition, it is the legalistic halakhic process that may provide the most significant sense of meaning and comfort in coping with enormous and inexplicable tragedy. The fact that Talmudic sources and voluminous halakhic literature address this type of situation serves as a reminder that even the most horrific event carries with it a sense of Divine direction for the future.

May the memories of the victims who perished on that day be blessed forever and ever.

The Halakhic Background to Handling the World Trade Center *Agunot*

BY RABBI CHAIM JACHTER

The tragic events of the September 11th, 2001 terrorist attacks on the Twin Towers of the World Trade Center in New York City resulted in close to three thousand deaths. As a result of this tragedy, fifteen cases of *Agunot* were presented to *batei din* in the New York metropolitan area. Ten of these cases were presented to the Beth Din of America. In this essay, we outline the halakhic sources and background that enabled the Beth Din of America to permit these women to remarry by determining that their respective husbands had indeed died. Several of the prominent rabbis who participated in the deliberations regarding the status of these women have published *teshuvot* about the cases.[1]

When a Wife Disappears

A husband whose wife disappears may not remarry without proof of her death. We are much more lenient, however, for men whose wives disappear, as the prohibition for a married man to marry a second wife is only rabbinic in nature, whereas the prohibition for a married woman to marry another man involves a capital Biblical offense (see *Pitchei Teshuva, Even HaEzer* 1:14). Rabbi Yona Reiss, who was then the director of the Beth Din of America, informed me that a number of husbands called the Beth Din of America after their wives disappeared in the World Trade Center attacks. Rabbi Reiss said that the Beth Din of America followed the view of the *Gesher Hachaim* (1:19, note 4), who rules that a husband may remarry if adequate evidence exists that his wife was at the place where a tragedy occurred, and that most people who were in her location and situation perished.

General Background

Before discussing the World Trade Center *Agunot,* we will present a basic overview of the process of determining the death of a husband when no body is found. Rabbis throughout the generations devoted extraordinary efforts to resolve cases of *Agunot*. In fact, the *Otzar Haposkim* (in its 1982 edition) devotes no fewer than eight volumes, spanning approximately 1500 pages, to this topic alone. Fifteen hundred pages merely summarize the responsa literature on the subject of *Agunot*! An example of some rabbis extraordinary efforts is Rabbi Yitzchak Isaac ha-Levi Herzog (*Heichal Yitzchak, Even ha-Ezer* 2:9), who writes that although his doctors gave him strict orders not to read anything (for the sake of his eyes' health), he violated their command in order to research and issue a ruling regarding an *Agunah,* due to the compassion he felt for her. Some rabbis, such as Rabbi Yitzchak Elchanan Spektor, were famous specifically for their special attention, sensitivity, and creativity in this area of Halakhah.

From the time of the Talmud, *poskim* have tried to be as lenient and creative as possible regarding *Agunot,* while maintaining the integrity of the halakhic process.[2] The *Sam Chayei* (17) describes the attitude of a rabbi grappling with an *Agunah* situation:

> "It is comparable to one who is running away from a lion and has encountered a bear, as the battle has caught him from the front and behind; just as he fears being lenient, so too does he fear being strict."

This process continued in the twentieth-century, as *poskim* responded to the enormous challenges that arose in that war-torn century. For example, Rabbi Moshe Feinstein (*Iggerot Moshe, Even HaEzer* 1:41-51, and 4:56, 58), and Rabbi Tzvi Pesach Frank (*Har Tzvi, Even HaEzer* 1:64-70) deal extensively with *Agunot* from the Holocaust. Rabbi Yitzchak Isaac ha-Levi Herzog (*Heichal Yitzchak, Even HaEzer* 2:1) writes at great length about the rulings he issued regarding *Agunot* from Israel's War of Independence. Rabbi Ovadiah Yosef (*Yabia Omer, Even HaEzer* 6:3) records his rulings regarding the *Agunot* from the Yom Kippur War of 1973. Regrettably, *poskim* have one again been summoned to contend with many *Agunot* from the World Trade Center terrorist attacks.

Methodology

The *Otzar Haposkim* (8:203-211) outlines the basic methodology of *poskim* regarding cases of *Agunot*. *Poskim* emphasize that not just any rabbi may resolve questions in this area. Rather, only a rabbi of great stature should rule upon a matter of such great urgency (see the many sources cited in the *Otzar Haposkim* 8:206-207). Moreover, when possible, it is customary for three eminent rabbis to consult one another and agree upon a conclusion before issuing a lenient ruling. The *Aruch Hashulchan* (*Even HaEzer* 17:255) documents this practice:

> "It is a major principle (*klal gadol*) regarding permitting *Agunot* to remarry that in any case where a lenient ruling is not straight-forward and a rabbinical ruling is necessary, even the greatest of rabbis should not issue a permissive ruling until two other great rabbis concur with this ruling. This has always been the practice of all eminent rabbis, as is evident from all of the responsa literature...and one should not deviate from this practice."

In our case, the Beth Din of America's leading *dayanim* (rabbinical judges) — Rabbi Gedalia Dov Schwartz and Rabbi Mordechai Willig — deliberated concerning the World Trade Center *Agunot*. In addition, before it permitted these women to remarry, the Beth Din of America consulted with Rabbi Ovadiah Yosef and Rabbi Zalman Nechemia Goldberg, who issued permissive rulings. The Talmud (*Yevamot* 121a) provides a source for the practice of consulting numerous authorities before ruling on the status of *Agunot*. In the context of a discussion about *Agunot,* the Talmud cites a verse from Proverbs (11:14) to teach that salvation comes when one seeks much advice.[3]

The *Chavatzelet Hasharon* (*Even HaEzer* 28) records his practice (as he learned from one of his teachers) in resolving *Agunah* situations. First, he would thoroughly research the facts of the situation. He would then employ his own common sense to consider whether it appeared logical to conclude that the husband had died, and only subsequently would he explore whether his initial assessment was consistent with Halakhah. Rabbi Yosef Eliyahu Henkin writes (*Lev Ivra*, printed in *Kitvei ha-Gria Henkin*, p. 164) that this is the accepted practice. In the World Trade Center situation, Rabbi Yona Reiss and his assistants at the

Beth Din of America devoted months of meticulous research, in coordination with many public and private agencies and firms, to compile the "raw material" from which the *dayanim* of the Beth Din of America could reach conclusions. His research included obtaining telephone, cell phone, subway, and elevator records, as well as the results of DNA testing and dental records. In fact, the leniencies of the Talmud and all subsequent authorities are predicated on the assumption that exhaustive research has been undertaken.[4]

Meticulous proceedings in the *beit din* are a hallmark of properly resolving *Agunah* situations. The *beit din* must know the appropriate questions to ask witnesses and how to collect information from the witnesses properly. Indeed, collecting evidence improperly has in the past impeded a lenient resolution of *Agunah* situations (see for example, *Beit Shlomo, Even HaEzer* 43).

Hearing the Testimony

The *Otzar Haposkim* (8:204) notes that the authorities always emphasize in their *Agunah* responsa that they issued very stern warnings to the witnesses about the importance of testifying truthfully. Although a warning against perjury is a standard feature at all *beit din* proceedings (see *Shulchan Aruch, Choshen Mishpat* 28:7), in the context of *Agunot,* the *beit din* administers sterner warnings than usual. This practice balances the fact that many rules regarding the validity of witnesses and evidence are relaxed for the purposes of permitting an *Agunah* to remarry. For example, women (even including the *Agunah* herself), relatives, and those who are inadmissible witnesses merely on a rabbinic level are all acceptable witnesses in this context (*Yevamot* 121-122, and *Shulchan Aruch, Even HaEzer* 17:3). Hearsay evidence (*eid mipi eid*) and the testimony of one witness are also valid specifically regarding *Agunot* (ibid.). The stern warnings counterbalance these leniencies.

Moreover, some well-meaning people might be tempted to lie in order to help free the *Agunah*. If they believe that the husband has died based on questionable evidence, they might present their conclusion to the *beit din* as absolute knowledge. The severe warnings serve to counter such attitudes. Indeed, the *Rambam* (*Hilchot Geirushin* 13:29) explains that *Chazal* relaxed the laws of testifying in the context of *Agunah* because people are severely disinclined to

testify falsely when the lie can be discovered, thereby ruining their reputations. The severe warning reinforces this attitude, as it instills fear in the witnesses that they will face harsh consequences if they are caught lying.

Interestingly, Rabbi Ovadiah Yosef (*Yabia Omer, Even HaEzer* 8:18) accepts the testimony of most contemporary non-observant Jews in the context of *Agunot*.[5] This ruling is quite noteworthy because he repeatedly rules (in numerous *teshuvot* in the same volume of *Yabia Omer*) that a non-observant Jew is not a valid witness in any other area of Halakhah.

Issuing a Ruling

The *Otzar Haposkim* (8:210) notes that *poskim* try to collect many reasons to support a lenient ruling about an *Agunah,* reflecting the enormous responsibility that weighs on the shoulders of *poskim* who issue rulings on this matter. Thus, even if one particular reason convinces a rabbi to rule leniently, he will still seek additional reasons to strengthen his ruling. Finally, *poskim* must act prudently when issuing lenient rulings regarding *Agunot.* The *Otzar Haposkim* (ibid.) notes that many rabbis wait until the end of a year from the time the husband disappeared to issue a lenient ruling. Indeed, Rabbi Gedalia Dov Schwartz reported that when he consulted with Rabbi Ovadiah Yosef regarding one of the World Trade Center *Agunot,* Rabbi Yosef agreed with the ruling, but advised that the Beth Din of America wait until a year had elapsed since September 11th, 2001, before issuing a lenient ruling.

The *Otzat Haposkim* (8:211) concludes by citing from the *Devar Emet* (108) that once a duly recognized and competent *beit din* has issued a lenient ruling to permit an *Agunah* to remarry, another *beit din* or rabbi should not attempt to revisit the case and review the cogency of a ruling of a *beit din.* Otherwise, the plight of the *Agunah* would never be truly resolved until she received the approval of every halakhic authority in the world, which is obviously unnecessary.

The Range of Possible Scenarios

We shall divide our discussion of actual cases into three basic categories. In the first category, human remains have been found and the *beit din* must determine

that the remains are those of the missing husband. In a more complicated type of case, no body has been discovered but evidence proves that the husband was, at the time of the attacks, in a part of the World Trade Center where all or nearly all people perished. The final category is when no empirical evidence proves that the husband was in the disaster's location, but following his usual routine would have led him to be there.

The Sequence of Events on September 11th, 2001

In his letter to Rabbi Zalman Nechemia Goldberg, Rabbi Mordechai Willig records the key events of the attacks on the World Trade Center. The first plane hit the North Tower of the World Trade Center at 08:46 between floors 93 and 98. The Beth Din of America determined (after consultation with experts) that this immediately destroyed the elevators and all stairways from the ninety-second floor and above. Thus, anyone who was located in this part of the building at the time of the plane's impact could not escape. Indeed, there are no known survivors from the ninety-second floor or above. The building collapsed at 10:29.

The second plane hit the South Tower at 09:02 between floors 84 and 87, and this building collapsed at 09:59. Of those who were at floor 78 and above at the time of impact, only ten are known to have survived. The ten who survived were standing by stairwell "A." The elevators and stairwell "B" were destroyed by the impact of the plane. It seems that stairwell "A" remained intact only for a very brief time after the impact, and that only people who were standing immediately next to it were able to survive. The ten survivors sustained very serious injuries and would not have survived without immediate hospitalization.

Identifying the Man's Remains: Classical Simanim

The simplest way to solve an *Agunah's* case is to find the husband's body within three days of his presumed death. The *Shulchan Aruch* (*Even HaEzer* 17:24-26) codifies the Mishnah (*Yevamot* 120a) according to which one may identify a husband within three days of death and only if the face (including the nose) is intact. In the absence of such evidence, however, *simanim* (identifying characteristics) on the body of the deceased are necessary for identification. Many

of the most obvious traits, such as a ruddy complexion or the fact that he is either tall or short, do not suffice, as they are quite common. Rather, witnesses must find a *siman muvhak* (a unique characteristic) in order to identify the husband (*Shulchan Aruch, Even HaEzer* 17:24). The *Beit Shmuel* (17:72) and *Aruch Hashulchan* (*Even HaEzer* 17:172) cite the *Mas'at Binyamin* (63) as asserting that if fewer than one in a thousand people share this feature, then it is classified as a *siman muvhak*.

In the absence of a *siman muvhak,* we check for a middle category, s*imanim beinoniyim,* features that are neither very common nor very rare. Rather than automatically accepting or discounting a *siman beinoni,* the practice is to treat two such *simanim* as equivalent to one *siman muvhak*. Furthermore, one such average *siman m*ay be combined with other relatively convincing evidence that indicates that the body is that of the missing husband.[6] The *Aruch Hashulchan* (ibid.) cites an opinion that "numerous" inadequate *simanim* may be combined to constitute one *siman beinoni*,[7] but each case must be judged independently by the leading halakhic authorities of the time, who must evaluate whether all of the various types of inadequate *simanim* in the particular case indeed combine to render the odds of a mistaken identity less than one in a thousand (the aforementioned definition of a *siman muvhak*).

An enormous volume of literature exists consisting of classification of specific features. For example, the *Otzar Haposkim* (5:288-324) summarizes responsa addressing no fewer than 165 bodily features. In addition, the *Otzar Haposkim* (5:206-280) summarizes the various opinions regarding what combinations of *simanim* are adequate to identify a husband.

Identifying the Remains: Modern Techniques

Classifying dental records and DNA evidence in terms of the above categories of simanim is critical in resolving the plight of World Trade Center *Agunot.* The *Beit Shmuel* (17:72) rules that a hole that goes through an entire tooth constitutes a *siman muvhak.* The *Aruch Hashulchan* (*Even HaEzer* 17:173), writing in the late nineteenth-century, asserts that holes in teeth do not constitute a *siman muvhak,* as they are very common. However, Rabbi Moshe Feinstein (*Iggerot Moshe, Even HaEzer* 4:57, writing in 1959) and Rabbi Ovadiah Yosef

(*Yabia Omer, Even HaEzer* 6:3:4:20, writing in 1974) rule that dental records may help identify a missing husband, in conjunction with other evidence. Rabbi Ovadiah Yosef explains that the dental records are much more specific than the identifying marks that the *Aruch Hashulchan* addresses. Rabbi Zalman Nechemia Goldberg mentions in his responsum on the 9/11 attacks that halakhic authorities in Israel commonly accept dental records as a *siman muvhak*. The Beth Din of America partially relied upon dental records for identifying some of the missing husbands. Rabbi Zalman Nechemia Goldberg even accepts dental records that were procured by halakhically invalid witnesses, especially since they acted as government workers, which increases their trustworthiness, as will be explained later.

In recent years, *poskim* have been asked to address the halakhic status of DNA testing. *Poskim* do not accept or require a DNA test to determine an individual's status as an illegitimate child.[8] However, Rabbi Shmuel Wosner and Rabbi Nissim Karelitz (*Techumin* 21:123) rule that DNA is admissible as partial evidence together with other corroboratory evidence to determine the identity of a missing husband. They believe that DNA evidence constitutes a *siman beinoni*.[9] Rabbi Wosner and Rabbi Karelitz far prefer a DNA test using a sample from the missing person's personal effects (such as hair from his hairbrush or saliva from a toothbrush) to a DNA test that uses the DNA of immediate family to make an identification.

Rabbi Zalman Nechemia Goldberg writes at some length on this issue and concludes that DNA evidence constitutes a *siman muvhak*. He notes that the chance of error regarding DNA evidence ranges from a billion to one to a quintillion to one, far exceeding the requirement that a *siman* be shared by no more than one in a thousand people in order to constitute a *siman muvhak*. Rabbi Zalman Nechemia Goldberg draws an analogy between DNA evidence and Rabbi Yitzchak Elchanan Spektor's ruling (*Ein Yitzchak, Even HaEzer* 1:31) that a photograph of a missing husband showing that he is dead is sufficient evidence of his death.[10] Rabbi Shlomo Zalman Auerbach (cited in *Nishmat Avraham, Even Haezer,* p. 37) similarly seems to regard DNA evidence as conclusive proof regarding all areas of Halakhah. Rabbi Eliezer Waldenberg is cited (*Nishmat Avraham* ibid.) as ruling that DNA evidence constitutes partial evidence

for halakhic purposes. The Beth Din of America partially relied upon DNA testing in the identification of some of the missing husbands.

Assuming that these forms of evidence fundamentally may identify a husband, one could still question whether civil authorities should be trusted when they report the results of these processes. The *Shulchan Aruch* (*Even HaEzer* 17:14) codifies a ruling of the Talmud (*Gittin* 28b) that one may not rely upon the report of a non-Jewish court that it has executed a Jew. The *Rishonim* (early authorities) explain that the authorities might falsely report that they executed a Jew in order to glorify the effectiveness of their judicial system, or simply to instill fear in the residents of the land. The *Acharonim* (later authorities) debate, though, whether we may rely upon a government-issued report that someone has died when it is clear to us that the concerns offered by the *Rishonim* do not seem relevant. In the early nineteenth-century, two premier authorities of the time debated this issue. Rabbi Mordechai Banet sent a letter to Rabbi Moshe Sofer (*Hatam Sofer, Even HaEzer* 43), arguing against the validity of such a report, but Rabbi Sofer replied that one may accept it. Later nineteenth-century authorities, such as Rabbi Yitzchak Elchanan Spektor (*Beer Yitzchak, Even HaEzer* 5:4)[11] and Rabbi Shlomo Kluger (*Ha'Elef Lecha Shlomo, Even HaEzer* 97) accept Rabbi Sofer's lenient view. Rabbi Kluger explains that that non-Jewish government officials fear the consequence of being caught as liars, so we may trust their reports. In fact, the *Aruch Hashulchan* (*Even HaEzer* 17:80), writing in the late nineteenth-century, records that the lenient view has generally become accepted, though as thorough an investigation as possible should be conducted in order to corroborate the report (also see *Yaskil Avdi, Even HaEzer* 5:20:3).

Rabbi Yitzchak Elchanan Spektor's reasoning on this matter appears quite cogent. He notes that, unlike other areas of Halakhah, a non-Jew's testimony *is* valid regarding *Agunot* if he speaks about the matter in passing (*mesi'ach l'fi tumo*). On the other hand, a non-Jew has credibility in other areas of Halakhah only if he testifies about a matter in his professional capacity (*uman lo mar'ei anafshei*), such as a chef testifying that a food item does not taste like a non-Kosher ingredient that fell into it by mistake.[12] Accordingly, reasons Rabbi Yitzchak Elchanan Spektor, a non-Jew testifying in his professional capacity is

certainly believed in the context of *Agunot,* where the Halakhah is extraordinary lenient about the type of testimony that is acceptable.

Rabbi Moshe Feinstein (*Iggerot Moshe, Even HaEzer* 1:48) recognizes the testimony of the United States War Department that the plane of a missing pilot plunged into the English Channel during World War II; elsewhere (*Iggerot Moshe, Even HaEzer* 4:58:7) he similarly accepts the testimony of the Belgian government that the Nazis transported a missing husband to Auschwitz. Rabbi Ovadiah Yosef (*Yabia Omer, Even HaEzer* 7:14) admits the testimony of the Russian government that a missing husband died in a battle with the Nazis during World War II.

Accordingly, the Beth Din of America partially relied upon the New York City Medical Examiner's testimony regarding DNA tests administered under his auspices. Rabbi Mordechai Willig notes that he and other members of the Beth Din of America were permitted to visit and evaluate the procedures of the New York City Medical Examiner's laboratory. Rabbi Willig was duly impressed by the professionalism of this office and concluded that the chance of error in the operation of this office is virtually nil. In fact, Rabbi Yona Reiss reports that the Medical Examiner's office told him that dental records are examined no fewer than five times to ensure an accurate identification.

In addition, Rabbi Zalman Nechemia Goldberg writes that we may rely upon American Airlines' assertion that a missing husband was on board one of the planes that crashed into the World Trade Center. He reasons that they also have a professional reputation to uphold and thus may be trusted according to Halakhah. He adds that there is no apparent reason for American Airlines to lie about such a matter, as it only serves to increase their exposure to liability for the passenger's death.

Personal Items in the Wreckage

In some situations, a husband's body cannot be found, but people do discover personal items of his near the scene of the disaster. In fact, a pair of pants (that had pieces of skin and bones) were found in the World Trade Center wreckage

containing the wallet (including a driver's license and credit cards) of a missing husband whose body was not found.

The *Shulchan Aruch* (*Even HaEzer* 17:24) rules that even highly unique items that are found on a body cannot serve to identify the body, for the missing husband might have lent these items to someone else. The *Shulchan Aruch* makes no exceptions, apparently disqualifying even items that one normally does not lend. However, the *Chelkat Mechokeik* (17:42) cites a dissenting opinion, which permits identifying a body based on the discovery of highly unique and personal items such as one's wallet or ring, which one does not normally lend to others.[13] The *Beit Shmuel* (17:69) adopts the latter position. The *Otzar Haposkim* (5:173-205) summarizes rabbinical rulings about whether any of ninety-five personal items constitutes something that people would not normally lend.

Rabbi Moshe Feinstein (*Iggerot Moshe, Even HaEzer* 4:57) and Rabbi Ovadiah Yosef (*Yabia Omer, Even HaEzer* 6:3:2) combined the discovery of such items with other evidence in order to identify a missing husband, and the latter suggests that finding a husband's army uniform is better evidence than other garments, as the army does not permit lending it to other people. Thus, Rabbi Gedalia Dov Schwartz reports that the Beth Din of America partially relied upon the discovery of the pants containing personal items of the aforementioned missing husband. One may add that although one might lend clothing to others, one does not normally share business attire with others. Businessmen in many companies are quite meticulous about their appearance and generally only wear items that are professionally tailored to fit them perfectly. Thus, it would be highly unlikely for someone to lend his pants to a friend to wear at his business office on a workday. Rabbi Zalman Nechemia Goldberg further comments that in today's affluent society, men do not commonly lend their pants to others.

When No Remains Are Found

Those missing husbands whose remains did not turn up posed a much greater challenge for the Beth Din of America. If a man is lost in a body of water whose other side cannot be seen (*mayim she'ein lahem sof)*, the Talmud (*Yevamot* 121) prohibits his wife from remarrying. Although most people who are lost in

mayim she'ein lahem sof perish, the rabbis were concerned that the husband might have surfaced somewhere down the river, unbeknownst to us. *Tosafot* (*Yevamot* 36b, s.v. *Ha*) note that a significant minority (*mi'ut hamatzui*) of husbands might have been saved in such situations. Thus, in any situation where no remains were found, the wife may not remarry if a significant minority of people could have survived her husband's situation. Although the Halakhah normally follows the majority (see *Chullin* 11), *Tosafot* explain that the rabbis treated the case of a missing husband especially strictly due to the severity of adultery, which would result if the woman "remarried" when her husband was still alive.

Nonetheless, once it has been proven that a husband entered a situation in which most people die, there are many circumstances that can permit his wife to remarry. For example, the *Shulchan Aruch* (*Even HaEzer* 17:23), based on the Mishnah (*Yevamot* 122a), presents a situation where people witnessed a man from afar proclaim, "I, so-and-so the son of so-and-so, have been bitten by a snake and am about to die." The people later discovered an unrecognizable body. The Mishnah permits the wife to remarry even though the man's body was not positively identified at a later time. Rabbi Jonas Prager (in the *Journal of Halachah and Contemporary Society* 44:5-30) records that the *beit din* of the Belzer community released a woman from the status of *Agunah* based on similar circumstances, even though the husband's body was not yet found. The husband, who was trapped in the World Trade Center, called a friend on his cellular phone and said that he was about to die. He remained on the phone until the moment of death.[14]

The first step for a *beit din* to issue a lenient ruling in such a case is to establish that husband and wife were at peace with each other, in order to guarantee that the man had no apparent motivations to flee his family (see Mishnah, *Yevamot* 114b). Rabbi Yechezkal Landau (*Noda Beyehuda, Even HaEzer* 2:47), adds that the *beit din* should investigate whether the man established a regular pattern of returning home each day after work or immediately after a brief trip. Rabbi Landau explains that once this is established, and then there are serious considerations (*raglayim ladavar*) that the husband is no longer alive. Rabbi Landau explains:

> "Although this is insufficient basis upon which to issue a permissive ruling, nonetheless, it is a point of departure from which it is appropriate to search for leniencies within the Halakhah [to permit the woman to remarry]."

After determining that the couples were all at peace, the Beth Din of America then sought to establish that each husband was in a section of the World Trade Center where very few or no people survived at the time of the terrorist attacks. The goal was accomplished by finding e-mail messages (as noted by Rabbi Ovadiah Yosef in his responsum on the World Trade Center *Agunot*), telephone calls, or eyewitnesses. For example, Rabbi Ovadiah Yosef verified a husband's presence in the World Trade Center based on the fact that the man called his wife from there after the plane hit the North Tower, stating that he was evacuating his office in the North Tower, which was located above the 92nd floor.

In a less simple case, one husband phoned his wife that he arrived in his office in the North Tower (above the 92nd floor) at 08:20 and was not heard from subsequently. Accordingly, he clearly arrived at work before a plane hit his building, but there is no evidence that he was in the building at the time the plane hit it. Rabbi Zalman Nechemia Goldberg ruled that one may rely on the halakhic principle of *chazakah* (that the status quo was maintained). Jewish law permits reliance on the status quo (*chazakah*) unless there is a disturbance to the *chazakah* (*rei'utah*). For example, we routinely rely upon the validity of an *eruv* on Shabbat based on an inspection that took place before Shabbat, as normally there is no reason to believe that the *eruv* was damaged since its last inspection. Regarding the World Trade Center, the assumption was that there was no disturbance to the *chazakah* applies to those who were in the North Tower before 08:46, but not to the South Tower's occupants, as many people evacuated the South Tower after the North Tower was hit.

Rabbi Mendel Senderovic of Milwaukee writes in his responsum, published in fourth volume of *Kol Zvi,* that it appears difficult to rely on *chazakah* in cases of *Agunot,* as the Halakhah does not permit relying upon a majority in such situations. In general, the Talmud (*Kiddushin* 80a) states that a majority is more effective than a *chazakah,* so it appears obvious that the Halakhah cannot rely

upon *chazakah* to permit an *Agunah* to remarry. Rabbi Senderovic cites that Rabbi Yitzchak Elchanan Spektor (*Ein Yitzchak* 2:1) did not rely upon *chazakah* alone to permit an *Agunah* to remarry, but ruled leniently as there was also a *rov* upon which to base a leniency. He had asserted that a combination of a *rov* and *chazakah* may be relied upon to permit an *Agunah* to remarry. In the World Trade Center tragedy, Rabbi Senderovic argues that in addition to the *chazakah,* there exists a *rov* that if the missing husband survived, he would have contacted his family. Thus, while he questions Rabbi Zalman Nechemia Goldberg's reasoning, Rabbi Senderovic does not challenge his actual lenient ruling.

Once they established that the husband in question was in the World Trade Center during the attacks, the Beth Din of America began exploring ways to establish that he indeed perished, rather than viewing the World Trade Center as parallel to *mayim she'ein lahem sof*. The *Shulchan Aruch* (*Even HaEzer* 17:30), based on the Talmud (*Yevamot* 121b), rules that one who witnessed a husband fall into a cauldron of fire may testify that the husband died. The *Beit Shmuel* (17:92) cautions, though, that this ruling obviously applies only to a fire from which the husband would be unable to extricate himself. Once it has been proven that the husband entered a situation that no person could survive, the Halakhah does not concern itself with the possibility that a miracle occurred and that the husband was saved in defiance of the laws of nature.[15]

Rabbi Ovadiah Yosef ruled that those who were caught at or above the floors where the hijacked planes hit the World Trade Center parallel the case of one who fell into a burning cauldron. A huge fire erupted upon impact, as the terrorists chose very large planes that were on cross-country flights and thus held huge amounts of fuel. Those individuals who were unfortunately caught at that point can be described as being trapped in a cauldron of fire. Rabbi Gedalia Dov Schwartz adds that although we did not see the individual husbands being trapped in the fire, knowledge that they were located in the relevant area constitutes sufficient evidence of their death. Rabbi Schwartz compares this situation to a case cited in the *Otzar Haposkim* (6:255) in which a fire erupted on a ship. The *Tzei Hakesef* (2:4) permitted the wife of a prisoner who was held in the bottom of the boat to remarry. Despite the fact that witnesses did not

actually see her husband being engulfed by the fire, he could not have possibly survived because he was shackled in chains, with no possibility of escape.

Rabbi Gedalia Dov Schwartz suggested another venue of leniency, which Rabbi Ovadiah Yosef also adopted. The Talmud (*Yevamot* 114b) rules that a wife who asserts that her husband died in a building collapse is believed only if she also states that she buried him (see *Shulchan Aruch, Even HaEzer* 17:51). The Talmud explains that we do not believe her otherwise, lest she actually know only that he was in the building and erroneously assumes that he died in its collapse. The inference from the Talmud is that he died in its collapse. The Talmud's ruling seemingly complicates attempts at permitting the World Trade Center *Agunot* to remarry, as the husband's presence in a building during its collapse does not prove that he died.

Nonetheless, a responsum from World War I demonstrates that there are situations where a husband's presence in a collapse constitutes sufficient proof of his death. Rabbi Abraham Isaac ha-Kohen Kook (*Ezrat Kohen* 25, cited in *Otzar Haposkim* 8:83) was presented with a case in which a Jewish soldier was in a railway station that was attacked by German artillery, resulting in a mountain of dirt falling upon the building. Among his reasons for permitting the wife to remarry, Rabbi Kook suggests that only in the case described by the Talmud and *Shulchan Aruch* does the building collapse not constitute evidence of death, because there was a possibility that the husband was not hit by the collapsing building materials. Thus, it is analogous to *mayim she'ein lahem sof,* where most people die, but the woman may not remarry because her husband could have been one of the significant minority who survived. However, in the case presented to Rabbi Kook, the mound of dirt was so massive that it was impossible to survive the collapse.

Similarly, Rabbi Meir Arik (*Imrei Yosher* 2:24) determined that there could not be any survivors when a particular train fell off a bridge while transporting troops. Hence, he ruled that demonstrating a husband's presence on the train constituted sufficient proof that he perished. In light of the response of both Rabbi Kook and Rabbi Arik, an argument was presented by Rabbi Gedalia Dov Schwartz and Rabbi Ovadiah Yosef that even if the husband somehow survived

the fire on the top floors of the World Trade Center, he would have been inevitably killed by the collapse of the Twin Towers or by falling from a very high story.

Moreover, the *Aruch Hashulchan* (*Even HaEzer* 17:247) raises the possibility that in a case where people thoroughly searched the rubble of a collapsed building for survivors and did not find the husband, then one may assume that he perished in the building collapse, though he concludes that he is unsure whether to adopt this position in practice. Rabbi Ovadiah Yosef applies this ruling in the case of the World Trade Center tragedy, as an extensive and sophisticated search was conducted for survivors.

Six Leniencies Regarding Mayim She'ein Lahem Sof

Moreover, there are at least six potential ways to distinguish between the situation of *mayim she'ein lahem sof,* in which the Talmud forbids the woman to remarry, and disasters such as the World Trade Center attacks. First, *Tosafot* (*Avodah Zarah* 40b, s.v. *Kol,* and *Yevamot* 36b, s.v. *Ha,* but see *Bechorot* 20b, s.v. *Chalav*) explain that *Chazal* were strict in a case of *mayim she'ein lahem sof* because the husband may have survived the calamity in a significance minority of cases. However, very few, if any, individuals who were at or above the point of the planes' penetration survived the attacks. Thus, the stringency that *Chazal* applied to *mayim she'ein lahem sof* might not apply to the World Trade Center tragedy. Moreover, even if there is doubt as to whether a situation should be equated with *mayim she'ein lahem sof,* the *Taz* (*Even HaEzer* 17:48), *Beit Shmuel* (17:105), and *Aruch Hashulchan* (*Even HaEzer* 17:224) rule leniently, since the prohibition to remarry in a case of *mayim she'ein lahem sof* is only rabbinic in nature.

Second, Rabbi Moshe Feinstein (*Iggerot Moshe, Even HaEzer* 1:43) suggests a novel interpretation of *mayim she'ein lahem sof* in the course of his ruling regarding husbands who disappeared in the Holocaust. Rabbi Feinstein argues that *Chazal* issued the stringency of *mayim she'ein lahem sof* only in situations that generally involve individuals, such as an individual being swept away in *mayim she'ein lahem sof.* However, Rabbi Feinstein contends, *Chazal* did not legislate the same concern for a significant minority of survivors

in situations that involve *many* people, even if the large group entails a similar statistical probability of perishing in *mayim she'ein lahem sof.*

Thus, Rabbi Feinstein rules that if there is adequate knowledge that a husband was taken to a Nazi concentration camp and has not been heard from in the years following World War II (and there is no reason to believe that the husband was living in the Soviet Union), then the wife may remarry, even though a minority of people did survive the concentration campus. Similarly, one could argue that the status of *mayim she'ein lahem sof* does not apply to the World Trade Center tragedy because so many people were involved.

Interestingly, Rabbi Feinstein comments that his quite lenient approach to the *Agunot* of the Nazi Holocaust is motivated in part by his concern that a strict ruling might be too difficult for most of these women to bear. Rabbi Feinstein notes that the *Or Zarua* (*Hilchot Agunah* 693) already alludes to this concern. Rabbi Feinstein observes that if this concern was relevant in the time of the *Or Zarua,* then it is most certainly relevant in the modern era.

Third, many *Acharonim* develop the idea that the stringency of *mayim she'ein lahem sof* does not apply in a situation where there are two majorities (*trei rubei*), two factors, each of which is probably true and if either is true, then it alone would prove that the husband died. For example, Rabbi Chaim of Volozhin and other eminent rabbis in Vilna (cited by the *Pitchei Teshuvah, Even HaEzer* 17:133) were consulted regarding a man who fell from a tall bridge onto ice and subsequently fell from the ice into water with no visible boundary. Although no body was ever found, Rabbi Chaim of Volozhin ruled leniently, as there were *trei rubei* in this situation: most people who are swept into water with no visible boundary (and are not found) have perished. If the probable result occurred at either stage, it would mean that the man died.

The *Pitchei Teshuvah* (ibid.) notes that some *Acharonim* do not subscribe to this leniency. In fact, many point out that that *Tosafot* note that the Talmud (*Yevamot* 121a) prohibits remarriage even when a renowned Torah scholar was lost in *mayim she'ein lahem sof,* despite the fact that word would usually spread if a Torah scholar survived, with his wife thus being informed of his survival.

Accordingly, there exist *trei rubei* to permit the woman to remarry, since a majority of those who are lost in a *mayim she'ein lahem sof* have perished and a majority of Torah scholars who survive are publicized as having survived. Nevertheless, the Talmud forbids the wife of a missing Torah scholar to remarry. Rabbi Yitzchak Elchanan Spektor (*Be'er Yitzchak, Even HaEzer* 18; *Ein Yitzchak, Even HaEzer* 1:122, and 2:1) defends the *trei rubei* leniency by distinguishing between the case of the Talmud and that of Rabbi Chaim of Volozhin. The two factors of Rabbi Chaim of Volozhin emerged virtually simultaneously, whereas the *trei rubei* of the Talmud's case do not. The second "majority" in the Talmud's case emerges only after time, when it is realized that word has not come that the renowned Torah scholar has survived.

Many *poskim* have come to accept reliance on *trei rubei,* as Rabbi Zalman Nechemia Goldberg notes in his World Trade Center responsum (see *Heichal Yitzchak, Even HaEzer* 2:8). Rabbi Simcha Zelig Rieger, a *dayan* (rabbinical judge) in Brisk, Lithuania, in the early twentieth-century, writes that *trei rubei* has become an accepted approach in Halakhah provided that the husband has been missing for quite some time (see *Devarim Achadim* 43, cited in *Yabia Omer, Even HaEzer* 7:14). Rabbi Moshe Feinstein (*Iggerot Moshe, Even HaEzer* 1:48) applies this principle to a case where a plane crashed into the English Channel during World War II, and Rabbi Ovadiah Yosef employs it in a case where an Israeli pilot's plane was shot down by enemy fire and fell into the sea. In both cases there were *trei rubei*, as most will die if their plane crashes into the sea and most people who are lost in a body of water whose other side cannot be seen (*mayim she'ein lahem sof*) will not survive in the water. Rabbi Yitzchak Isaac ha-Levi Herzog (*Heichal Yitzchak, Even HaEzer* 2:8) applies this principle in a case where a car plunged down a steep incline and into the sea in Italy.

Rabbi Ovadiah Yosef applies *trei rubei* to the World Trade Center attacks. He reasons that most (if not all) people at or above the point of the plane's impact perished, and most (if not all) of those who survived were discovered by the rescuers who made an extraordinary effort to rescue any survivors. Rabbi Yona Reiss further noted that a *trei rubei* may exist for the husbands who were proven to be located on the 78th floor or above when the South Tower was hit. Most people at the 78th floor or above perished after the impact, and most of the sur-

vivors sustained severe injuries, which they could not survive without prompt hospitalization (see Rabbi Zvi Pesach Frank, *Har Zvi, Even HaEzer* 1:62). Rabbi Ovadiah Yosef adds that even if the application of *trei rubei* is not appropriate, one may rely upon a double doubt (*s'fek s'feika*): the husband might have perished in the fire, and if he survived the fire, then he might have died falling down. Rabbi Ovadiah Yosef thoroughly reviews the dispute among the *Acharonim* regarding whether a *s'fek s'feika* is a valid halakhic tool for resolving *Agunah* situations. He concludes that it is certainly a valid principle according to Sephardic tradition, and the World Trade Center case that Rabbi Ovadiah Yosef discusses involved a Sephardic husband. (Rabbi Ovadiah Yosef and Rabbi Shalom Messas permit an *Agunah* to remarry based on a *s'fek s'feika,* in *Techumin* 22:184-187; and for a discussion of the relationship between the principles of *trei rubei* and *s'fek s'feika,* see Rabbi Zvi Pesach Frank, *Har Zvi, Even HaEzer* 1:64, pp. 135-138.)

A fourth avenue of leniency is an approach that is often quoted in *Agunah* cases of the past 150 years. The Talmud (*Yevamot* 121a) is strict in the case of *mayim she'ein lahem sof* because of concern that the husband has survived unbeknownst to his wife. Rav Ashi in the Talmud suggests that perhaps we might be lenient in case of the wife of a renowned Torah scholar because if he survived word would have spread of his survival. This passage in the Talmud reflects the reality that even during times of poor communication, the Jewish community managed to spread the information about a great Torah scholar.

Although the Talmud ultimately rejects Rav Ashi's position, the *Terumat Hadeshen* (139) suggests that in his time (the late medieval period) there was more reason to be lenient because changes in the location of Jewish settlement had enabled better communication than during the time of the Talmud. He reasons that the Talmud did not wish to distinguish between a wife of a Torah scholar and others because of the principle of *lo plug* (that the Rabbis do not make special exceptions to their rules). However, reasons the *Terumat Hadeshen*, in a time of improved communication, a husband's surviving *mayim she'ein lahem sof* would be communicated to the wife applies to **everyone** equally, so there should not be any need to rule strictly in cases of *mayim she'ein lahem sof.*

The reasoning of the *Terumat Hadeshen* has not been accepted as normative (see *Shulchan Aruch, Even HaEzer* 17:34). Nonetheless, Rabbi Moshe Sofer (*Chatam Sofer, Even HaEzer* 1:58, cited in the *Pitchei Teshuvah, Even HaEzer* 17:135) argues that more room existed to be lenient in his day, during the early nineteenth-century, as post offices functioned in every village and newspapers spread news throughout the world. If the husband had survived, then he or the local rabbi would have had an opportunity to send a letter or advertise in a newspaper in order to publicize his survival. Thus, not hearing from someone who was lost in a *mayim she'ein lahem sof* would prove that he perished. This approach of Rabbi Moshe Sofer engendered much discussion, which is summarized by Rabbi Ovadiah Yosef (*Yabia Omer, Even HaEzer 7*:14:7, and in his responsum devoted to the 9/11 attacks).

Rabbi Moshe Feinstein (*Iggerot Moshe, Even HaEzer* 1:43,48), writing about the *Agunot* from the Nazi Holocaust, states that in his time, there was even more reason for leniency than in the time of Rabbi Moshe Sofer, as methods of communication had made many strides. Rabbi Ovadiah Yosef, writing in regard to the World Trade Center tragedy, asserts that the logic for leniency is greater in 2001, as telecommunications and other methods of communication have improved immensely.

We should note that *poskim* do not rely on this line of reasoning alone, as it would completely eliminate a rule from the Talmud, something *poskim* are loath to do. Furthermore, relying on this line of leniency increases the pressure on the *beit din* to definitively establish that the husband and wife were on good terms before the husband's disappearance, lest the husband has taken advantage of the tragedy to disappear and establish a new identity.

A fifth avenue of leniency is the option of Rabbi Eliezer of Verdun (cited in *Zichron Yehudah* 94, and *Mordechai* to *Yevamot* 92). He acknowledges that the Talmud forbids the wife to remarry in any case of *mayim she'ein lahem sof.* However, he argues, the Talmud does not say that she is forbidden *forever.* Thus, he reasons, if after a very long period of time it seems obvious to the great rabbinical authorities of the time that the husband has died, then the rabbis have the right to permit the wife to remarry. Rabbi Eliezer of Verdun reports that

he relied upon this in a case when a husband was lost at sea and had not been heard from in four years.

Poskim have vigorously debated the cogency of this argument. The *Mordechai* (ibid.) cites two major authorities who oppose Rabbi Eliezer of Verdun's leniency. The *Beit Yosef* (*Even HaEzer* 17, s.v. *Nafal*) rejects it entirely, claiming that it lacks any basis in the Talmud. Other authorities, however, such as the *Mahri Bei Rav* (*Teshuvot* 13) and the Mabit (*Teshuvot* 1:187), defend Rabbi Eliezer of Verdun's view. In practice, *poskim* from the time of Rabbi Yechezkal Landau (*Noda Beyehuda, Even HaEzer* 2:47) through Rabbi Moshe Feinstein (*Iggerot Moshe, Even HaEzer* 1:43), Rabbi Tzvi Pesach Frank (*Har Zvi, Even HaEzer* 1:65), and Rabbi Ovadiah Yosef (*Yabia Omer, Even HaEzer* 7:14) use the leniency of Rabbi Eliezer of Verdun as an additional reason to be lenient (*senif lehakeil*). However, as noted by Rabbi Eliezer Waldenberg (*Tzitz Eliezer*, 15:59), *poskim* disagree about the length of time which is necessary to wait before concluding that the missing husband is dead: one year, two years, or four years. In the case of the World Trade Center tragedy, Rabbi Ovadiah Yosef advised the Beth Din of America to wait one year before issuing permission for the *Agunah* to remarry.

Finally, a sixth avenue of leniency is the approach of the *Shevut Yaakov* (3:110). He notes that, in a case of *mayim she'ein lahem sof,* if the woman mistakenly remarried, then *ex post facto* (*b'dieved*), the Talmud (*Yevamot* 121b) does not requite her to separate from her new husband. The *Shevut Yaakov* further notes the Talmudic principle that *sh'at had'chak k'b'dieved dami,* in a case of great need one may permit what is normally permitted only *ex post facto.* The *Shevut Yaakov* reasons that when an *Agunah* is a young woman and anxiously wishes to remarry, a great need exists that justifies permitting that which is normally permitted only *b'dieved.* In such a situation, he suggests that the young *Agunah* should be permitted to remarry. This ruling of the *Shevut Yaakov* engendered much discussion and controversy (see *Otzar Haposkim* 7:37-39); and, in practice, many *poskim* use this leniency as a *senif lehakeil*, including, for example, Rabbi Yitzchak Elchanan Spektor (*Ein Yitzchak, Even HaEzer* 1:22), Rabbi Tzvi Pesach Frank (*Har Tzvi, Even HaEzer* 1:65), Rabbi Yitzchak Isaac ha-Levi Herzog (*Heichal Yitzchak* 2:9), Rabbi Eliezer Waldenberg (*Tzitz Eliezer* 15:59), and Rabbi Ovadiah Yosef (*Yabia Omer, Even HaEzer* 7:16). Indeed, the *Shevut Yaakov* him-

self uses this point only as one of several lenient considerations. Rabbi Yona Reiss notes that many of the *Agunot* from the World Trade Center attacks were young women, so the approach of the *Shevut Yaakov* functioned as a minor consideration in the rulings of the Beth Din of America.

No Empirical Evidence that the Husband Was There

The most difficult task faced by the Beth Din of America was one situation where they were unable to discover any empirical evidence that a particular missing husband was inside the World Trade Center at the time of the attacks. The Beth Din of America investigated the possibility of identifying a pattern in the husband's daily routine that would prove he arrived at work. Using various travel records, including his Metrocard, Rabbi Yona Reiss was able to prove that the man routinely entered his office during August and early September a few minutes before the time of day when the attacks occurred. It was after making this determination that DNA identification was made on the missing husband's remains.

Several response serve as precedents for asserting that a man following his regular routine. Rabbi Yitzchak Isaac ha-Levi Herzog (*Heichal Yitzchak, Even HaEzer* 2:9:2) considered the possibility of partially relying on a husband's patterns to determine that a man was at a particular place where a bridge collapsed into the water. (Although a pattern is sometimes called a "*chazakah*," it is a very different concept that we mentioned early, which referred to the assumption that the status quo had been maintained.) Rabbi Herzog notes that the *Taz* (*Yoreh Deah* 69:24) rules that if a woman is unsure if she salted a piece of meat before she cooked it, she may assume that she followed her normal pattern of salting the meat. As a precedent, the *Taz* cites the Talmud's ruling (*Berachot* 16a) that if one is reading the *Shema* and is unsure if has read the verse "*Uch'tavtam*" from the first section of *Shema* or the second section, the doubt is resolved if he had begun to read the verse of "*L'ma'an yirbu*," which follows "*Uch'tavtam*" in the second section (see Deut. 6:9, and 11:20-21). Since people normally recite the *Shema* in the proper order, a person may assume that he followed his usual routine and proceeded to the next verse of the second section, because he had recited everything up until that point.

Rabbi Herzog ultimately rejects the analogy between the ruling of the *Taz* and an *Agunah* situation. Meat that was cooked without proper salting is prohibited only on a rabbinic level, whereas here we wish to rely on the husband's routine in order to permit the woman to remarry, which could lead to a violation of the Biblical prohibition of adultery. Hence, the lenient ruling of the *Taz* regarding the salting of meat cannot serve as a precedent for permitting an *Agunah* to remarry. The routine of one who is reading *Shema* also differs from the husband's situation, because we know for sure that the person began reciting *Shema*, and we merely doubt which verse he was reading. Regarding the *Agunah*, however, we do not know if the husband crossed over the bridge at all on the day of its collapse.

Despite his inability to demonstrate from the *Taz* that we may rely on a husbands patterns, Rabbi Herzog concludes that the woman in this case may remarry, by combining the likelihood of the husband following his routine with other lenient considerations that existed in that case.

Rabbi Yehoshua Ehrenberg (*Dvar Yehoshua,* vol. 3, *Even HaEzer* 13) relies on a similar approach, determining that a husband's usual pattern of travel to work placed him at the point where a terrorist attack occurred in Tel-Aviv in 1950, and combining this information with other lenient factors, he issued a lenient ruling, and cites the *Mabit* (135) as a precedent in this context. Rabbi Gedalia Dov Schwartz and Rabbi Zalman Nechemia Goldberg rule that this approach may be used as a consideration to be lenient in the World Trade Center case. We might add that there is actually more reason to be lenient regarding the World Trade Center, as the Beth Din of America thoroughly documented the missing husband's travel patterns in the months of August and early September, with a level of detail that was not provable in the situations addressed by Rabbi Herzog and Rabbi Ehrenberg.

Conclusion

Every tragedy that befalls the Jewish People adds another layer to the voluminous literature regarding the status of *Agunot.* In the case of the attacks of September 11th, 2001, the Beth Din of America was ultimately able to permit all of the *Agunot* to remarry. We hope and pray to God that the World Trade

Center tragedy should be the last of these tragedies and that the days of the Messiah should arrive, when the halakhic literature regarding *Agunot* will be of a purely theoretical interest.

NOTES:

1 The responsum of Rabbi Gedalia Dov Schwartz, Av Beth Din of the Beth Din of America, appears in the 5762 issue of *HaDarom*. Responsa from Rabbi Zalman Nechemia Goldberg regarding all of the cases and from Rabbi Ovadiah Yosef regarding one case (of a Sephardic husband) appear in the fourth volume of *Kol Zvi* (pp. 3-63), and were reprinted in *Techumin*, vol. 23 (pp. 97-119). The same volume of *Kol Zvi* also includes Rabbi Mordechai Willig's careful and methodological presentations of the tragedy's facts and the related *Halakhic* issues on which the rabbis involved needed to rule. These responsa have been reprinted and are available in English translation in this present volume. This chapter is based on an essay that appeared in my *Gray Matter*, volume 2 (2006), 114-138.

2 For further discussion of the general attitude of profound urgency that *poskim* maintain towards *Agunah* problems, see Rabbi Ovadiah Yosef (*Yabia Omer, Even HaEzer* 6:3), and *Otzar Haposkim* (8:203-211).

3 The Talmud illustrates this principle by recounting how Rav once consulted Shmuel regarding a difficult question, and Shmuel saved him from issuing a mistaken ruling.

4 "*Ishah dayka u'minsaba*." See *Yevamot* 115a; *Ra'avad* to *Rambam, Hilchot Geirushin* 13:29; and *Beit Shmuel* 17:10.

5 Rabbi Ovadiah Yosef addresses a case that depended on the testimony of an airline steward, who presumably worked on *Shabbat*.

6 See *Pitchei Teshuvah* (*Even HaEzer* 17:106). Also see *Aruch Hashulchan* (*Even HaEzer* 17:172), who cites many *poskim* as ruling that two *simanim beinoniyim* may combine to form one *siman muvhak*.

7 See *Ein Yitzchak*, *Even HaEzer* 1:20.

8 See Rabbi Yosef Shalom Elyashiv (*Kovetz Teshuvot* 135), Rabbi Ovadiah Yosef (*Yabia Omer, Even HaEzer* 10:8), Rabbi Shmuel Wosner and Rabbi Nissim Karelitz (*Techumin* 21:123), and Rabbi Shlomo Dichovsky's responsum (published in *Bikkurei Asher* 6). It should be noted that Rabbi Dichovsky wrote his responsum in 1982. One wonders how further technological advances would impact his position. Interestingly, in his letter to Rabbi Zalman Nechemia Goldberg on the 9/11 attacks, Rabbi Mordechai Willig suggested that DNA testing does not prove *mamzeirut,* despite its high accuracy, because the child could have been fathered through artificial insemination, which does not create *mamzeirut* according to Rabbi Moshe Feinstein and a number of other *poskim* (see *Iggerot Moshe, Even HaEzer* 1:10.71, and 2:11; three responsa printed as an addendum do *Dibrot Moshe* on *Ketubot; Chelkat Yaakov* 1:24, and *Nefesh HaRav*, 255).

9 More precisely, they consider DNA evidence from a relative to be a *siman beinoni* and DNA evidence from the person himself to be better than a *siman beinoni* but incapable alone of permitting an *Agunah* to remarry, without additional evidence. See *Techumin* 24:396, where Rabbi Yitzchak Oshinsky delineates the reasons that some authorities do not consider DNA tests to constitute a *siman muvhak* despite their exceedingly high accuracy.

10 The *Netziv* (*Meishiv Davar* 4:23) and Rabbi Ovadiah Yosef (*Yabia Omer, Even HaEzer* 6:3:3:19) also regard photographs as a *siman muvhak*. Presumably, a beit din nowadays would need to verify that a photograph was not forged before admitting it as evidence. Otherwise, technological advances enable unscrupulous individuals to fabricate evidence. For example, Rabbi Shlomo Fisher once voiced his concern to me (when I observed the workings of the Jerusalem Rabbinical Court in 1993) that conducting divorce proceedings by video teleconference (see *Techumi*n 14:272-276) runs the risk of forgery.

11 It should be noted that Rabbi Yitzchak Elchanan Spektor's responsum shows clear signs of being edited in order not to offend the non-Jewish government. He adds an entire disclaimer explaining that concern for dishonesty among non-Jewish government officials existed only in Talmudic times, so he is discussing these laws only for their theoretical value. Nevertheless, he seems sincere in trusting non-Jewish government records.

12 See *Shulchan Aruch, Yoreh Deah* 98:1; *Shach, Yoreh Deah*, 98:2; and *Bei'ur Hagra, Yoreh Deah* 98:2.

13 See *Pitchei Teshuvah* (*Even HaEzer* 17:95) for a lengthy summary of this issue.

14 In his responsum on the 9/11 attacks, Rabbi Ovadiah Yosef notes that Halakhah regards voice recognition (*t'viut eina d'kala*) as a valid means of identification (*Gittin* 23a), and many *poskim* accept a woman's telephone appointment as an agent to receive a *get*. See *Beit Yitzchak, Even HaEzer* 2:13; *Shaarei Deah* 1:194; *Maharshag* 2:250; and *Iggerot Moshe, Even HaEzer* 1:139.

15 See *Tosafot* (*Yevamot* 121b, s.v. *Ein*), who note that the *Yerushalmi* (*Yevamot* 16:3) actually does raise the possibility that a miracle occurred. Regardless of the position of the *Yerushalmi,* we follow the rulings of the Babylonian Talmud, which does not concern itself with such an eventuality.

Regarding Permitting the *Agunot* Whose Husbands Perished in the Twin Towers

RABBI GEDALIA DOV SCHWARTZ

The collapse of the Twin Towers of the World Trade Center following the two airplanes which crashed into them, which were filled with hundreds of thousands of liters of fuel, was a horrific event which took place in the full view of millions of people who watched it on television as it happened. All the details of this event have already been extensively reported in media outlets throughout the world. As we approach the issue of resolving the *Agunah* status of the women who turned to the Beth Din of America, we must first determine that their husbands were, in fact, in the Twin Towers at the time of the attack. Since the incident, no word or information about the missing husbands has been received, and already several months have passed. In each case, with the exception of one, there is proof in general that the husbands were in the buildings after leaving home and were there at the time of the attack. This is for the reason that they phoned their wives or friends on that morning, or that there is evidence based on a number of different circumstances received from several people who survived and had seen them in their office.

The explosion caused by the fuel from the airplanes on the floors where they crashed into the Towers is very similar to the case of *kivshan ha'eish* — a fiery furnace — as it says in the Talmud (*Yevamot* 121b): "If a man fell into a furnace we may testify on him [that he died]. If he fell into a cauldron of boiling wine or oil, we may testify on him [that he died]." This is the ruling of the *Shulchan Aruch* (*Even HaEzer* 17:30). See also the *Be'er Heitev* 95 who writes:

This responsum was originally written in Hebrew and published in HaDarom *72-73 (January 2003). This translation retains much of the flavor of the original halakhic writing.*

> "The *Maggid Mishna* in the name of the *Rashba* wrote that this is specifically when he fell into a furnace which is deep and he is unable to lift himself out from there. But if he fell into a shallow fire we can suggest that perhaps he extricated himself from there. Alternatively, he fell into a shallow fire but he remained there as long as it would take to be burnt. It appears to me that it is referring to a case where he was there for a short period in which there was enough time to burn his legs to the extent that he was no longer able to move from there. And so writes the *Knesset Hagedola*."

Based on the realities of the airplane crashing into the North Tower on the 93rd floor — there were no survivors from the 92nd floor and up because the explosion was so incredibly powerful that anyone who was there were immediately was consumed or was unable to escape by means of the elevators or stairwells. Even the hundreds of firefighters who arrived to try to save people were prevented from doing so due to the powerful fire and thick smoke which engulfed these floors. Afterwards the buildings collapsed and several hundred firefighters and police officers were killed due to the collapse.

This case is not comparable to the case of the *Pitchei Teshuva* (cited from the *Noda Beyehuda* 1:59) regarding a man who ascended to the roof during a great fire and nothing further was known regarding his welfare. Afterwards bones were found and the doctors determined that they were certainly the bones of this individual. See there, where the sages of Brod permitted the wife to remarry based on the principle of *kan nimtza kan haya*. (i.e., there is a presumption that the person known to have entered into the location earlier was the individual whose bones were found at the site). But he disagreed with them since it is possible that others came to try and save the man, or even to rob him, and it could be that the bones were from these people. However, in a situation where it is not possible to suggest that people might have come to the site of the fire then the woman should be permitted to remarry. This is not the case in our situation where those who tried to save people were simply unable to reach these floors to save them. We are discussing only those who were known to have been there at the time of the tragedy and no remains or survivors were found from the

upper floors of the building. It is certain that they were all burned there and we should rule leniently for these reasons, based on the realities of the situation.

See the *Otzar Haposkim* in this chapter, paragraph 348, on all the material cited there from different precedents of fires which correspond to the "fiery furnace" or are at least similar to it, especially paragraph 3 under the heading: "If they were in a place in which they were unable to escape and a fire broke out as is cited in *Tzel Hakesef* section 2 in the *Teshuvot Rachash Gatinav* section 4, regarding the case of a ship which caught fire and burned and inside was a man tied up in chains. He wrote that since we have established that one who fell into a pit full of snakes or a fiery furnace or a cauldron of boiling wine or oil, may we testify that he has died. Even though no one witnessed the actual death take place but they saw that sequence of events which would have certainly led to his death — it is sufficient. The *Rambam* wrote (*Hilchot Gerushin* 13:7) as well as the *Shulchan Aruch* (Paragraph 30) that not only in the situations specifically illustrated but even in all similar situations in which it is not possible for a person to have survived and would have died almost immediately — we may testify that he has died.

As such, in this case too, since the fire burned the ship, completely consuming it, and there was a man aboard — it is certain that he was burned up and died. Therefore, even though no one actually saw him burn nor did anyone linger long enough for the burning to have certainly taken place, nevertheless we may testify that he died. Even though the *Nimukei Yosef* wrote (as well as the *Maggid Mishna* in the name of the *Rashba*) that only in a furnace which is deep do we testify that a person who fell into it has died but not one who has fallen into a simple fire unless he remained there for as long as it would take to die (as will be explained later on in section 4) — nevertheless, in our case since he was chained and his feet were in shackles making it impossible for him to escape the ship there is no better case of *tzamku raglav* (his feet were dried up and useless) than this. This is comparable to the case of falling into the cauldron or furnace and being unable to escape. In our situation, since it became clear that all the people who were in the North Tower on the upper floors were unable to escape due to the powerful fire, we can testify that they had died even though

no one actually saw them die. The inability to leave from there is comparable to the case where someone was chained and unable to escape.

We must also discuss our case in relation to dying due to "an avalanche" as it is cited in *Yevamot* 114b that an avalanche is comparable to a war where even estimations are admissible. This is also cited in the *Shulchan Aruch* in paragraph 51: "A woman who says that her husband died under an avalanche is not believed." But this precedent is not relevant to our case because the woman does not know with certainty what had happened because she fled the avalanche which had occurred as a result of stormy weather which destroyed the houses of the city, as it is explained in *Rashi,* and she testifies based on estimations. See there in the *Otzar Haposkim* where *Rashi*'s opinion is elaborated upon. But our situation is comparable to the case which is cited in *Shu"t Ezrat Kohen* from Rabbi Avraham Yitzchak Kook, Chapter 35, (cited in *Otzar Haposkim* there in paragraph 2 from his handwriting) regarding one who died in war due to the collapse of a mountain which fell upon him due to an explosion and he wrote that this case is not comparable to the regular case of "an avalanche." This is because the standard case of avalanche is when the cause of death was due to the collapse of wood and stones upon him. If she states that this was the cause of death it is considered a case of *ruba*, majority, and *mayim she'ein lahem sof* in which we are concerned for the unlikely event that maybe the waves washed him up somewhere else. But an avalanche such as this where he was buried under a pile of rubble is literally the case of her having buried him, *kevartiv*, and is admissible testimony as in the case of water which is *mayim sheyesh lahem sof* in which we rule that as long as he was in the water for as long as it would take for a regular person to die then we can presume his death.

So too here, since they are saying that he died due to having been buried under an avalanche of rubble — and it is certain that he was buried under it with no chance of survival possible. In fact, in this case there is no time frame needed to assume the death. Regarding drowning, however, it is conceivable that a person may have survived by swimming, thrashing or being washed up by the waves — which is not the case when someone is buried under a pile of rubble. It is a certainty that he died there and there is no basis to suggest that perhaps he escaped. This is especially true when the flow of the avalanche was powerful

and prolonged and there was no way that rescue workers could have removed the debris, which was upon them.

Even though in our situation they began digging and removing the debris and stones and metal pieces from the fallen tower and managed to extricate a small number of individuals but from the second day and onwards they did not find any living person. In the course of the weeks and months which followed, right through to today, only crushed body parts and pieces of limbs have been found.

See also in the *Shu"t Maharash Engel* 8:118 regarding the case of a war in which a grenade fell on a house in which there was a woman's husband and the entire house was destroyed and everyone who was in it was killed. They ascribed all the bones that they found to be of those who were in the house at the time and did not suggest that perhaps someone else came there and the husband in question ran away. So too, *Shu"t Rabbeinu Yosef Nechemia* (Chapter 96) discusses that same case as the *Maharash Engel* and both agreed to rule leniently.

Furthermore, it appears to me to combine the reasons cited in *Shu"t Kehillat Yaakov* by the *Mishkenot Yaakov, Even HaEzer* 9 and *Shu"t Imrei Yosher* 2, who rule that one who falls from a high place can not survive due to his limbs being crushed. This is based on the case of one who is stoned by the *beit din* and is thrown off a height of two stories (*Sanhedrin* 45a). How much more so regarding this terrible tragedy when we are dealing here with eighty stories.

In all the cases related to this tragedy it has been made known to us that all the couples were happily married without any quarrels.

After presenting all the above background information, please note that in all these individual cases before us are dealing with husbands who traveled from their home to their place of work and were intending to return home the same day and not to travel to some far off destination. Since they did not return — the *chazaka* of "*eishet ish*" is marginalized. See the *Noda Beyehuda* 1:47 and *Shu"t Meshivat Nefesh* Chapter 35 who write likewise — that one should not suggest that the husband made up in his mind to run away and leave his wife and family. We don't insinuate such a scenario at all. (See the *Piskei Din* on the

Batei Din Ezorim Vol. 15 pages 191-210). As such, we are dealing with matters, which are of rabbinic stringency in nature.

We Will Now Deal With Individual Cases.

THE CASE OF J.S. — AND HIS WIFE

There are clear conclusions in the case regarding this individual who worked on the 87th floor in the South Tower. Out of the entire fourteen people who worked in his private office, seven did not survive. The seven who survived did so for one simple reason — they did not arrive to work that day except for one who left the building before the plane crashed into the South Tower. J.S.'s wife told the Beth Din of America that on that morning her husband traveled by train to his office as was his routine each day, and his car was found at the train station. At the time of the tragedy in the South Tower his wife telephoned him right away but there was no answer. One of the ladies who was also missing, L.G., the wife of H.G., called her mother who was in her office at work together with J.S. This phone call was made after the crash in the North Tower. According to the calculations of the one responsible for the office there was no trace of survivors from among anyone who had been on the 87th floor.

On the 5th of November, J.S.'s wife received word that parts of J.S.'s body had been identified. This identification was made based on pants in which were found a wallet which contained several identity cards, his driver's license and keys to his home and car. So too, in his pants were fragments of skin and bones. Even the medical examiner's office certified that this person had died based on the identifying signs which were found.

According to this it seems obvious to certify that this person has died based on the issues discussed earlier and based on: a) the comparison to a "fiery furnace" b) being "buried under an avalanche" and c) the wallet and the keys which were found in his pants together with a number of identity cards which are considered "items which are not lent out to others" in which many halakhic authorities have ruled that we can rely on this. See the *Pitchei Teshuva* Paragraph 95 as well as *Otzar Haposkim* Paragraph 187 where there is a listing of authorities who do not accept the principle of "items which are not lent out to others." In our

case, however, even according to those who do not accept the principle of "items which are not lent out to others," nevertheless, we can permit her based on a combination of different principles as were mentioned earlier.

Therefore, since it is known to us that this man was in the World Trade Center at the time of the attack, and in combination of the different principles mentioned above, we permit J.S.'s wife to marry after performing *chalitza* with her brother-in-law since she had no children from J.S.

Based on our inquiries of this woman's background we learned that she was married several times before having married J.S. in 1996. However, she should not be forbidden for marriage based on the principle of "*katlanit*" as it is explained in the *Rema, Even HaEzer* 9:1 that we don't shun a woman when one of her husbands was killed. This is especially true according to the *Rambam* in his *Teshuvot* where he says that there is no true prohibition at all, as it is explained in the *Beit Yosef* in Paragraph 2. There are further considerations to rule leniently in this case based on the *Aruch Hashulchan* 69:4, 7 — see there.

THE CASE OF E.L. — AND HIS WIFE

E.L. traveled to work, as was his routine, early in the morning at 06:00. His wife reported that he had to be there in order to participate in a meeting due to take place at 08:30. At 07:30, she received an email from E.L. originating from his office email address on the 103rd floor of the North Tower. According to a non-Jew who worked in the same office, E.L. was always at work at 07:15 In the event that he was not intending to show up at work, E.L. would send an email that he would not be arriving. We were told the same thing by two other workers there that E.L. would always be at work from 07:00. The site of his office was on the 103rd floor, as mentioned above, in the North Tower. Based on what is known from the news and media outlets as well as the appointed investigators — no one remained alive from the 92nd floor and up.

On October 11 word was received by E.L.'s wife and her father that the upper portion on E.L.'s body was found. The section was from his waist upwards and was identified by the medical examiner's office based on dental records. According to the opinions of the chief doctor, these records are as reliable as

fingerprints which have been discussed in *Yabia Omer, Even HaEzer* 6:3 and in *Darchei Chesed* 6 — that dental records are considered to be a *siman muvhak,* especially when examined by x-ray. In truth, it has been determined that in order to properly research dental records it was undertaken with a number of experts in this field and was repeated four times.

Therefore, according to the information above, the general background issues previously discussed and in this case there is the combining of dental records — E.L.'s wife is permitted to marry (upon completion of her nursing) without any delay or hesitation. In this case, there is no question of *chalitza* since the couple had already had a daughter several weeks before this event.

THE CASE OF T.B. — AND HIS WIFE

As in previous cases, there is an itemized summary regarding the case of T.B., who worked on the 85th floor of the South Tower and was already in the building at the time of the attack in the North Tower and his wife phoned him afterwards and he assured her that he was fine and that he would call her. Based on the testimony of several workers who evacuated the South Tower after the attack on the North Tower, T.B. remained in the building in order to hurry the other workers to escape from there. He returned in order to go up and save some people and they were there when the second airplane crashed into the South Tower below that floor. (According to experts, the crash in the South Tower was between the 78th and 84th floors.) Those who escaped the South Tower before the attack all related that T.B. gave of himself to save others.

An article in *The New York Times* newspaper reported that T.B. was considered to be dead by the municipal doctor. According to the expert there, the identification was made by doctors from a piece of the thigh bone based on DNA. The expert also gave his opinion that this identification is almost positive that any error would be one in a trillion. This has been buried in a Jewish grave in the Mount Ararat cemetery on Long Island.

Therefore, according to all that has been explained above in the general background, T.B.'s wife is permitted to remarry. Since she is pregnant and scheduled to give birth in March, she is not obligated to undergo *chalitza*. In addition

to the considerations for permitting her cited above: a) he fell into a "fiery furnace" b) he was buried under "an avalanche" and c) he fell from a "great height." We also include the DNA identification as per the ruling of Rabbi Shmuel Wosner of Bnei Brak — that the DNA examination is virtually a *siman muvhak*. Therefore, based on all these reasons which have been explained, this woman should be released from her *Agunah* status and is permitted to marry (after she completes her nursing) and there is no question concerning *chalitza* since she had a son after the attack.

THE CASE OF J.L. — AND HIS WIFE

As in previous cases, there is an itemized summary regarding the case of J.L., who worked on the 104th floor in the North Tower in the firm of Cantor Fitzgerald. All the employees in this firm, approximately 650 out of about 1000 employees were among those who were dead or missing. Those who remained alive were not in their offices at the time of the attack. The collision of the plane into the North Tower was right below their offices (between the 93rd-98th floors). According to expert investigators there was no way for those who were above the site of the collisions to escape upwards. There was not even a single person from all who were above the 92nd floor who remained alive.

It is known that J.L. was there at the time of the attack because he phoned his wife and by means of the email log from his office on that day.

Based on all that has been explained above and according to the reasons cited, J.L. died. a) He fell into a "fiery furnace," b) he was buried under "an avalanche," and c) he fell from a "great height." According to this, we should release his wife from her *Agunah* status and she is permitted to marry (after she completes her nursing). There is no question concerning *chalitza* since she gave birth on the Yom Kippur following the attack.

THE CASE OF W.G. — AND HIS WIFE

As in the previous case, there is an itemized summary regarding the case of W.G., who worked on the 104th floor of the North Tower in the firm of Cantor Fitzgerald, just like J.L., above. All the employees in the firm, approximately

650 out of about 1000 employees, were among those who were dead or missing. Those who remained alive were not in their offices at the time of the attack. The collision of the plane into the North Tower was right below their offices (between the 93rd-98th floors). According to expert investigators there was no way for those who were above the site of the collisions to escape upwards. There was not even a single person from all who were above the 92nd floor who survived.

It is known that W.G. was there at the time of the attack because he phoned his wife and a friend of his had phoned him on his office line after the attack. There is also evidence that he was in his office on that day based on the email log from his office on that day.

Based on all that has been explained above and according to the reasons cited, W.G. died similar to J.L.: a) He fell into a "fiery furnace," b) he was buried under "an avalanche," and c) he fell from a "great height." According to this we should release his wife from her *Agunah* status and she is permitted to marry (after she completes her nursing) and there is no question concerning *chalitza* since she gave birth to a daughter following the attack.

THE CASE OF M.G. — AND HIS WIFE

M.G. worked on the 96th floor of the North Tower and it has been determined that he did not remain alive — not a single person from all of them who were there at the time of the first attack on the North Tower remained alive. According to testimony received, it is known that M.G. left his home in New Jersey and, as was his routine, traveled by bus to New York. From there he took the subway directly to the North Tower where he worked. All those who knew him at work said he was known to arrive at work each day at 08:15. It is also known that once he arrived at work he would not leave to attend any meeting and he was not known to regularly phone home. In this particular case there seems to be a serious problem as he did not phone home or to any place else from his office and therefore we have no positive information that he was in the North Tower at the time of the attack. This is in contrast to all the other *Agunah* cases in which there was evidence which is described in the employee log from the North Tower. According to the testimony it is known that he was living in

harmony with his wife. Thus, we must find a basis to permit his wife to marry based on his daily routine of going to work, for the following reasons:

1. In the book *Devar Yehoshua* 13 (authored by Rabbi Yehoshua Menachem Eherenberg, a rabbi in Tel Aviv) a case is discussed from the year 1950 about a husband who on the day he disappeared was seen in Tel Aviv and he was intending to go to the Central Bus Station. From there he was to take a bus to Ramat Yitzchak. It is known that on that day terrorists blew up the Central Bus Station and caused the death of more than one hundred people, some of which were completely burned up and others who were blown to pieces. It is conceivable to suggest that this husband was among them though it is not certain if he was at the Central Bus Station at that time or perhaps he survived and ran away.

   In his responsa there, after presenting different arguments, Rabbi Eherenberg cites the *Mabit* 135 that one who leaves a certain place and is headed home but did not arrive there and thereafter he was not heard from and his whereabouts are not known, and then a non-Jew comes and innocently relates that he saw a Jew on along this exact route killed — it is likely that he is dead, for if he would be alive he would have returned to his home. Therefore, if it is known that a husband left his work with the intention of going to his home in Ramat Yitzchak via the Central Bus Station but did not arrive to Ramat Yitzchak, and his whereabouts are not known. And afterwards people come and say that they saw a Jew killed on this route, meaning at the Central Bus Station, from where he was supposed to transfer — this is identical to the case of the *Mabit* in which case it is likely that he is dead.

   Therefore, in our situation in which the husband woke up early to head for work as was his routine and to then return home. Then no word was heard from him and there was no trace of him especially in that place, the tower where thousands of people were killed, as was reported in the newspapers — this case is similar to the *Mabit* and he is likely dead.

All this is to remove the woman from the biblical status of being a married woman. However, with only a "*ruba*," a likely scenario, she cannot remarry according to rabbinic law. See above for further background on the related *Agunah* issues from the *Noda Beyehuda* 1:47 as well as *Shu"t Meshivat Nefesh* 35 — that if it was their intention to return on the same day and not travel far and they did not return — the status of a married woman is marginalized. This is because we don't assume that he decided to run away and leave his wife and family — we don't suggest such things at all.

See also in the *Divrei Yehoshua*, in his conclusion, where he relied upon Rabbi Koppel Katz, cited in *Teshuvot Habach* 72. There he discusses a case of one who went missing at the time of a fire and a scorched body was found. One person then came and testified that it is him — we can rely on him since one who has vanished from the public eye has certainly been burned. Why would he abandon his house and possessions for another country and leave his wife as a living widow and orphan his children? See there. Regarding this the *Devar Yehoshua* wrote that even if this is not a perfect analysis, which can be taken with certainty, nevertheless, it is likely that he is dead. This is similar to what is written in *Tosafot* in *Gittin* 73 that most people don't divorce their wives. How much more so that most people don't abandon their wives thereby making them as widows. As such, we can combine this likelihood with what the *Mabit* wrote — that anyone who went on his way with the intention of returning home but did not arrive and then a person was found killed on that same route — it is likely that he is dead. The recent halakhic authorities have ruled that when there are two "likelihoods," a woman is permitted to marry even according to rabbinic law.

2. See *Shu"t Yaskil Avdi* 5:20 where he discusses a case regarding a brigade of *Hagana* soldiers who went to a certain bridge in order to carry out a military operation. The bridge exploded and everyone was killed. They were not able to identify all the bodies or even the individual body parts. The concern arose that perhaps it is possible that not all the soldiers who were scheduled to be on this mission actually went. Perhaps one person returned from the mission and ran away and disappeared.

This suggestion, however, was dismissed based on the principle that "one who is sent on a mission is likely to have completed it." We do not suggest that perhaps he changed his mind, as he would have been penalized for doing so. We can suggest that in our case where the husband was in a routine of going to his place of work every day in the North Tower in accordance with his responsibilities and expectations — his mind would not have changed because he would have been financially penalized upon return. There is also evidence that he was on his way to work because his Metrocard was used in the 42nd street Port Authority subway station between 08:12-08:17 on September 11. According to the station's schedule for that day, the subway arrived at the World Trade Center station before the time of the attack, with enough time for M.G. to have taken the elevator up to his office. We were able to prove this by comparing the list which shows when M.G. arrived at the World Trade Center each day in the month of August and when he arrived at the station on that morning.

3. We can also combine the decision of the government and other civil authorities who decided to issue a death certificate to the wife on the death of her husband. The recent halakhic authorities have ruled that certification of the civil authorities that someone has died is admissible when combined with other factors. See the *Taz, Even HaEzer* 17:11 and *Shu"t Chatam Sofer, Shu"t Shav Yakov*, and *Shu"t Zecher Yehosef.*

4. In addition to all the above, a few weeks ago they found to pieces of bone from the shoulder and ribs which according to DNA testing has been identified to be from the body of M.G. as established by the medical examiner's office. Without getting into the practicalities of this test, nevertheless, together with all the arguments presented here we can combine them to release this woman from the status of an *Agunah*.

THE CASE OF G.H. — AND HIS WIFE

G.H. was among the passengers on the American Airlines flight #11 from Boston, which crashed into the North Tower. It is well known that there were no survivors from this terrible event. It has been established that G.H. was among the passengers on this flight as he presented his ticket in order to receive his boarding pass, as all passengers do. This is proof that he boarded the plane since we have no information to suggest otherwise. This is especially true since no word was heard from him since this time.

Therefore, there is no doubt that G.H. died in the airplane along with all the other passengers for the plane's explosion is identical to the case of one who falls into a "fiery furnace" from which it is not possible to escape. Therefore, his wife is permitted to marry.

THE CASE OF D.S. — AND HIS WIFE

D.S. worked on the 86th floor in the South Tower. It was reported that after the attack in the North Tower he descended to the 78th floor and was intending to descend by the elevator in order to evacuate the building. Those who descended in the elevator at that time survived, but witnesses saw D.S. speaking with one of the police officers on the 78th floor. Those who saw him talking descended in the elevator but he did not join them. After the second attack in the South Tower it was revealed that all those who survived from the 78th floor after the event descended by means of the stairwells and only after being seriously burned. Those who remained at the elevators did not survive. From the time of the incident no word had been heard regarding D.S. Even after searching in the records of the hospitals, which received the injured from the incident D.S. was not found to be among them.

According to this, based on the arguments presented earlier in the general background, it appears that the wife of D.S. should be released from the status of an *Agunah* since he was in a place from which it was impossible to escape due to the huge fire which is comparable to the case of the "fiery furnace," the case of the "avalanche," and the case of falling from a "great height," as explained earlier.

THE CASE OF M.L. — AND HIS WIFE

M.L. worked as one of the managers of the police on the bottom floor of the South Tower. After the attack on the South Tower his wife spoke with him by telephone and she pleaded with him to leave the building, but his response was that it was his duty to remain in the building and to assist people with getting out of danger. After the tragedy, a number of his body parts were identified, including the majority of his body and even his head. The identification was made in three ways: 1) DNA. According to the experts the margin of error in such a case is less than one in a vigintillion; 2) Fingerprints. Many authorities accept this as a *siman muvhak*, see *Darchei Chessed* 6:26 and at the end on the Responsa of Rabbi Ovadia Yosef in *Yabia Omer, Even HaEzer* 6:1 where he says that a match of fingerprints between two people cannot be found in even thousands; and 3) Clothing and other possessions which were found on his body in his clothes: his driver's license, work permits, and credit cards. See what we have written earlier in which we cited a large array of halakhic authorities which are cited in *Otzar Haposkim* 187:22 who hold that we are not concerned that these possessions were lent out because these are items which people do not lend out. See also the *Darchei Chesed* 6:28.

Considering that we are unable to combine the clause of "falling from a great height" since he was on the bottom floor, it is clear, however, that his wife is permitted to marry based on a number of considerations: 1. The DNA identification which is virtually a *siman muvhak* as we mentioned earlier in the name of Rabbi Wosner; 2.Based on the identification by the fingerprints, as mentioned earlier; 3. Based on the identification made based on the personal possessions which are items that people do not lend out — which according to many authorities can be relied upon; and 4. Based on a solid estimation that he did not leave work as he had told his wife. He is also subject to the principle of being buried under "an avalanche." There are no questions of *chalitza* because they had a son.

On this I affix my signature, today, the 3rd of Adar 5763.

Rabbi Gedalia Dov Schwartz
Av Beth Din, Beth Din of America

Questions Regarding the *Agunot* from the Twin Towers Tragedy

RABBI MORDECHAI WILLIG

To the honorable Rabbi Zalman Nechemia Goldberg, *shlita*

Nine months after the World Trade Center tragedy the searches in the area of the buildings have been completed. Indeed, approximately twenty thousand body parts have been found most of which have not been identified through laboratory examinations. This question is based on the current facts and if more information becomes available, I will forward it you.

In the North Tower, the plane hit between the 93rd and 98th floors and according to the photos, the plane hit all the elevators and stairwells. It seems that the stairwells were not in the exact same place at every floor, but according to the stairwell map which was published in *The New York Times* May 26, 2002, on these floors the stairwells were in the middle of the building, and were destroyed in the attack. There are no known survivors from the 92nd floor and upwards. Therefore, if there is admissible proof according to Halakhah that the husband was on a floor above the 92nd at the time of the attack, it appears that he has the status of one "one who has fallen into the furnace" (*Even HaEzer* 17:51) and his wife would be permitted to marry.

1. J.L. worked on the 104th floor. His wife testified at the Beth Din of America that he left his home at approximately 07:30 and called to wake her up, seemingly from his office, at 08:20. At 08:50, after the attack of 08:46, she called his cellphone and left a message. Accord-

This responsum was originally written in Hebrew and published in Kol Zvi *4 (2002). This translation retains much of the flavor of the original halakhic writing*

ing to the calling log of the telephone company, J.L. called in to listen to his messages at 08:51, and from his cellphone called his home at 08:52. His wife testified the he told her that the building was being evacuated.

Furthermore, there is email documentation sent at 08:21 from his email address as a response to mail received at 08:17. (However, it is not clear to us if it is not possible to send such an email from another place.) The wife and her parents testified that they lived in marital harmony.

2. W.G. worked on the 104th floor. His father-in-law testified at the Beth Din of America based on his daughter, that her husband left the house at approximately 07:00 and she called him to his private line at 08:24. At 08:54, after the attack, W.G. phoned his wife from his cellphone. The documentation from the phone company confirms that these conversations took place and that the cellphone was in the vicinity of the World Trade Center.

   Furthermore, a lone witness (who appears to be non-observant) testified (in writing and by telephone) that she called W.G. on a private line at 08:50 and said that he will try to leave his office. There is also email documentation sent by W.G. from his company-issued email address, from 07:56. (However, it is not clear to us if it is not possible to send such an email from another place, as stated earlier.) His father-in-law testified that they lived in marital harmony.

3. K.W. worked on the 103rd floor. His wife testified at the Beth Din of America that he left at approximately 06:00 and sent her an email at 07:36. (However, it is not clear to us if it is not possible to send such an email from another place, as stated earlier.) Two non-Jewish witnesses testified (by telephone) that K.W. always arrived at his office between 07:00-07:15. One of them said that he knew that there was a meeting in his office at 08:30 on that same morning, and one of them said that he is certain that K.W. was in his office, because anytime K.W. did not come in he would notify him in advance by email. The wife and her father testified at the Beth Din of America that they lived in marital harmony.

At the end of *Tishrei*, the body of K.W. was found from his waist upwards. The body was identified by dental records, an extremely reliable *siman muvhak*. This is known to the Beth Din of America by means of the testimony of two witnesses, one of whom is an observant Jew, who saw the documents in the office of the medical examiner, in addition to the testimony of the head of the office.

In the beginning of the month of *Shevat,* they found four pieces from the body of K.W., who was identified by means of DNA according to the testimony of an Orthodox Jew in the office (by telephone).

4. G.H. boarded American Flight #11 which struck the North Tower. The Beth Din of America received a letter from the airline company that someone with his ticket had boarded, meaning that he boarded the plane, as testified by a company representative (by telephone). However, it could be that he got off the plane, and it appears that there is a case of someone who had gotten off the plane and was saved. To our question regarding if and how getting off the plane appears in the airline company documentation, they responded that they don't reveal their internal procedures to anyone, though they were certain that if G.H.'s name appeared on the passenger list that was circulated after 9/11, then he did not get off the plane.

   There has been some speculation in the newspaper that G.H., who was an officer in the I.D.F., is the one, according to a description from a cellphone conversation, who tried to block the terrorists and was killed by them, and was thus the first victim of September 11th attacks.

5. M.G. worked on the 96th floor. His wife testified before his friend, who later testified at the Beth Din of America, and brought along the recording of their conversation.

   M.G. told his wife at 07:15 that he was going to work. He always worked in his office and generally did not phone home.

In our possession is a document from the credit card company that M.G. purchased a Metrocard with his credit card. An observant Jewish employee at MTA New York City Transit testified (by telephone) that the Metrocard was last used in the station at 42nd street between 08:12 to 08:17 on that same morning.

In our possession is a document from the office responsible for the security of the World Trade Center, from the month of August (it seems that the September documentation was destroyed in the attack), with the exact times that M.G. entered the North Tower each morning, recorded by his personal security-card at the entrance of the building. So too, a document from MTA New York City Transit, from during the month of August, with the times that his Metrocard was used in the station. The time which appears is accurate within three minutes.

According to comparisons, and according to the testimony of an observant Jew mentioned earlier, the subway that leaves from the station mentioned earlier to the direction of the World Trade Center was on schedule on that morning. It appears that M.G. entered the building between 08:32 to 08:40, averaging at 08:34. The elevators arrived at their regular frequency and arrived at the 78th floor in less than a minute, and from there to the 96th floor. It is understood that there is no proof that he arrived at the building at all since the documentation was destroyed. Our intention is that if he traveled in his regular route as he had for twenty-three straight days in August, he would have reached the 96th floor before the attack.

M.G.'s wife, and the rabbi mentioned earlier, testified that they lived in marital harmony.

In the South Tower, the plane hit between the 78th and 84th floors at 09:02 and the building collapsed at 09:59. All the elevators of the upper floors were destroyed in the attack, specifically the express elevators which went from the ground floor to the 78th floor, as well as the elevators which served the 78th floor and upwards. (There was no direct service from the ground floor to floors above the 78th.) But one of the stairwells (A) survived and several individuals survived on floors above the 78th when they went down these stairs, and it seems there were ten people who were on the 78th floor and survived by means of the above mentioned stairwell which was in the northwestern corner of the building.

1. J.S. worked on the 87th floor. His wife testified at the Beth Din of America that he left his house at approximately 07:30. There is testimony

that he arrived to his office as regularly. During the time between the attacks, a woman who also worked in the same office was speaking with her mother on the telephone, and told her, according to this woman's testimony (by telephone) that J.S. was with her in her office. The wife testified that they lived in marital harmony.

2. T.B. worked on the 85th floor as a lawyer. His firm hired a detective agency to investigate what became of missing persons, and here is a selection of their report (in writing):

> "At least eight individuals testified that they saw T.B. on the 85th floor as he was supporting and assisting people to evacuate the building. His wife testified that she phoned him on his cellphone between the attacks and he said that he was fine and he will call her back and the documentation from the cellphone company certifies that he received a one-minute phone call at 08:54."

An observant Jew from the company testified (by telephone) that T.B. told him to go downstairs and when he descended at 08:55 by means of stairwell B, T.B. appears to have still been in his office. As mentioned, all the stairwells, except for stairwell A were inaccessible because of the attack.

His non-Jewish secretary estimates that T.B. returned from the stairwell to save two lawyers whose office was in the south-eastern corner which was where the attack took place.

During the month of *Kislev,* the medical examiners office found a large piece from his thigh-bone (a limb on which life depends) according to the testimony (by telephone) of an observant Jew who works there. It was identified as belonging to T.B. according to DNA examinations alone, which is a *siman muvhak*, as mentioned. (However, according to that which was shown to a member of the Beth Din of America in the medical examiner's office, the identification was made by matching it with the DNA of the father and mother of T.B. The chance that there is another match like this is less than one in ten billion [10,000,000,000].) The wife, her parents, and their rabbi testified that they lived in marital harmony.

3. D.S. worked on the 85th floor. His wife testified at the Beth Din of America that he always left his house at 06:00. His friend (who is not an observant Jew) testified (by telephone) that D.S. boarded the bus at 06:05 and got off at the stop closest to the World Trade Center at 07:35.

   Another friend (who is not an observant Jew) testified (by telephone) that he phoned D.S. at 08:55, between the attacks, to inquire whether he had left the building, and he responded that "he would try to find out what had happened." A non-Jewish female worker in the office testified (by telephone) that she went down with D.S. in the elevator to the 78th floor and she saw him on the 78th floor between the attacks. When she entered the elevator to descend to the ground floor, D.S. spoke with a policeman who told him that the building was secure and he should wait for further instructions. Less than a minute after she arrived on the ground floor, the second attack occurred. She believes that the elevator she descended in was the last one to reach the ground floor before the attack.

   Another, non-Jewish, worker from the office testified (by telephone) to all the above. Similarly, D.S.' wife testified that another non-Jewish woman told her that she saw D.S. on the 78th floor. (Nevertheless, about ten people were saved from the 78th floor by means of stairwell 'A' in the northwestern corner of the building. However, it appears that they were standing close to the stairwell at the time of the attack but D.S. stood next to the elevators leading to the ground floor, which were in the middle of the building.)

These are the details of the cases in the possession of the Beth Din of America, and as mentioned, if more information becomes available we will inform you immediately.

After presenting the facts and their details, I will state some of the questions in which *poskim* were divided in their decisions, and maybe in combination, they can be implemented to the different realities which existed in the time of these *poskim*, and are important for these cases. The questions can be divided into two groups, questions of reliability and questions of evidence — meaning that even if the testimony is admissible, is it enough proof that the husband is dead?

Regarding reliability, as follows:

1. The *Shulchan Aruch* (*Even HaEzer* 17:3) writes that those unfit for testimony according to Torah law are unfit to testify to permit a (potential *Agunah*) woman to remarry. The *Pitchei Teshuva* (17:18) writes that there is a dispute regarding a person who is disqualified because he violates ritual law but does not violate monetary law such a theft, who is unfit only because of scriptural law and not because he is suspect to lie for financial gain. Regarding matters for which a woman can testify, such as to permit a woman to remarry, some say he is kosher, and some disagree; see the *Ketzot* and *Netivot* (46:17).

2. The *Otzar Haposkim* (17:36) writes of a dispute concerning one who is a Shabbat desecrator and denies the Torah, with some saying that for the purposes of accepting testimony, he has the status of a non-Jew, and is even worse than one who violated ritual law, but does not violate monetary law such as theft (*Maharam Schick*). And some disagree regarding one who denies the Torah but is well-mannered and avoids theft and lies (*Chavatzelet Hasharon*) (Paragraph 3,4).

3. Regarding a *tinok shenishba,* one who was not raised in an observant home, some say he is invalid, since ultimately he doesn't believe in the prohibition of "not bearing false witness" (*Maharam Schick*), and some disagree, since even though he violates ritual law, he is not wicked to other people (*Beit Yitzchak*). Further study is required, for here it might be beneficial for people if he were to lie and testify that her husband died, and it is only a violation of ritual law, of which he is suspect (Paragraph 4).

4. Regarding one who is suspected of sexual immorality, there is a dispute in the *Pitchei Teshuva* (17:40). The *Aruch Hashulchan* (17:30) rules stringently even regarding one who secludes himself with single women. It is unclear regarding one who is unfamiliar with *yichud* (seclusion) restrictions, or those of hugging and kissing women, as is the practice of secular people, and even some religious ones, in our day.

5. Where the facts can ultimately be determined with certainty, the *poskim* were lenient (Paragraph 24), even if without this factor they are

unfit. Do we rule this way? If the facts can be determined only by means of disinterment from the grave, as in dental records and DNA from bones, is this sufficient?

6. The *Maharam Schick* who is stringent, as stated above, is lenient when there is circumstantial evidence that the woman is no longer presumed to be married (Paragraph 29). Do we rule this way? And is the fact that he is missing and worked in the towers sufficient circumstantial evidence?

7. Regarding accepting testimony of non-Jews, some say (see *Otzar Haposkim* 17:113, 5) that in court related documents they don't deceive and can be believed. Do we rule this way? And can this be said for the medical examiner and other professionals such as in the security company, airlines, telephone, etc.

8. The *Rema* (17:15) ruled that when a search is being conducted for a Jew in the city and there are rumors and then a non-Jew comes along and innocently conveys that the individual has died that we believe him. What is the law when the mayor, or the company he worked for, are searching for bodies and testimony in order to "close the case" for the relatives, and a non-Jew testifies to them? What is the law when testifying to the insurance companies?

9. The *Rema* (ibid.) writes that some say that if we ask a non-Jew and he then relates a story, that it is considered innocent conveyance (*mesiach lefi tumo*). Do we rule this way? What is the law when he had testified to another non-Jew who asked him, and he then went and testified to a Jew? Can this be compared to the case in the *Shulchan Aruch* (ibid.) that everything is established at the beginning, and in a situation of innocently conveying something at the beginning and he is then asked afterwards, that we believe him? Is the request of the mayor and the other agencies we mentioned in which anyone who has information comes forward and testifies as if a non-Jew asked him, even when he only testified to a Jew?

10. What is the law regarding the telephone? Do we rely on voice recognition if the husband says that he is stuck in the building? Do we accept testimonies received by telephone?

Regarding evidence, as follows:

1. Do we rely on DNA as a *siman muvhak* (a clear proof) on the body? Must it be taken from a limb upon which life depends, or is it enough that he was seen in the building, for if he was injured he certainly would have proceeded to a hospital to receive treatment, and he did not appear in any local hospital lists?

2. Are we concerned that his clothes are borrowed, as in the *Shulchan Aruch* (*Even HaEzer* 17:24) regarding the status of a *siman muvhak* on his clothing, or not, as those who argue in the *Pitchei Teshuva* (17:95)? What is the law regarding clothing or other articles which are not ordinarily lent out? Do we accept the view (as cited in the *Pitchei Teshuva*) that here too we are concerned that they may have been borrowed? Are we concerned with lending regarding the Metrocard when it is known that the husband used it every morning? Are we concerned regarding a driver's license, which is not ordinarily lent out, in combination with other identification cards and keys and clothing?

3. When it is clear that he was on an upper floor before the attack, and if he was there at the time of the attack it would not have been possible to escape alive, are we concerned that he may have descended in the meanwhile? Do we rely on the majority, that he did not descend or on the status quo (*chazaka*) that he was there? Can this situation of majority be compared to the majority concerning one who disappeared into a body of water whose other side cannot be seen (*mayim she'ein lahem sof*), in which she should not marry (17:32)?

4. The *poskim* discuss cases of a double majority (*Pitchei Teshuva* 17:132). Do we rely on this opinion, and is there a situation of double majority in these cases?

5. In the *Iggerot Moshe* (*Even HaEzer* 41) he explains that the stringency of a body of water whose other side cannot be seen applies to Torah scholars, even in a situation where if he survived his whereabouts would be known. Since in the first stage, before the lack of knowledge of his whereabouts proves that he died, it is forbidden, in the second stage, where we consider the lack of knowledge of his whereabouts as a proof, they did not permit the forbidden. Based on this, he writes

that in our day since there is postal service and telephone, and there is instant proof, it is permitted. Can we rely on this? Should we rule like the *Imrei Yosher* (2:24) that one must wait 92 days, which in any case she is forbidden according to rabbinic law, and if so, in our day certainly the second majority — that if he were alive then there would be knowledge of his whereabouts — is present within this timeframe and is permitted?

6. One who was on the floor at the time when only a minority was saved, do we rely on the majority who perished and on the presumption that he did not make it? Is this a case of a body of water whose other side cannot be seen, as above?

7. Regarding one who arrived at his office every day, can we rely on a majority that he arrived there on that day — when he told his wife he was going to work, and it is known that he arrived at the train station at a time that if he traveled at that time to his office he would have arrived before the attack? Is this a majority dependent on an action, which is not acceptable (*Bechorot* 20a)? Can we rely on the opinion in the *Ezrat Nashim* (which was written after the Holocaust) (Chapter 6) that we can rely on a majority dependent on an action in the case of a miniscule minority, just like the majority of *shochtim* who are assumed to be experts, as the *Pnei Yehoshua* (*Chullin* 3a) and others rule?

   The *Gaon*, Rabbi Gedalia Dov Schwartz, *shlita*, the Head of our *beit din*, ruled permissively in these cases above, and asked me to send you these questions and ask you to join in his ruling for the sake of saving Jewish women from the chains of *Agunah*.

APPENDIX

REGARDING DNA SOME CONCERNS HAVE ARISEN:

1. Since identifications are made based on thirteen different places in the DNA, maybe it should be considered as thirteen different *simanim beinonim* (mediocre identification signs), which do not combine to be considered a clear proof according to the *Rema* (17:24). Nevertheless, the *Pitchei Teshuva* (17:107) writes that when they are found in one limb they do combine to be considered a clear proof, and we are strict

only when they are dispersed. Therefore, in one cell it is certainly considered one complete *siman muvhak*.

2. The DNA cannot be seen by the eye, and the comparisons are done in special laboratories, by means of cloning and adding chemicals and changing colors by means of special light beams (laser), and the like, and maybe we should not rely on what we can't see with our senses even with a microscope. However, it appears that scientific knowledge is admissible without actually seeing it, at least for testifying on behalf of a woman, for we find that the *Terumat Hadeshen* (2:139) relies on an evaluation which is not as certain as DNA is.

3. If it is established that we can rely on DNA completely, there may be issues of *mamzerut* in that DNA can prove that a child is not from the presumed father. However even if we say thus, it appears that we don't sacrifice one life for another, and the truth should prevail. But the truth of the matter is that DNA proof that the husband of the mother is not the true father is not definitive proof that the child is a *mamzer*, because maybe the true father is a non-Jew, and even if it can be proven from DNA that the suspected adulterous Jew is the true biological father of the child, there is room for discussion if it is possible to attribute the pregnancy to artificial insemination, which according to the *Iggerot Moshe* (*Even HaEzer* 1:10) and others, the child produced from it is not a *mamzer*; this must be studied further.

4. According to the science and statistics of today, which is based on examining nearly one million people in which no matching DNA has been found (except for identical twins), it is clear that DNA is an exceptionally reliable *siman muvhak*. Nevertheless, maybe through further testing and unexpected revelations it will be determined that it is not a *siman muvhak*. However, it appears that since these examinations have withstood tens of years of testing without exception, there is no room within Halakhah to be concerned for any changes in this area of science.

5. Perhaps a mistake occurred in the laboratory and the DNA which was submitted on behalf of the missing person which was taken from the hairbrush or toothbrush, and the like, was switched with that which

was submitted on behalf of a different missing person. Therefore, when matching up the bones which were found at the site of the disaster it may actually belong to someone else, and not to the husband of this woman. However, even though we cannot deny the possibility of human error, nevertheless, based on what we have observed ourselves in the laboratory of the chief medical examiner of the city of New York, the chances of such an error are nearly zero, certainly less than the possibilities of error in the testimonies found in the Talmud and *Shulchan Aruch*. In the two cases in which we relied on DNA in our *beit din*, there is a submission of DNA samples from two different people in each case. Therefore, even if one was switched, something which it seems has never happened in this laboratory, it seems that it is simply not possible that it would have happened twice.

6. Even so, perhaps there is someone in the world with the same DNA and the bone belongs to him. It is accepted in these laboratories that they don't rely on DNA unless the chance that there is someone else in the world with the same DNA is less than one in ten billion (10,000,000,000). And in the above case where there is no other evidence aside from DNA, the chances are less than one in 7,5000,000,000,000,000.

7. Since they only found one small piece of the bone, perhaps it can be suggested that since life is not dependent on such a small fragment, the DNA only proves that the missing individual was in the building, but not that he died. However, in one case the missing person worked above the area of the attack in the North Tower, and anyone who was there was killed. Nevertheless, it may just be that at the time of the attack he was below this floor and was injured and escaped. However, it appears from the form of the bone that it did not come out in a surgical manner but rather as a result of a disaster which broke the bone, and it is not possible to survive without medical treatment, and he did not go to any hospital in the area to receive treatment, according to their lists. Therefore, if this is indeed his bone, as concluded by DNA testing, it is clear that he is no longer living.

RABBI ZALMAN NECHEMIA GOLDBERG

To my friend Rabbi Mordechai Willig, *shlita*

I received your distinguished letter which contained serious questions regarding permitting *Agunot* of the victims of the Twin Towers. I am unworthy of judging such serious matters, therefore anything I write is simply to be considered a general analysis and rabbis should investigate the issues and decide according to law.

The North Tower:

The plane hit the North Tower between the 93rd-98th floors at 08:46, and there are no known survivors from the 92nd floor upwards. I will begin according to what you have written.

1. J.L.: You ruled that if there is proof that the husband had been above the 92nd floor at the time of the attack he has the status of "one who fell into a fiery furnace" which is ruled in the *Even HaEzer* that his wife can remarry. However, the *Chelkat Mechokek* 53 and *Beit Shmuel* 92 write that this only applies to one who fell into a deep furnace and is unable to emerge from it; but if he fell into a routine fire it can be suggested that perhaps he got out of it, and so writes the *Milchemet Mitzva* in the name of the *Rashba*. If so, it can be suggested that maybe our case is similar to a routine fire which one is able to emerge from. However, according to what you wrote, as shown by the pictures of the plane striking the building at all the elevators and stairwells — this case is similar to falling into a "fiery furnace." (Nevertheless, it is unclear from the pictures how it is known that the plane hit all the elevators.)

   Regarding what you wrote further that there were no known survivors from the 92nd floor upwards — it seems from what you wrote in the con

This responsum was originally written in Hebrew and published in Kol Zvi *4 (2002). This translation retains much of the flavor of the original halakhic writing,*

tinuation of paragraph 1, that J.L. worked on the 104th floor. The attack was at 08:46, and he phoned from his cellphone to his home at 08:52, and he told his wife that they are evacuating the building, and it was five minutes following the attack when he spoke to his wife. If so, why was he unable to get out of there? (Also, it is not mentioned in anywhere in your letter when the North Tower collapsed?) It is likely because the elevators and stairwells were destroyed for if they would have remained behind how come we did not hear of any survivors? Therefore there is basis to say that this proves that there was no opportunity to get out of the building by means of the elevators and stairwells.

Many things have been established based on evidence such as these. For example, a majority of animals are kosher, meaning, that we have observed that most slaughtered animals are kosher, and from here we established the rule that it is the nature of animals to be kosher. Therefore, one who drowns in a body of water whose other side cannot be seen and his wife remarries — she need not leave the new husband. The reason for this is because we follow the Torah principle of *rov*, that we accept the majority, and as the *Tosafot* in *Bechorot* 20b wrote, that the vast majority of drowning victims die. At first glance, how was this principle established if not that it is known that the vast majority of drowning victims are not known to survive, for it is difficult to suggest that this was established based on the fact that after some time the sea washed them up and we then observed that the majority died. We are forced to conclude that we establish majorities based on what we see.

Indeed, it makes sense that to establish something like this the matter must occur many times. It has been many times that we have not seen any drowning survivors except for a small minority, and from here we established the rule that the majority of drowning victims die. Therefore, from the many times we *shecht* (slaughter) animals and have seen that the majority of animals are kosher, we are able to establish that most animals are kosher.

In our case, that this is the first occurrence of such a thing, there is no proof that the nature of the fire that was in the Twin Towers was such that all or the majority of people died. However, it can be sug-

gested that based on the fact that we saw that thousands or close to a thousand were in the building and did not survive — it is as if we had seen such a tragedy many times over. We can now establish that the majority, the vast majority or even everyone had died.

One should not suggest that perhaps many survived and ran away, for it is certainly not practical to suggest this. If not, there is the question of where did our Sages establish that in a body of water whose other side cannot be seen, the vast majority die — perhaps many survived and ran away? Rather, it is certainly only a small concern whether or not they ran away. Even though we might assume so in individual cases, we do not suggest such a thing for hundreds. In the lower floors we say that hundreds of people survived and did not run away. Here too we should not be concerned for such a thing — even regarding those who were on the upper floors. Rather, we assume they did not survive — and not that they survived but ran away. Further study is still required.

And now, regarding J.L., his wife testifies that he called his house at 08:52. It is clear that he was there at that time — for a woman is believed in matters relating to *Agunah*. Even though in wartime a woman is not believed to say he died, nevertheless according to the view of "there are those who say," in section 48, that if she says that she buried him she is believed even in a time of war, and the reason is because conjecture is not relevant, — in our case as well, where she says he phoned and spoke with her by telephone conjecture is not relevant. And even according to the first view in which if she said she buried him she is not believed in wartime for even though conjecture is not an issue when she says she buried him, nevertheless we are concerned that she may be lying. As such, see *Beit Shmuel* 146 who quotes from the *Teshuvot Haran* that we are concerned that she is lying, for it is not normal to linger to bury in wartime, rather they flee the war. Therefore in our case there is no reason to suggest that she is lying and that she did not speak with him by telephone, on the contrary, it is routine to do so, and how much more so in our case that there is itemized documentation from the telephone company that he spoke from his telephone at that time.

Therefore it is likely to say that J.L. died, however it is worthwhile to wait up to a year in order to allow any concerns of him having lost his mind, as according to the Rabbi Eliezer of Verdun we can permit a woman even in a case of one who drowned in a body of water whose other side cannot be seen if he lost his mind.

All this is if we are convinced that he spoke on the telephone with his wife from his office on the 104th floor in the North Tower. However, it seems this is not compelling, and perhaps he spoke from a cell-phone from outside the building or from a lower floor. But maybe since he told her that they are evacuating the building this proves that he indeed spoke from his office as that was his intention when he left his home that morning, and maybe he explicitly told her that he reached his office. It is worth asking her if it seemed from the context of the conversation that he was inside.

Nevertheless, it seems that if he was certainly inside and the only doubt is whether he had left — in this case we can apply *kan nimtza kan haya*. You wrote in his letter containing the question: "he called to wake her up, seemingly from his office," and the word "seemingly" implies that the matter is unclear. In the continuation of your letter, in which J.L. told his wife that they are evacuating the building — it appears that he spoke from inside the building. And as mentioned, it is very worthwhile to hear from her in greater detail, as maybe he explicitly told her that he was speaking from his office.

We still must investigate — even if it is known with certainty that he arrived in his office on the 104th floor, but it is possible that he descended from there before the collision by means of the elevators, is it possible to suggest that he did not descend or should we not suggest this? The two sides of the matter depend on the fact that we have an existing presumption (*chazaka kamaysa*) that he was there from the beginning, and since there is no proof that he had left we assume the *chazaka*, presumption, that he was there as in the first place. Or do we say that before we can assume the initial *chazaka*, presumption that he was there and did not descend, do we assume the opposite — that the

presumption is that she is a married woman, which are two presumptions, and therefore suggest that he descended and survived?

Nevertheless, it appears that the existing *chazaka* is preferable over these other *chazakot*. This is especially true since in the current *chazaka* there have been no negative developments and no basis to arouse doubt — which is not the case concerning the presumption of a living person and a married woman — in which a doubt evolved that maybe he remained there and died in the attack. A presumption which has no negative considerations is preferable to a *chazaka* which does have negative considerations, for the slaughtering knife needs to be checked before and after the shechita, and post facto if it was not checked after the shechita, the shechita is kosher. So too, if bones were broken after the shechita and afterwards the knife was checked and found to be unfit the *shechita* is kosher. And the reason that the *shechita* is kosher if the knife was not checked following the *shechita* is because since it was checked before the *shechita* we rely on the *chazaka* from the initial check — that it was not damaged by the skin, and all this is explained in *Yoreh Deah* 18:2: even though the knife was checked before the *shechita* one must go back and check it after the *shechita*, and this applies when [the knife] is before us, but if [the knife] was lost the *shechita* is kosher, since it had been checked initially. And this is so even if many animals were *shechted* one after the other [and we don't say that maybe the knife nicked one of the bones/joints in the first animal and was thereafter rendered unfit or that through *shechting* many animals the knife became unfit, *Shach* 7], and the reason is explained in the *Taz*, 10, that we label the knife with the *chazaka* that it is not unfit. This is problematic though — how can we rely on a presumption to permit, as in opposition to this, there is the presumption of a forbidden animal? And any uncertainties in *shechita* are forbidden as we assume that a live animal is presumed to be forbidden. Therefore, we are forced to say that any presumption regarding the status of the knife is acted upon and we even permit the animals which were *shechted*, and we don't say to apply the *chazaka* of forbidden animals against the *chazaka* of the knife. As long as there is no reason to doubt

— for there is no reason to doubt the *chazaka* of the knife — we apply the *chazaka* and permit the animal which has a *chezkat issur*.

And so we find in a *mikva* which had been measured and found to contain 40 *se'ah* [approximately 200 gallons of rain water] and a person then went and immersed in it. It is certain that he is purified from his impurity even if he did not go back and re-measure the *mikva* after having emerged from it. If it is later measured and found to be lacking [the required amount of water] and it is not known when the *mikva* became unfit — the law is that he is impure because of two negative considerations: the first because there was a *chazaka* that he was impure and the second is the current *chazaka* before us, namely, that the *mikva* is unfit. Even if the *mikva* was not found to be lacking water we say that perhaps it was lacking and there is now a *chazaka* of impurity against the *chazaka* of the mikva, and we are forced to say that in any situation where there is no reason to doubt we follow the *chazaka* which has not changed, even when there is an opposing *chazaka*.

And the author of the *Shav Shemateta* wrote (2:4): "And regarding that which we accept that whoever is the cause of doubt is required to bring proof. We assume that the donkey has a *chazaka* that it is alive and now it died. How do we extract money by means of a *chazaka* since we have established that in financial matters we don't follow rov? How much more so regarding a *chazaka*, etc.! However, in my humble opinion it seems that in the case of a lone *chazaka* without a declaration of certainty we cannot extract money, etc. Rather, the reason is that whoever is the cause of doubt is responsible to provide the proof and we extract money even in a case of "maybe" (*shema*), like in the case of the needle. It seems that the reason for this matter — and that in a situation in where there is certainly no negative consideration and there is no room for doubt — we certainly don't follow the doubt. This is like in the case of the butcher who purchased an animal which was then lost and the seller is suing for the money — we certainly don't accept his claim to suggest that maybe the animal was *treifah* and therefore the sale is invalid, for we don't follow rov in financial matters. Since there is no room for negative considerations or doubts, we

certainly don't accept the doubt. And that which we don't follow rov in financial matters is when the doubt is before us and there is what to doubt.

Therefore it appears that whenever there is no reason to doubt we follow the *chazaka* — even when there are two opposing *chazakot*. We can bring a proof for this from one who sends a *get* from overseas, which was given on the *chazaka* that he is alive, for we presume that the husband is alive even when permitting his wife to others by means of a *get*. We are not concerned that he has died and that she requires chalitza. And one who leaves fruit as a resource for her to take from — she continues to separate tithes on the assumption that they are still in existence. We are confident to permit the prohibition of tevel — which the fruits are generally presumed to be. We are forced to say that it is for this reason that there is no reason to have doubts.

Even in our case we have no reason to doubt that maybe he left his office a short while after having arrived in the morning and as long as there is no reason to have such a concern we continue to assume the status quo even against the *chazaka* of a married woman and the chazaka that her husband is alive.

However, it is worth examining our case to that of *Noda Beyehuda*, Even HaEzer 46 regarding one who was crucified on a tree. He discusses whether we should be concerned that maybe the crucifier took him down before he had died, and crucified another person in his place. The *Noda Beyehuda* discusses this from the perspective of the Talmud in *Pesachim* where a grave was lost and then a grave was found — we say that it is the grave which had been lost. And the *Noda Beyehuda* writes there that they said that even when mauled and crucified we don't testify on him. However, this is when they went away and did not return, but if they returned after several days and it is seen that he is still crucified even if he is unrecognizable, we say that this is the one who was crucified. See there where he enters into an extensive discussion regarding the status of a grave that was lost and then a grave was found — whether or not we are concerned that a different grave may have been found. Nevertheless, his words pose a difficulty, for even if

he was seen crucified and they went away, we permit [his wife] based on the *chazaka* that he remained crucified.

And it seems that we should differentiate between the case of the *Noda Beyehuda* and our case in two ways:

A. It is possible that he remained alive for it is not convincing that one who is crucified would have necessarily died after a few days. Therefore, only if he was seen crucified and then after several days a crucified man was seen dead — then we permit his wife. This is not so in our case, in which it can be said that it is a *chazaka* that he remained in this place, and if afterwards the place was turned into a fiery furnace it is likely that he was burned there; and

B. It is possible to suggest that a crucified person tried to find any pretext possible in order to save himself, and this is why the matter is considered an uncertainty — which is not so in our case in which there is no reason that he would have left his office a short while after having arrived.

See in detail the *Noda Beyehuda* there, towards the end of his responsum, writes that the *poskim* quote from the *Yerushalmi* in *Yevamot* that we don't testify regarding a crucified person — for perhaps a noblewoman came and redeemed him. And the *Noda Beyehuda* writes that we are concerned for this only when they did not return or it had been seen after several days that the crucified person died. But if they came back we are not worried that that another person had been found. Nevertheless, for our purposes, it is proven that if it were not for the suspicion that perhaps a noblewoman came and redeemed him, we would have permitted her, since it is likely that he remained crucified and died. From here there is support for our argument that we are not concerned that maybe the circumstances had changed. Buy maybe this can be rebuffed, for over there in the case of crucifixion he was probably crucified by government decree — and they would not have given any clemency to take him down. Therefore we need to entertain the

possibility of the noblewoman since without this, it is unlikely that the government would have commuted him (i.e. let him down). In any case, it seems that in any situation where there is no reason to suggest any doubts we don't say that the circumstances have changed, even if it is against the *chazaka* — just like we rely on this when it is in conflict with a *rov*.

2. W.G.: A single witness testified that he called home at 08:50 on his private line. It seems that you mean from the private line installed in his office, and not from a cellphone, and this was after the attack. This is adequate proof that he was there at the time of the attack.

3. K.W.: Witnesses testify that they found his body and he was recognized based on dental records. This seems to be accepted as a *siman muvhak* and it is accepted in Israel to identify soldiers who were killed in this manner. However, it is worth investigating this manner one more time with the military *chevra kadisha*, since, unfortunately, these things are routine for them.

4. G.H.: It is certified by the airline company that he boarded the plane that exploded in the Twin Towers. However, it appears that the plane landed somewhere before this, and if so, we are redirected to what we wrote in #1, in that as long as there is no reason to suspect that he disembarked from the plane, we should not fabricate such doubts. But it is worthwhile investigating if there was indeed no reason why he might have gotten off the plane, as for example, to pursue some business interests, and the like.* They also cited the speculation that G.H. is the one who was killed by the terrorists on the plane, and it is worth investigating on what basis this has been suggested.

5. M.G.: Two bones were found, one from the shoulder and one from the rib, and they were identified as being his through DNA. We must say that this examination is considered an extremely reliable *siman*

* [Editor's Note: In his response to Rabbi Zalman Nechemia Goldberg, Rabbi Mordechai Willig clarifies that the airplane did not land at another location after taking off in Boston, but that a passenger had disembarked before the plane took off.]

muvhak. Even if you wanted to suggest that the discovery of the bones on its own is not a proof that he died since the bones could be from him yet it is possible that he remained alive — nevertheless, it is a clear proof when such things have been found in a place which had been a fiery furnace.

The South Tower:

The plane struck the South Tower between the 84th-87th floors at 09:02 and the building collapsed at 09:58.

1. J.S.: The medical examiner identified his body based on the pants that he was wearing and in his pocket was a wallet with his personal credit cards and drivers license. Such things are not ordinarily lent out, comparable to examples of purses in the time of the Talmud, at least four other personal identifying signs, as well as the keys to his house and car.
2. T.B.: Worked on the 85th floor and at 08:54 received a telephone call. An observant Jew testified that at 09:55 he was still in his office. A piece of the thigh-bone (a limb on which life depends), was identified as being his by means of a DNA examination from the father and mother of T.B. in which the chances that there is another one like this is one in ten billion. A non-observant Jew testified that he spoke with T.B. by telephone at 09:55.
3. D.S.: A non-observant Jewish woman testified that she descended by elevator, and less than a minute after she arrived at the ground floor the attack took place. At the time she had entered the elevator, she reported that D.S. spoke with a policeman on the 78th floor. However, tens of individuals who were standing by the stairwell on the 78th floor at the time of the attack survived, but D.S. was standing by the elevators and the elevators were entirely destroyed by the attack.

All this I had first written in a general manner, and now I will write more on these matters.

And here I will add a comment on that which I wrote that we rely on an existing presumption (*chazaka kamaysa*) where no doubts have arisen — as in the

case of one who *shechted* with a knife which was checked and then lost and one who immersed in a *mikva* which had 40 *se'ah* beforehand but was not measure after the immersion. We will examine this based on what is written in *Shu"t Rabbi Akiva Eiger 7*, regarding the *chazaka* of *Rava* — that a minor that becomes of age is presumed to have physically matured, however we don't rely on this for the purposes of *chalitza*. Rabbi Akiva Eiger writes there that this is only regarding *chalitza* since the woman is forbidden based on the *chazaka* that she requires *Yibum*, but regarding discharging others in the *mitzva* of *Kiddush* — in which there is no *chazaka* of anything forbidden — we can indeed rely on the *chazaka* of *Rava*. And according to our approach — if we were to rely on the *chazaka* of *Rava* in a situation where there is no *chazaka* of anything forbidden — the same applies even where there is a *chazaka* of something forbidden. Why should it be any different from the case of one who immerses in a *mikva* or *shechted* with a knife which was check and the lost? As mentioned above. Perhaps we should differentiate between an existing *chazaka* in which there is no cause for concern (that perhaps circumstances have changed) and a child who reached the age of maturity. For at that point, we have to judge the matter based on many considerations; and therefore we differentiate between discharging the *mitzva* of *Kiddush* and the issue of *chalitza*. Indeed, from that which we cited from the *Shav Shemateta* that one who purchases an animal which had died still has to pay as if it was kosher, see there. Therefore in our case we can say *kan nimtza kan haya*, since we know that he was here there is no reason to suggest that he left — like the *Ramban* wrote in his *Milchemet Mitzvah* regarding the concern for two individuals with the name Yitzchak.

In the case of *Agunot* in which there are identifying signs it appears that they can be permitted even without combining the arguments presented earlier — whether we should be concerned that they left the building before the attack or perhaps we can assume that they were there at the time of the event. First we will discuss the status of these and then we will discuss those things in which they all have in common.

It appears that K.W.'s wife should be permitted to remarry based on the identification of her husband's body by means of dental records which is accepted to be an extremely reliable *siman muvhak*. And since two witnesses, one of whom

is an observant Jew, testified that they saw the deceased's dental photos and they were compared to that which was in his dentist's possession and were found to be matching — this is to be considered a clear piece of evidence.

Even though the actual act was not seen as to how they photographed the teeth of the deceased, nevertheless, if it is clear from the photo that it is a photo of the deceased, it is clear to us that a person whose teeth photos are as these is dead. If it is not recognizable that these are the photos of the teeth of the deceased, nevertheless, there is no reason to be concerned that maybe they went to a dentist and made copies from teeth photos which were done during his lifetime, for certainly the doctor would prevent this from happening because if such a thing was done they would be severely penalized. The main thing is that since the body of the deceased was found and it is possible to take additional photos, one can certainly rely on the fact that a professional is not going to risk ruining his name, as it is explained in *Yoreh Deah* 66, where it states that even a non-Jew who says that the eggs he is selling are from such-and-such kosher species — he is believed. The *Shach* to *Yoreh Deah* 66:3 wrote that the reason is because he fears that one may try to brings eggs from the said bird and if they don't match he will be caught, therefore it is presumed that he wouldn't lie. See also the novella of Rabbi Akiva Eiger to *Yoreh Deah* 302:1 where he explains the ruling of the *Rema* that it is permitted to give cannabis threads to a non-Jewish tailor for him to make a wool garment, and we aren't concerned that he will switch them for linen threads (which are easier to sew with), because we can rely on the fact that linen threads extinguish quickly when lit, but cannabis threads catch fire and burn. This is the Halakhah even though some choose to be strict in this regard. And Rabbi Akiva Eiger writes that even though that this sign is not a *siman muvhak* and we don't rely on this to permit if he had sewed threads in a wool garment, nevertheless the non-Jewish tailor fears from a possible examination even though it is not a *siman muvhak*.

It appears that our case is more lenient since he is appointed and has the status of a civil authority as we will write further.

So too, a doctor has no reason to lie and say that the photographs of the deceased matches the photo taken when he was alive for this photograph is

certainly a match from one of the victims. What does he gain to lie and photograph a living person and not the dead one?

Look in the *Otzar Haposkim* Vol. 3 p.22 (3:28) where is it quoted in the name of many modern day authorities that we can rely on the testimony of a non-observant witness in a case where there is already a basis on which to believe his testimony (*raglayim ledavar*). In our case, there is certainly a basis to believe the testimony because he definitely went to the Twin Towers and based on the fact that he sent an email at 07:30 and that his wedding ring was found (however you wrote that it was not clear how they knew it was his ring). If his wife recognized it upon sight this alone is enough reason to permit her because a wedding ring is certainly something which is not lent to others. This is true even though it is not identical to the case in the Talmud, which says that a ring is not lent out — because there it is discussing a ring used as stamp in which there is concern that it might be used for forgery. Nevertheless, a wedding ring is something not lent out. With all these combinations it is certainly considered a matter which has a basis upon which to believe the testimony.

Look in the *Otzar Haposkim* Vol. 3 p.23a, s.v. "*Ach*" where it is cited in the name of the *Tashbetz* and it seems that our case is similar to the assessment written there by the *Tashbetz*.

It is also agreed upon by the modern day authorities that we can rely on civil authority, see *Otzar Haposkim* (3:42:3) from the sefer *Otzerot Yosef* by Rabbi Yosef Engel. And now that the documents which discuss the photographs, which also include the photographs attached, seems to have the status of civil authority. See at length in *Shu"t Chatam Sofer, Even HaEzer* 43-44 who concludes that we can rely on civil authority, even when they are not speaking with motive (*lefi tumo*). The *Chatam Sofer* suggests that our case may be a situation of *lefi tumo*, since the medical examiner wrote it for his own purposes. See also the *Chatam Sofer 67* s.v. *V'hinei*.

From all this alone it appears obvious that the wife of W.G. should be permitted to marry.

With regard to M.G.'s wife let us begin with the fact that two bones from her husband were identified, one from the shoulder and one from the rib through DNA examination. In my humble opinion it is obvious to me that this examination is considered a *siman muvhak*. I saw that one rabbi wrote that this is no proof because maybe there are many others with the same DNA, and that which the experts say that such a possibility is less that 1 in 7,500,000,000,000,000. The rabbi argues that the experts did not check this many people as this number is higher than the amount of people in the world since the beginning of time and rather, they only examine about a million people and from here it was determined that the results are the same for all other who were not checked.

In my humble opinion we can we rely on this. We rely on visual identification based on the premise that people's faces do not resemble each other. One can ask — from where do we know that the faces of people are different? Did someone travel the world and check every human being and see that no person resembles the other? Rather, we are forced to say that it is based on the fact that we have seen so many different people and anyone we see does not resemble anyone else. Therefore, we must conclude that this is the way the Holy One Blessed be He created the world — that people's faces would be different from one another. Furthermore, it appears that the truth of the matter is that nothing in the world resembles anything else because even objects can be recognized and identified visually. As the Halakhah states — we can return a lost object to a scholar if he says he recognizes it — we are not worried that there might be another object similar to this one (only regarding a new item which one is not familiar with are we worried that a mistake can be made). According to this it seems that the Talmud specifically mentions this amazing fact specifically with regards to people, as it says in *Sanhedrin* 37a: "therefore a man is unique," etc., which relates the greatness of the Holy One Blessed Be He. When a person mints coins they all look the same but when the King of kings "mints" people in the same mold as the first man — no one resembles the other. But other things which were not done in the same mold obviously won't resemble one another. As such, we must say that the rule that we return a lost object belonging to a scholar based on his visual identification of it is dealing with items which were not individually created but were mass produced, or they are items which were made in a single mold but through wear and tear it

changed somewhat, and with this there is visual identification. According to this we should say that this is the reason we don't rely on visual identification for unfamiliar items — because it is considered to have been a product of a mold and not different from other such items. Although this appears to be the reason, the Talmud suggests a different reason — that the eye is unfamiliar with it, and maybe the intention is that it was used slightly, and this is what causes it to be different than other objects. It is only because the eye is unfamiliar with it that we don't return such a lost object. The words of Rabbi Yisrael Salanter are well known regarding the verse "Water wears away stone," for the truth is that every drop makes a mark on the stone. For if one drop of water which falls onto stone doesn't make a mark at all then how is it possible that water can make a hole in a rock? Even a thousand years worth of rain wouldn't make a hole if individual drops are unable to do so. Even if one doubles it, it is nothing. In hundreds of thousands it is nothing. Therefore, even a new item which was only used a little is recognizable if there is some familiarity.

Nevertheless, even the issue of DNA is one of the greatnesses of the Holy One Blessed Be He, for even if man was created as an individual, i.e. Adam, nevertheless, every person has their own DNA which is different from anyone else.

Everything which we know regarding a majority which is not before us (*ruba d'lita Kaman*), such as the principle that most animals are presumed to be kosher — from where do we know that most animals are kosher? Did the sages check over a period of thousands of years and determine that most are kosher? Rather, they examined what was available to them — that most animals were found to be kosher following the *shechita* and from here we can derive that the nature of things is that the Holy One Blessed Be He created healthy animals, and if there are non-kosher animals it is a coincidence and not the norm. So too, most women get pregnant and give birth. Did the sages examine the entire world to see that most women can get pregnant? Rather, they decide based on what they saw. So too, witnesses who testify on the validity of a signature — how do they know there is no one else in the world who signs like this? How much more so if he has intention to forge? So too, we rely on similarities in signatures. However the *Ketzot Hachoshen* in Chapter 46 cites opinions that there

are no similarities in signatures rather, as "signs," and there is some question whether signs are based on biblical law.

In my humble opinion, it appears that this is the difference between signs (*simanim*) and visual identification (*teviat ayin*). Signs are, for example, when one has a hole in his tooth or a wound on his head or a hole in a *get* — these are signs. For example, a situation where no one knew that a hole of a specific size and this shape was in the *get* — only that there was a hole. So too, when it is known that a certain person has a wound on his head — the exact size and shape of the wound isn't known. Only with specific visual familiarity is such a thing known. Bear in mind that there are those who know how to draw the face of another person and everyone who sees this picture will recognize him. Moreover, even if the picture is changed somewhat, like a cartoon caricature, he would still be recognized. It is clear that such a person has talent to even draw a nose with amazing clarity. The truth is that most people know the length of another person's nose and the distance between the eye and the nose, etc., but they are still unable to draw it on paper — but in their head, they can visualize it well and this is the definition of visual recognition.

Whatever the case, DNA is like the face of a person that the Holy One Blessed Be He made in such a way that there is nothing resembling it. So too, with DNA and fingerprints, and dental photographs, and even the photo of a person in which the *poskim* wrote that that we rely on them, as concluded in the *Be'er Yitzchak*. There is no need to elaborate on that which has already been elaborated upon. Based on all this it appears that we can rely on DNA to permit an *Agunah*.

In any event it appears that your *beit din* can permit the wife of M.G.

The wife of J.S.: He was in the South Tower and his body was recognized based on the pants he was wearing and in his pocket was a wallet with his personal credit cards, drivers' license (which people don't lend out), and at least four other personal identification items, as well as the key to his house and car.

The *Beit Shmuel* in 17:69 concludes that items which are not lent out are not subject to any concern that they were lent out. Even regarding items which people do lend out, the opinion of most later authorities is to rule that we are not concerned that they were lent out — and this is the ruling of the *Biur HaGra*. In any event, with other combining factors we rule to permit, see the *Pitchei Teshuva* 17:95. Therefore, certainly in a case in which all the items mentioned are items which are not lent out — certainly in our day and age of affluence, when pants are not lent out, and how much more so regarding things which people are scared to lend out for fear of theft. There is also no concern that the pants were stolen on the way to work. If so it would have been known that there is a naked man wandering the street. If the pants were stolen from his home, I assume the woman did not mention anything of robbery in their house.

Based on all this it appears that your *beit din* can permit the wife of J.S.

The wife of T.B.: They identified a large piece of the thigh and they identified him based on DNA, and we already wrote that one can rely on this. Even though the match was made based on DNA taken from the father and mother of T.B., but here too it is no worse than any other *siman muvhak* in which we wrote that it is one in ten billion which could be similar — so that is a *siman muvhak*, as the *poskim* write that even one in a thousand is considered a *siman muvhak*. This is also related to that which we wrote above that we should not contemplate that maybe he escaped without his bone. Therefore your *beit din* can permit the wife of T.B.

We are left with four *Agunot* in which no physical evidence was found. They are: 1. J.L. 2. W.G. 3. G.H. 4. D.S. and in all of these cases, there is no testimony or signs that they were truly in the building when it was destroyed. We simply know that they were there previously and the only question is if they left beforehand.

Now G.H. boarded flight #11, which hit the North Tower. According to logic it seems that everyone who was in the plane that hit the building was certainly killed whether from the collision or from the explosions and fire. Even without the collision or the explosion, falling from that height alone would be cause for

death. Even if we were to say that each of these possibilities are merely different variations of *rov* — there are three types of *rov* and we customarily permit with only two majorities, how much more so with three.

Based on this it appears that we should permit the woman but the possibility that he got off the plane [on the way] was mentioned — but you wrote that it is clear from the airline company that he did not get off. Now we must discuss whether the company has the status of a civil authority. Furthermore, it is in the company's interest that he would not have been on the plane so that they would not have to pay the family any compensation. I don't know if there is any loss to the company for them to say that he was not on the plane. In any event, there is no reason that they would lie and say that he was there and died, this is especially true regarding something like this which can eventually be determined. Therefore, if the company is certain that G.H. did not get off the plane it appears to me that his wife should be permitted to remarry. However, it is preferable to ask the company that on what basis do they insist that he did not disembark the plane and how they know such a thing. Even if the company is unable to produce explicit proof we would have to discuss whether there is reason to suggest that he disembarked the plane if there was no reason for doing so, like we know that he traveled to a particular place for a certain purpose with no reason to disembark — in this situation we must discuss whether we should worry that he may have gotten off the plane.

Regarding the other three *Agunot* there are basically the same doubts. And even though we are sure that they were there in that place on that day, is there reason to be concerned that they left the building before the attack and survived?

I saw in an article written by Rabbi Gedalia Dov Schwartz, *shlita*, who cites Rabbi Yehoshua Menachem Ehrenberg, who compared it to that which the *Mabit* wrote regarding one who went out on the road and was found dead on that road. It is like our case — that people who went to work were in the building and we should assume that the dead are those who were in the building. In my opinion we can differentiate this both for leniency and for stringency. In the case of the *Mabit* a person went along a road and was found dead. The *Mabit* offered a novelty — that we presume that the dead person is the one

who had went on the highway. But in our case, even though it is known that a person went out — many dead bodies were found and there are certainly other dead people besides him. If so what is the proof from the dead that were found

that one of them was the individual in question — even though he is known to have gone there. The simple fact that dead people were found does not prove that one of them is our person in question who was killed. On the other hand, even according to those who disagree with the *Mabit*, and there are many, it is specifically regarding the point that when he went on the road — but there is no proof from the fact that a dead person was found that it is the person who was known to have gone on the road. It is possible that another person also went out on this road and it was he who was killed and not the first person. But in our case it is sufficient for us to simply decide that the person was indeed there when the building collapsed. With this we can say that since he went there — there is no reason to suggest that he turned back or had left — it was his intention to remain there. Furthermore we can apply *kan nimtza kan haya* and that he did not leave from there. I have also written at length whether we should rely on the *chazaka kamaysa* that he remained in that place. I will send his honor what I wrote with the intention that you will examine it and show it to other rabbis. I would enjoy hearing their opinion.

Many years ago I wrote on the subject of *Agunot* and after quite some time the paper was published in *Techumin* Volume 12. There is also a responsum there from Rabbi Avraham Shapira, the former Ashkenazi Chief Rabbi of Israel. It seems from what I concluded there based on the responsa of the *Chatam Sofer*, *Even HaEzer* 65, that once twelve months have passed and he is unheard from it is a *rov* that he has died. Therefore, regarding that which we have written here that there is a *chazaka* that he remained in the place and that he had arrived at the Twin Towers — even if we were to suggest that this is doubtful, nevertheless there is room to permit the *Agunah* based on what I wrote in the *responsa*. Since people definitely died, he loses the *chazaka* of being alive and we can permit based on the consideration of *rov* — that he did not return and we are sure that he died. However, I request that you show what I have written to three expert rabbis and if they likewise agree, I will join with those who rule to permit.

With all three *Agunot* there is testimony that their husbands' were in the building. Regarding J.L.: there is testimony that he was in the building at the time of the attack and the only doubt is whether he survived. Regarding W.G. there is acceptable testimony that he was in the building twenty-two minutes before the attack. There is also testimony from a non-observant Jew that he was in the building at 08:50 which was after the attack and this testimony is considered *mesiach lefi tumo*, for he merely testifies that he telephoned him at 08:50 but he is not testifying that he died. It is simply our estimation that after it had occurred he died and it is possible that this is considered *lefi tumo*, because he is merely trying to describe the situation which was and he wasn't coming to testify that anyone had died.

And so it appears regarding D.S. who, according to several accounts, was in the building at that time, and this is likely a case of *mesiach lefi tumo*. See the *Otzar Haposkim* Volume 3 p.93:3 where he cites from the *Mabit* regarding a non-Jew who says that Reuven and a partner sailed with him on a ship. The ship sank and everyone on board drowned and only he survived and he also saw Reuven and his partner dead on the seashore. He writes that these are simply introductory words he used to introduce the topic — that they boarded the boat together and everyone drowned. This is simply a part of the story he was telling, namely, that no one survived from the ship other than him which is considered *mesiach lefi tumo* even according to the Ran. Even though he brings from the *Massat Moshe*, vol. 2, who hesitates regarding this that perhaps the intention of the non-Jew was to testify and not merely to relate a story which is why he may be relating all the details. Nevertheless he concludes that he does not argue with the *Mabit* and this should be combined as a consideration. In our case where he isn't coming to report about the death of D.S., but rather simply to convey the order of events and why he would not have survived — therefore we can say that the report that he was in the building at the time of the attack is considered a report *lefi tumo* and not official testimony. The non-Jew truly believed that he was still in the building — and so the story was primarily intended to convey what took place. Nevertheless, we must investigate if all these things were reported by themselves or they were given as a response to a question asked by the woman or the *beit din*.

The conclusion of the matter, in my humble opinion, is that these five *Agunot* should be permitted by your *beit din* and the other three *Agunot* also have basis on which to be permitted. However, all this is on condition that your *beit din* will agree and permit these women. If so, I will also join them to permit these women after twelve months have passed.

Your Friend,
Zalman Nechemia Goldberg

RABBI MORDECHAI WILLIG

To the honorable Rabbi Zalman Nechemia Goldberg, shlita

I hereby acknowledge receipt of your response and would like to comment as follows:

1. You wrote that I did not elaborate on how it was known from the pictures that the plane hit all the elevators. According to the pictures, the elevators were in the center of the building and the plane hit in the center. Based on the width of the plane it appears that the plane would have struck them all, as I wrote regarding the stairwells.
2. The North Tower collapsed at 10:28. I didn't mention this because I felt that it wasn't relevant because if there was no chance for those who were above the 92nd floor to survive — they all would be categorized as those who fell into a fiery furnace.
3. In the case of G.H. my intention was that perhaps he got off the plane before the flight ever took off from Boston. There was no stop along the way and hence the there is little chance that he had disembarked.
4. In the case of T.B., they evacuated the second building because of the first attack, as you commented.
5. Since I wrote my question, the DNA of J.L. was found and it matched the DNA of his parents. The chance that there is another person like this is less than one in thirty million. Therefore, according to your opinion, this is a *siman muvhak*, and therefore his widow can be permitted to remarry.
6. You wrote: "regarding the three other *Agunot* (W.G., J.L., and D.S.) there is basically the same uncertainty — whether we should worry that maybe they left the building even though we know they had arrived there." It appears that your assumption that they were in their

This responsum was originally written in Hebrew and published in Kol Zvi *4 (2002). This translation retains much of the flavor of the original halakhic writing.*

offices on that morning but perhaps they left before the attack, and regarding this we must discuss the original status quo (*chazaka kamaysa*). Indeed, there is a similar case which *poskim* have dealt with (including Rabbi Eliyahu Levine who met with you), but afterwards they found DNA and Rabbi Yosef Shalom Elyashiv, *shlita*, relied on this and did not decide your question. However, it appears that our three cases are not dependent on this question. In the case of W.G., they called his private line before and after the attack and it is clear that he did not leave before the attack. We wrote that we are certain he was killed — but you were hesitant, as perhaps the elevators were not destroyed. If so, the case can be analyzed as you have done, but this is a different question.

In the case of J.L., had it not been for the DNA, if it is clear that the two telephone calls to his wife (08:20 and 08:52) were from his office, then the case is similar to the case above. If it is not clear, it appears that there is no concrete proof that he was there in the first place.

In the case of D.S., it is known for sure that he was in his office at the time of the attack in the North Tower and that he descended to the 78th floor. The *chazaka* that he was there is certainly subject to change. Furthermore, even if he had been on the 78th floor at the time of the second attack it is still possible that he survived. In my humble opinion this is the most difficult of all the cases.

7. In the case of the pants of K.W., we relied on the assumption that no one lends them out in order not to be left naked. For the sake of truth, it is not clear they were his pants. Therefore, the primary proof is his wallet and its contents, which people do not lend out.

8. You discussed if the witness who testified that he called W.G. on his private line at 08:50 had the status of *mesiach lefi tumo*. In my question I wrote that he testified in writing, but I did not explain. This testimony was given to the insurance companies without any connection to the *beit din*. Furthermore, when the administrator of the *beit din*, Rabbi Yona Reiss, called him, he got angry thinking that we were trying to fool the insurance company and hung up the phone.

> However, in the interim, he did manage to say that he called W.G. on his private line at 08:50. It appears that this is certainly *mesiach lefi tumo.*

I once again thank you and look forward to your response.

With esteem,
Mordechai Willig

RABBI ZALMAN NECHEMIA GOLDBERG

To my friend Rabbi Mordechai Willig, *shlita*

I was delighted to read your most recent letter which contained the good news that J.L. was identified by means of a DNA examination from his parents and it appears that even this examinations can be relied upon to permit the *Agunah*. Regarding what you wrote that it is inconceivable that G.H. disembarked the plane in the middle of the trip and that if he entered the plane it appears to me that we can rely on the company, which says that he did not disembark. I feel that this is a case of *mesiach l'fi tumo* since they probably conveyed this information not to a woman or to any Jews who had asked. Even if it was as the response to a question it still can be classified that the airline has the status of civil authority. This is especially true since it is in the airline's interest that G.H. would not have been among the dead for why should they want to be obligated themselves in compensation payments. There is certainly no room to suggest that the airline would lie that he got on the plane. Regarding W.G. you correctly pointed out that there is proof that he was in the building at the time of the attack.

Based on my conclusions there is basis to permit all seven *agunot*, and they are:

1. The wife of J.L.
2. The wife of W.G.
3. The wife of K.W.
4. The wife of G.H.
5. The wife of M.G.
6. The wife of J.S.
7. The wife of T.B.

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We are left with only one *Agunah*, the wife of D.S. We have not written adequately to certify her, as you wrote, that we have a doubt that maybe he survived the attack by leaving the place. However, in the *Otzar Haposkim*, vol. 7, page 230 s.v. "*v'yesh shekatvu*" it is written: "There are those who wrote to permit in the first instance, when his memory is forgotten a long time after the war, without any testimony as to his death. In the responsa of Rabbi Simcha Zelig of Brisk in "*Devarim Achadim*" paragraph 43, by Rabbi Eliyahu Kletzkin, rabbi of Lublin: "There are two majorities for most who go to war and are lost and if the civil authority does not have any information on him it is because he was killed. So too, most who go out to war and do not write home. This is especially true in our case in which they lived peacefully and even wrote her letters and did not respond regarding the child which was born. There is no doubt that most people in such cases would have died — even more than a body of water whose other side cannot be seen that if she went ahead and married — she need not leave him. We should rely on the Rabbi Eliezer of Verdun that in the event that there is a *rov* that die like in a body of water whose other side cannot be seen — if much time had passed we rely on it and allow her to marry. And in combination of the views of the modern day authorities that in our day it is even stronger — in which the *Shevut Yakov* cited in 260:28 that an emergency situation is considered post facto. And at the end of his responsa he wrote that even according to the *Ein Yitzchak* — that we need two majorities at once as it is explained in sub-chapter 260:3 — we can say that placing him in the battlefield is a *rov* that he died. And the fact that he did not write to his wife is also a basis to say there is a *rov* that he died. As such, we have two majorities converging at once — and the author agreed with him" [namely, Rabbi Eliyahu Kletzkin]. In our case it is worthwhile investigating how many people survived from the second building — if it was the majority or the minority — even though Rabbi Eliyahu Kletzkin appears to admit only those who were there and not known to have survived. It is difficult how there would be a majority that died if everyone had survived.

See the *Otzar Haposkim* there, where further evidence is cited from the *sefer Minchat Yechiel* who disagrees and holds that maybe he was taken captive. If so, it is possible that our case is permitted, even according to the view of the *Minchat Yechiel*, and others. Now we can combine what I wrote to you, together

with the arguments of others, a copy of which I sent to you, in order to permit these women to remarry.

Therefore, I suggest that if you believe that there is room to permit her, you should combine two other expert rabbis and if in their view we can rely to permit her, you should do according to their words.

I will sign with blessings that you be inscribed and sealed for a good year and may we not hear of any additional bad things. May the year and its curses come to a conclusion and let the New Year and its blessings begin.

Zalman Nechemia Goldberg

Responsum Concerning The Terror Attacks on the World Trade Center: The Case of J.L. — and His Wife

RABBI OVADIAH YOSEF

This article is dedicated to the memory of the precious gentleman, whose fear of Heaven is his treasure, his utterances are sweet and he is all delight, who attains merits for the masses with all his strength and vigor, Rabbi Menashe Yonah *z"l*, in that I know him well for over fifty years that he established the yoke of Torah amongst the members of his community. He was wonderful in counsel and great in wisdom. His children should be blessed, all are beloved, all are flawless, all *talmidei hakhamim*, attainers of merit for the masses. May his soul be bound in the bounds of life.

Question:

I was asked by the great rabbis of America about the igun of a woman... who appeared before the court on Sunday, 4 Heshvan, 5762 and delivered the following address: "My husband...worked in the Twin Towers, on the 104th floor of the North Tower... [in a company] whose offices were on the 101st through the 105th floors of the North Tower. (It is worth noting that all of the above-mentioned company's employees who were present that day in their offices, 650 employees in total, were all proclaimed "missing" from the time the plane was crashed into the Twin Towers by the terrorists on Tuesday, 23 Elul 5761 (September 11th, 2001). It seems that all of them were killed in the enormous explosion which occurred and with the collapsing of the buildings.) My husband called me, it would appear, from his office at 08:20 to wake me up. After the place crash that occurred at 08:46, I called him on his cell-phone,

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and when he didn't answer, I left him a message. At 08:52 he called me from his cell-phone, and told me that they were evacuating the building. From that time onwards I have not heard from him." (We have the print out of his phone log from that time, and it shows that he did, in truth, call their home phone at that time.)

A further proof for the presence of her husband in his office is that it was made known to us that her husband received an email at 08:17 and sent a response at 08:21, and the documentation demonstrates that the email was sent to him when he was in his office and the answer was sent from there as well.

On Tuesday, 27 *Heshvan* of this year, the woman, along with his parents, appeared another time, and all of them testified that their marriage was a happy one. (The woman — she and her husband are both of Judeo-Arabic descent — requested specifically that the question be brought to me, and she requests that I free her from her *igun*.) The architect explained that since the airplane hit the 92nd floor, there is no doubt that everyone who was on the floors above this one was killed by the great flames that burned around them. Even before they would have been burnt to death, they would have been unable to breath due to the extreme heat choking them. Also, due to the thick smoke which surrounded them, they would have been unable to see anything to try to save their lives. Also, the tremendous impact of the crash caused the opening of doors to be impossible, so that they were stuck inside, and were unable to open them to save their lives. One of the victims even said this on the phone; that he was stuck inside and could not escape to save his life.

Answer:

PART I

It would appear that our case is better than a permission based on double probability. In this case, one of the probabilities is so clear that there is almost no equivalent in any previous generation: with the plane exploding with its occupants in the North Tower, and the terrible explosion that was caused by the fifty tons of fuel the plane was carrying, which spread immediately to every part of the North Tower, to the point where there was no escape for anyone on the upper floors of the North Tower — reason dictates that all of them were

lost in the explosion, without a single survivor. And after the North Tower collapsed completely, and they were buried underneath, it is certain that they were all killed. This is similar to the rule (*Yevamot* 121b): "If he fell into a fiery furnace we can testify that he died." The *Rambam* (*Hilchot Geirushin* 13:13), the *Tur* (*Even HaEzer* 17) and the *Shulhan Arukh* (ibid, paragraph 30) all codify this.

We do not follow the Jerusalem Talmud (*Yevamot* 16:3), quoted by the *Tosafot* (*Yevamot* 121b) which says that we should worry that perhaps a miracle was done for him, as it was for *Hananiah, Mishael* and *Azariah*; meaning, perhaps, although he fell into the fire, he escaped from the fire in some way. This is because we work with the assumption that one should not factor in miraculous events. The *Helkat Mehokek* (ibid. 56) and the *Be'er Heitev* (ibid. 96) both write this as well.

Although it is true that the *Maggid Mishna* quoted the *Rashba* that this is specifically true for a person who falls into a fiery furnace which is deep and is unable to climb out of it, but if he fell into a burning fire, we do not testify [to his death], because he might have gotten out. Or even in a case where he fell into a burning fire [we might accept testimony], as long as the witness was there for the length of time it would take [the man who fell in] to burn up. So too wrote the *Ritva* (ad loc) and the *Nimukei Yosef* (ad loc).

Nevertheless, in this case the fire spread throughout the entire building, and the great fire set ablaze all of its surroundings, in such a way as to make it impossible to have escaped from there. And thus wrote the *Hazon Ish* (*Even HaEzer* 52:7) that each case should follow the perspective of the judge, because any case which is [determined to be one where] there was no possibility of escape is the same as falling into a fiery furnace where we testify to his [death]. See further there. So too did the responsa *Even Yekara* write (Vol. 2, no 36). See further the responsa of Rabbi Shmuel Engel (Vol. 3, no 95) and the responsa of Rabbi Meir Tzvi Weitmeir (*Even HaEzer* 10).

That which we said (*Yevamot* 115a): "'The house caught smoke around us, the cave caught smoke around us (*Rashi* explains that it means 'we were surrounded by fire') and he died but I escaped' — she is not believed, because we

say to her 'just like a miracle happened to you perhaps a miracle happened to him'." The author of the responsa *Sadeh Yitzhak Hayut* (26) already wrote that if she was not in the house or the cave, but far off, and she testified that fire consumed the whole house or cave in such a way that it was impossible to escape without some sort of miracle, she is believed, and we permit her to remarry, for it is like someone who fell into a fiery furnace. The responsa *Emek She'elah* wrote the same (*Even HaEzer* 63).

All of this brings us to say that in our case, which is incomparably worse than drowning in the ocean, where the scholars were strict since there is a real minority of people who survive, as *Tosafot* wrote (*Yevamot* 36b, *Avodah Zarah* 40b). They were strict because of the seriousness of adultery. Nevertheless, they were only strict a priori, but in the end, if she already married, she does not have to separate, as is clear from *Yevamot* (121b). And even though she has the legal presumption of a married woman, nevertheless, the legal assumption that a woman is cautious when she gets married weakens the presumption that she is married.

This is similar to what *Tosafot* wrote in *Ketubot* (22b) regarding that which was taught: "Two say that he died and two say that he did not die, she should not remarry. If she does, she does not need to separate." The Talmud asks: "But this is two against two, and one who sleeps with her should be obligated in an '*asham talui*'!" The Talmud answers: "[The case is] when she marries one of the witnesses." *Tosafot* ask: This is surprising, for [the sacrifice] should be a sin offering, since according to the Torah we follow legal presumptions, as it states in *Yevamot* (31b)! Hence, we should say that she remains under presumption of being a married woman. Therefore, *Rabbeinu Tam* argued that the presumption that a woman is cautious when she gets married weakens the presumption that she is married. How much more so is this true in our case, where there isn't even a minority of escapees; for here there was no escape at all, and everyone was consumed in by the flames.

Even if you were to argue that it should only count as one majority and we may not testify that he died for we consider the possibility that a miracle was done for him, as was done for *Hannaniah, Mishael* and *Azariah* (as *Tosafot* wrote in

Yevamot 121b), even though the Halakhah does not follow the Jerusalem Talmud, as we said in *Yevamot* (121b): "Miraculous events are not referenced," nevertheless, since the government commissioned the rescue officers to search in the wreckage very carefully for survivors under the debris after the Twin Towers fell, and they searched and found no survivors — if anyone would have survived, it is almost certain that they would have found him, and that he himself would have made known his survival. Rather, it is certain that he is among the deceased. Therefore, we have a double-probability with which to be lenient.

PART II

With a double probability in an *iggun* case it seems reasonable to be lenient, since everyone would agree that we do not give serious consideration to a [possibility which is a] minority of a minority, as *Tosafot* in *Gittin* wrote (2b). [And regarding the difficulty which *Mitzpeh Eitan* raised on this *Tosafot*, that in the case where a man disappeared into a body of water whose other side cannot be seen, his wife is forbidden to remarry, even though survivors are a minority of a minority — this is not a difficulty, since one can posit that this *Tosafot* agrees with the other *Tosafot* (*Yevamot* 36b, *Avodah Zarah* 40b) that the reason that the Rabbis were strict regarding ocean drowning is because the probability of surviving is [equivalent to] a significant minority.] Furthermore, since the stringency with regard to ocean drowning is Rabbinic, even when there is doubt one should be lenient, because of [the principle that] when there is doubt regarding a Rabbinic law one should be lenient, as the *Beit Shmuel* wrote (17:105).

The same is written in the responsa of Rabbeinu Haim Cohen Rappoport (*Even HaEzer* 28, end). Also, see *Responsa Ohel Yosef Fried* (*Even HaEzer* 24, end) in the responsa of the great Rabbi Isaac Elhanan, who also relied on the words of the *Beit Shmuel* in a like case. Further see(his) responsum *Ein Yitzhak* (*Even HaEzer* 29:28). Also, see responsa *Maharsham* (vol. 2, 168:6). How much more so with a double majority! See responsa *Tzemah Tzeddek* (*Even HaEzer* 68:10) who wrote that it is a debate amongst the Rabbis whether one should be lenient in a doubtful case of ocean drowning. Nevertheless, when there is a probability, one should be lenient.

Further, I saw in the responsa *Kehillat Ya'akov* of Karlin (9, page 26) who wrote: "I remember from my young days, at the time when I was living in the house of our teacher and master, the great Rabbi Haim from Volozhin, that he was asked about a certain man who fell from a bridge that was very high onto an iceberg in sea water, and he subsequently fell from the ice into the sea — bottomless water— and was lost and never found. He argued to permit [his wife to remarry] based on the fact that there was a double probability: Most people who fall from a second story height are killed [in the fall] in addition to falling into ocean water, where most people drown and are not rescued — this is a double probability. (He discusses this at length in the responsum.) The woman was permitted [to remarry] with the agreement of all the Sages in Vilna. Now I know that there are reasons one could argue to be strict from certain responsa of later scholars, but one should not be too concerned about ocean drownings, which is a rabbinic institution and in a case of *iggun* one should rely on the lenient positions." The great Rabbi Haim of Volozhin wrote about this at length in his section of the *Hut HaMeshulash* (6), and it was also recorded in the responsa *Binyan shel Simha* (*Even HaEzer* 6).

In truth, at first glance it appears from the *Tosafot* (*Yevamot* 121a) that one should be strict a priori, for it says there:

> "Rav Ashi said: "That which the Rabbis said: 'If a man drowns in the sea his wife is forbidden' — this is true for regular people, but not for a young scholar, because if he had survived, it would have gotten around." But this is not true, rather even regardig a young scholar, if [she] already [remarried] it is permissible, but if not, she cannot."

About this, *Tosafot* wrote:

> "Even though in most cases if a young scholar survives, word will get around, nevertheless, we do not rely on that probability and she cannot remarry a priori."

It is clear from this *Tosafot* that even though most people drown in sea water (this being the reason why if she got remarried she need not divorce) and

among this minority, news of the survival of any young scholar would in most cases get around and become well-known due to all the talk, even so his wife is forbidden to remarry. Is this not a case of a double probability?!

Indeed, the *Yeshuot Ya'akov* (*Even HaEzer* 17, long com. #29) demonstrated from the aforementioned *Tosafot* that a double probability is of no consequence. He wrote about this further in his responsum quoted by the responsa *Beit Shlomo* (*Even HaEzer* 30, page 32d). So too did the *Naot Desheh* argue to be strict (part 2, 164:9) from the aforementioned *Tosafot*. The *Pithei Teshuva* (17:133) noted this as well, although he concluded that one could draw a distinction. Also, see at length the responsa *Binyan Shel Simha* (page 45b), and the conclusion of the *Hazon Ish* (*Even HaEzer* 31:7).

However, the great Rabbi Yitzhak Elhanan, in his responsa *Be'er Yitzhak* (*Even HaEzer* 18:10) answered that this case was different, for in the case of the sea, the first probability — that people who drown in bottomless waters do not survive — comes immediately upon his drowning. However, the second probability — that if he survived the news would get around — comes after a time, and since the two probabilities do not occur at the same time, they are not admissible. This is similar to what *Rema* wrote in *Yoreh De'ah* (110:9), that two doubts only make one rule leniently when they occur simultaneously, but not when they occur one after the other. This [he argues] should be the same in this case. He argued this as well in his *Ein Yitzhak* (part 1, 22:9, part 2, 1:4). This answer was offered as well in the responsa of *Berit Ya'akov* (*Even HaEzer* 15, page 28d), responsa *Aryeh de-bei Ilai* (*Even HaEzer* 7), responsa *Birkat Yosef Landau* (30, page 17d), and responsa Imrei Yosher (part 2, 24). See also the [comments of the] great *Maharsham* in *Gilui Daat Yoreh De'ah* (15, end of par 34) and the responsa *Be'er Haim Mordekhai* (part 2, *Even HaEzer* 50, page 87). If so, even assuming we consider our case to be one of double probability, we still cannot be lenient, since the probable scenarios come one after the other.

However, the great Rabbi Eliyahu Kletzkin, in his book *Devarim Ahadim* (page 48, #61), questioned the above responsum, [arguing that] the case of the *Rema* in *Yoreh De'ah* is different, since in that case the meat was already labeled forbidden, even before it got mixed in with other pieces. This is why the existence

of two doubts was inconsequential, since the doubts came one after the other, which is not true in this case, for from the moment of the drowning the matter stands to be clarified over the course of time and it is possible that the matter may be revealed retroactively etc. Also in responsa *Heikhal Yitzhak* (*Even HaEzer* part 1, 24:39), [the author] vigorously attacks Rabbi Yitzhak Elhanan's distinction.

Furthermore, all of this is based on the words of the *Rema*, who said that one should not be lenient in a case of two doubts if the doubts come one after the other. However, this is not a consensus position. In his comments on *Yoreh Deah* (110:17), the Gra questions this based on the words of *Tosafot* (Betzah 3b) where *Ri* and *Rabbeinu Tam* argue in a case of a [possibly forbidden] egg which became mixed with other eggs, where there is one doubt based on the object itself and one based on the mixture. [The *Gra* asks] why is this not solved by the fact that the two doubts come one after the other! He leaves this unresolved.

So too, the great Rabbi Yosef Haim, in his book *Rov Berakhot* (page 107a), proved clearly, and from many cases, that two doubts are efficacious even if one comes after the other and not simultaneously, and that one can demonstrate from the work of our master in the *Shulhan Arukh* (*Yoreh Deah* 84) that it is unnecessary for the two doubts to occur simultaneously. He concludes: "And now that the Halakhah is commonly accepted among us that in any case where there are two doubts about one matter, we do not pay attention to whether the two occurred simultaneously or whether first one doubt became known and afterwards came the second doubt." So too did the great Rabbi Yosef Yedid write in his book *Birkat Yosef* (part 1 page 205), that for us, who accept the decisions of *Maran* (Rabbi Yosef Karo), even if the doubts occurred one after the other, even if they are regarding a biblical prohibition, the two doubts remain efficacious [in order to cause us] to be lenient. The same [point] was raised in responsa *Shemesh u'Magen* (vol. 2, *Yoreh De'ah* 17), that *Maran* (Rabbi Yosef Karo) disagrees with *Rema* in this matter, and believes that one does not need both doubts to occur simultaneously.

Also, the great Rabbi Yitzhak Isaac Haver, in his book *Beit Yitzhak* in the chapter on doubts (4) argued for leniency even when the doubts come one after

the other. And he added, that this is true a fortiori according to the *Rambam* (*Hilchot Tum'at Meit*, end of ch. 9), who believes that the whole principle of "when there is a doubt regarding a biblical prohibition one should be strict" is itself a Rabbinic institution, for certainly, according to his position, there is no reason to make a distinction here between whether the doubts occurred at simultaneously or one after another, for either way it is fitting to be lenient.

And now that we have come this far, one could say that since we follow the position of the *Rambam* that the need to be strict about doubts [in biblical laws] is only Rabbinic, since the position of the *Rambam* is also that of the *Behag*, the *Rif*, the *Raavad*, the *Semag* and the *Meiri*. So too, our later authorities agreed; the *Radbaz* (4:93), the *Pri Hadash* (*Yoreh De'ah* 110), and our master *Hida* (*Orah Haim* 589). So too [argued] the *P'nei Yehoshua* (*Pesahim* 10b), the *Kereiti u'Peleiti* (Doubts, 110), the *She'ilat Ya'avetz* (2:143) and others. This is also what I wrote in the *Taharat HaBayit* (part 2, page 241).

Also in cases of a double probability, even if they come one after the other, we decide leniently. And the *Tosafot* who were strict about this were following their general position that stricture in a case of doubt [about a biblical prohibition] is itself biblical. And regarding the case in *Yevamot* where the Talmud was strict even with a young scholar, this is because the Rabbis did not want to make any distinctions between scholars and regular people. This is clear from the *Terumat HaDeshen* (139) that the reason they were strict about the young scholar [who was lost] is in order for them to avoid making distinctions within Rabbinic enactments. So too wrote the *Tzemah Tzeddek* (*Even HaEzer* 68:9), as well as responsa *Agudat Eizov* (*Even HaEzer* 12, page 53c).

I also saw this in the work of the great Rabbi Yitzhak Elhanan himself in responsa *Ein Yitzhak* (vol. 1, 21:18), who commented as well that that the reason they were strict with the young scholar who [was lost] in the sea is because the Rabbis did not want to make distinctions, which is not the case for other situations of double probability, where it is fitting to be lenient. He also commented on this further in *Ein Yitzhak* (vol. 1, 22:8), [saying that] the reason they did not permit [the wife of] the young scholar [to remarry], even with a double probability, was because the sages argued that in general the wife of a

person who was lost in the sea is prohibited [to remarry], implying even [the wife of] a young scholar, and the scholars did not make distinctions here, even if it is doubly improbable [that he survived]. Therefore, one could say that this case is different, since we see that the scholars were strict, which is not true in a regular case of double probability. According to this, we need not make any distinction between whether the two probabilities occur one after the other or simultaneously. This is a summary of his basic position. (With some force it could be argued that this is the intention of Rabbi Haim Volozhin in his *Hut HaMeshulash*, 6:13.)

I also saw this in responsa *Havatzelet HaSharon* (*Even HaEzer*, end of 28) who wrote: "And regarding the concern in our case that it is one of [being lost] at sea, it was explained in the *Pithei Teshuva* (17:139) that since he was struck near his heart and then fell into the sea, [his wife] is permitted, due to the double probability. Here, even though [the witness] did not wait until he died, nevertheless, there has been no mention of him [having survived] afterwards, which also probably indicates that he has died, and is a double probability as well, etc. It is clear [from this] that even when the two probabilities occur one after the other, it is considered to be a case of a double probability and one should be lenient.

This is also proven from responsa *Beit Yitzhak Schmelkes* (*Even HaEzer* Vol. 1, 72:1), see there. See further in the responsa *Ohel Yosef Fried* (*Even HaEzer* 24), who also permitted [the wife to remarry] when there is a double probability. He sent his responsum to the great Rabbi Yitzhak Elhanan, and he agreed with him to rule leniently in this matter. See further responsa *Brit Ya'akov* (*Even HaEzer* 15, page 26b). Also, responsa *Kol Mevasser* (84) quoted the *Mutzal me-Eish* (9) who permitted an *Agunah* based on a double probability, and [stated] that this was the position of the later authorities as well. This was also the position of the great Rabbi Avraham Yitzhak Kook, in responsa *Ezrat Kohen* (25).

The great Rabbi Simha Zelig Reiger, the *dayan* (rabbinical judge) of Brisk, Lithuania, wrote in a responsum quoted in the book *Devarim Ahadim* (43, page 27) that the permission for an *Agunah* [to remarry] in a case of a double probability in combination with his not being heard of which has become widespread

based on the decision of our elder Rabbis. And for anyone who would claim that such an incident happened and the husband appeared before us [anyway] — this is no claim, since this would be included under that which we said 'we do not count miraculous events,' for the mother of the *Hakham Tzvi* receive permission to remarry based on the testimony of witnesses who saw her husband murdered, and afterwards her husband appeared alive and well. Now because of this should did they stop permitting other agunot? Just the opposite, it is clear from these later authorities that the great scholars of their generation continued to permit agunot, and paid no attention to this case.

Even though we have not avoided the debate of the latter sages whether one should be lenient in a case of double probability like ours a priori or not, according to the responsa of *Rabbeinu Eliyahu Mizrahi* (54) whenever there is a debate amongst the rabbis in a case of permitting an *Agunah*, one should be lenient. This was quoted in the *Taz* (17:15) as well as in responsa *Mas'et Binyamin* (44). This was also quoted in the responsa of *Maharam Al-Shakar* (113), in the name of a responsum of the *Rosh*, [where he stated that] even though *Ra'avia* was unsure whether to be lenient in a case where the Rabbis argue, nevertheless his father, *Rabbenu Yoel*, wrote in a responsum that whenever there is a debate among the rabbis whether to permit agunot, one should be lenient because of "*takanat agunot*" (i.e. the need to fix their situations). [This is also brought in the responsa of *Maharam* of Rottenburg (Prague printing, 571).] One can deduce from this that the scholars of the generation should follow in their footsteps.

This is also recorded in responsa *Mahari Bei-Rav* (13), and the responsa of *Mabit* (1:326), and the responsa of *Rabbeinu Betzalel Ashkenazi* (30), and responsa *Beit Ya'akov* (9). So too wrote the great Rabbi of Lublin in responsa *Torat Hessed* (*Even HaEzer* 7:6). See further the discussion of the great Rabbi Haim Palagi in responsa *Haim ve-Shalom* (2:1, page 14c), who as a pure man gathered [the testimony] of many of the great prophetic Rabbis of the later generations who argued for leniency in the case of an *Agunah* where there is a debate amongst the Rabbis, especially when there is no biblical prohibition. This was also what was written in responsa *Sho'el u-Nishal* (Vol. 1, *Even HaEzer* 15). See also his discussion in volume 7 (*Even HaEzer* 10-11).

Therefore, in our case, where there is a double majority, one should definitely rely upon the lenient position, as their theory makes the most sense according to Halakhah. Thus also wrote the great Rabbi Herzog in responsa *Heikhal Yitzhak* (vol. 1, *Even HaEzer* 24:26, 37). Also in the responsa of Rabbi Haim Cohen Rappaport (*Even HaEzer* 28), he advocated being lenient with a double probability even a priori. This was also the position advocated in the responsa of the great Rabbi Betzalel Ze'ev Shafran (vol. 2, #2, page 11b). And even the latter authorities who were strict in general regarding a double probability would admit that we should be lenient in this case.

PART III

In addition to all that was mentioned above, one can add that which the great Rabbi Yisrael Isserlein, author of the *Terumat HaDeshen*, wrote in his [*Collected*] *Decisions*, that post facto it is permissible to accept [as fact] a well-founded assumption [of death]. It seems clear that in our days, even a regular person who disappears [is assumed to be dead] since if he were alive, news would get around even quicker than it would in a case of a young scholar in the time of the Sages of the Talmud, for then the Jews were spread throughout many places. This was quoted in the responsa of *Mabit* (1:135). Regarding that which Radbaz wrote in a responsum (1:526) to contradict this position of Rabbi Isserlein, see *Marot HaTzovot* (17:15, page 40b) and how he defended Rabbi Isserlein's position. Also, see further responsa *Ein Yitzhak* (Vol. 1, *Even HaEzer* 29:6) and responsa *Heikhal Yitzhak* (Vol. 1, *Even HaEzer* 30, page 162).

See also the *Or Zarua* (1:693) and responsa *Tashbetz* (1:90) who quote the Jerusalem Talmud (*Yevamot* 15:1):

> A certain person came before Rebbi. He said to him: "Where is so-and-so?" He said to him: "He died." "And what about so-and-so?" He said to him: "He died." "Are they all dead?" He said to him: "And if they were alive, would they not have returned?"

This is a support for *Rashi*'s comment (*Ketubot* 22b) in the case where she claims: "I am sure," that [this is because] if he were alive he would have returned.

The *Hatam Sofer* wrote (*Even HaEzer* 58) that it is known that nowadays things have changed from what they were like in the time of the Talmudic Sages. For in every country there is a set postal service in each of its towns, and even from the lands of Morocco, letters arrive here fairly quickly, and if someone were to survive having fallen into the sea, he would alert his family of his whereabouts, either by letter or through the newspaper. And even though in *Yevamot* (121a) Rav Ashi attempted to say that [the wife of] a young scholar who fell into the sea should be permitted even a priori, since word would get around, and the Talmud dismissed this position from Halakhah — because it was possible that the word did not spread everywhere, which accords with the reality of their time. However, in our time it is impossible that the information would not spread through whatever postal service exists in that country. Also, the fear that perhaps he ran away due to some shame (*Yevamot* 115a), even with regard to this times have changed. It is clear to us that even if all of his limbs were broken he would have returned or would have sent word to his family, and there would be no shame at all in this. Even stronger than this is *Rashi*'s explanation of [the wife's claim of] "I am sure," that [this is because] if he were alive he would have returned.

In any event, even if he had lost limbs, nevertheless, she still claims that he would have returned, according to her knowledge of his nature and character. Even though the *Ran* argues with *Rashi*, and believes that such a case would not be considered "certain," since she doesn't really know that he died, in that case there are two witnesses claiming that he did not die, [the *Ran*'s point is] that she could not contradict them with a "certainty" like this, which would not be relevant in a general case. Nowadays, it would be considered certain that he died, therefore, combining all of the above points would certainly be enough to remove this woman from any question of a biblical prohibition, with nothing more than a Rabbinic one. The *Hatam Sofer* also wrote similarly in *Even HaEzer* 48, 53 & 65.

See further the great Rabbi Haim of Volozhin in his responsa *Hut HaMeshulash* (6:19), who wrote that the implication of most of the halakhic decisors is that the Jerusalem Talmud should be understood in its plain sense, and that that was said explicitly in the *Mordechai*, in the name of *Ra'avia*, who argued that

one should be lenient, based on the Jerusalem Talmud. See also *Kuntrus Be'er Haim Mordechai* (58-59) who wrote that this is a strong position to rely upon.

Even though the *Rishonim* (*Ketubot* 22b) argue on *Rashi*, we don't find that they disagreed except on not relying on this argument alone when there is a doubt about a biblical (prohibition). However, everyone would agree when there is reason to find fault with the assumption that the husband is alive, then certainly this position is a strong and clear position which is fit to attach [to the case for declaring him dead]; for it is a commonly accepted principle that we do not create extra arguments [when it is unnecessary]. This was quoted in the *Otzar HaPoskim* (Vol. 7, #34m, page 108d).

Also, in responsa *Sha'arei De'ah* (2:114), in a case of a wagon train in which many people were burnt up in front of witnesses, and [the husband of the questioning witness] was not heard from again, the author wrote that it is possible that this claim — that if he were alive he would have alerted his family — is stronger than usual, since one's general premise would be that he certainly did not survive. If he did survive and remain alive, he would worry that his wife might remarry, based on the testimony of the witnesses. He would have done everything possible to hurry and send word of his survival, so that his wife not marry another. Rather it is certain that he is not among the living. (See further in responsa *Sha'arei De'ah* 1:87.)

Now even though in his responsa, *Maharsham* noted (3:252) that the *Hatam Sofer* (*Even HaEzer* 2:131) "broke his own club," since after he articulated his above-quoted theory, he went on to write that a case occurred which played out in the opposite way of what he had written (could occur), and he wrote "praised is he that chose them and their teachings," and he also wrote (ibid 138) that it is impossible to invent anything new based on our assumptions. However, the *Kol Mevasser* (84) already responded to this, that according to the dates of the responsa in the *Hatam Sofer*, it would come out that his final position was to be lenient. The great *Maharitz Dushinski* wrote similarly in a responsum (124:3) that even though the *Hatam Sofer* himself (in a responsum dated 5567) referenced a case where the husband returned alive, nevertheless, even after this, in a responsum he wrote in 5571 (1:48), he used this theory in

conjunction [with other reasons] to be lenient. To explain this, one must posit that this theory represents [the truth] for the overwhelming majority [of cases].

See further responsa *Kiryat Hanna David* (Vol. 2, Even HaEzer 9) who commented about the case of the *Hatam Sofer*, that in truth it should not be at all surprising to us that such an occurrence can happen in one in a thousand cases, and one should not worry about being strict because of this, for there are many cases where we find that an *Agunah* has been freed based on [the testimony of] one witness, or based on informal information obtained from a non-Jew, and afterwards he ends up appearing before us. Because of this should these halakhot be nullified and uprooted?! So too, the Gaon of Lublin relied upon this in his responsa *Torat Hesed* (Even HaEzer 7 & 40), and he wrote that from the words of *Rashi* in *Ketubot* (22b) it is very clear that this theory represents a biblical assumption, and therefore she would be exempt from an *asham talui*, and that this is also clear from *Ketubot* (62b):

> Rabbi Yanai said: "Turn over his bed, for if Yehuda was alive he would have returned."

And it is well known that one may only mourn based upon [the same kind of] testimony which one could use to allow a woman to remarry. Hence, this is clearly a biblical assumption. This was also written up by the great Rabbi Yosef Engel, in responsa *Ben Porat* (8, page 37d), covering all the points mentioned above. The same was also written in responsa *Noda beshearim* (1:20), responsa *Nefesh Haya* (*Even HaEzer* 260:9), and responsa *Tiferet Yosef* (*Even HaEzer* 6).

Also, the great Rabbi Shemuel Landau, in responsa *Noda Beyehuda* (Even HaEzer 51) wrote that we should combine [to be lenient] the theory of the Mabit (135) that we say that if he were alive he would have returned home, since he hasn't had any fight with his wife. This was brought by the Rabbi Zivhei Tzeddek, in his responsa on Agunah (Vol. 2, page 276), and he wrote that with this theory one is outside the category of biblical prohibition. See further responsa Tzemah HaSadeh (128 & 168) and responsa Tirosh ve-Yitzhar (40).

In our case, his wife was in her ninth month of pregnancy with their first child, and [only] a few days before the incident she expressed her worries about the danger of child birth, and he calmed her down, telling her not to worry, and that he would attempt to help her as much as he could. A few days after the incident she gave birth to a son, and they were forced to do the circumcision and redemption without him. Certainly if he were alive he would have returned to see them, as stated above. Rather it is clear that he was not alive. See further responsa *Zaken Aharon Walkin* (100).

PART IV

Indeed, I saw that the great Rabbi Haim Palagi wrote in his responsa *Haim ve-Shalom* (1, page 10):

> "I heard in the name of the great rabbi, he who is crowned with the royal crown of my dear learned brother, Rabbi Ya'akov Avigdor, who would say that in our days, where motorized boats travel the world to every corner and far off sea, such that if someone who fell into the sea actually survived and made it to some far off island, this would become known throughout the world. Therefore, we should make a distinction between our days, where these boats have been invented, and the days of the Talmud etc.
>
> When I heard these things, it was very difficult from my perspective to permit, and only if there is a strong assumption that he did not walk out alive would we rely on this theory to permit a priori, which would not be true if there were not a sufficient reason etc.
>
> And truth be told, in the month of Heshvan, in the year of "*mishpat tzeddek*," I was called by the royal office to Kushta, and things came about involving the my dear learned brother, our teacher Rabbi Ya'akov Avidgor, at which point he told me that the above distinction was not really his own, but was actually from the great Rabbi Moshe Ashkenazi, the head of the court in Odessa, who wrote this in his legal decision for an *Agunah*, [saying] that if he weren't afraid of his colleagues and his teachers, he would use the above theory to be lenient, since in

> every country in the world there is an embassy and consulates, as well as motorized boats, and journalists who are never quiet, [working] day and night to publish news from every country, to the point where the entire world has become like the fort of Hagronia, where everybody knew each other, etc. The *Hatam Sofer* wrote similarly (48, 57).
>
> Therefore, there is no reason to be strict nowadays at all, and according to this, it is clear that women whose husbands drowned are certainly removed from the category of biblical prohibition, etc. Regarding this, the two great lights, Rabbi Ya'akov Avigdor and Rabbi Yosef Alfandari, wrote in their decision that with all due respect to his Torah, his opinion is unenlightening, and one should not permit [her to remarry] without evidence and other reasons, but not beacuse of changing times. At that point I also expressed my agreement with their position to permit [her to remarry] in that case based on the power of the assumption [of death] and other reasons."

He also wrote about this in *Haim ve-Shalom* (2:10, page 68d), and there he noted that the above mentioned rabbis did not mention the responsum of Rabbi Isserlein in his collected decisions (139), for in that [responsum] there is support for this theory. On the other hand, the *Radbaz* (1:526) responded along the lines of Rabbi Isserlein, and believes that no distinction should be made, etc.

Nevertheless, the great Rabbi Haim Moshe Moda'i, in his responsum in the book *Haim ve-Shalom* (2:9, page 53c), relied with all his might upon what Rabbi Isserlein wrote in his decisions (139), that even an average person in our days, if he were alive there would be more talk about it than that of a young scholar in the days of the Talmud. How much more so in our days where there are steam boats, and railroad tracks, and telegraphs, and a post office in every town, such that with their help there is almost nothing hidden from anybody — real information about anything that happens anywhere on the planet in a matter of days. Certainly, if he were alive, he could, with ease, let people know his whereabouts. So too wrote the Hatam Sofer (48, 58, 65) that nowadays realities have changed which remove the woman from any biblical prohibition based on these assumptions. His words were quoted by the *Pithei Teshuva*

(17:138), and he is certainly a major authority to rely upon — this is a summary of his words.

I also saw [Rabbi Moda'i's] discussion in *Haim ve-Shalom* (2:2, page 27c), who wrote that according to that which the *Mabit* wrote (1:113) in the case where there is "no trace of him," which he explained two and three times, that anyone who is late and tardy returning to his house, and does not come at the time when he ordinarily would, and people are saying that he died, this would be enough. This was also the position taken in responsa *Edut be-Yehosef* (2:25, 63a). If so, it all depends on to regularity of the man in returning home.

So too, the author of responsa *Ein Yitzhak* (*Even HaEzer* 29:26) wrote that since according to the woman her husband had promised to come home to her soon, it is fitting to say that if he were alive he would have returned home already to keep his promise, sine he parted from her on good terms, and in such a case it is considered a proper assumption, even according to the *Ran* (*Ketubot* 22b).

If so, in our case, where the husband was accustomed to come home every night from work — "a man goes to his work, and to his toil until evening" (Psalms 104:23) — and he also promised to help her as much as he could with the birth, and he hasn't come home at all, and was announced as being one of the missing persons: He certainly falls under the category of "no trace of him."

And the great Rabbi *Same'ah Gagin*, in responsa *Yismah Lev* (*Even HaEzer* 5, page 11c) quoted the words of the great *Maharam Ashkenazi*, and the great Rabbis Avigdor and Alfandari mentioned above, who agreed that on the whole, the theory about the advancing of modern communications was a correct and sound one. Nevertheless, the rabbis have not been willing to rely on it alone as a matter of Halakhah, since doing so would uproot the words of the Sages, who forbade [a woman's remarriage] in a case of [her husband] being lost at sea. And he wrote, concerning this: "I, a young man, say that even though the theory is correct and sound on its own, and in the majority of cases the truth will be in line with it, nevertheless, one should not decide [a case] exclusively according to it, for does it never occur that someone survives and came out of the sea on one of the many far away islands or deserts where there are

no instruments for communication at all? Or perhaps he was kidnapped by nomads, or some such other concern, which cannot be removed entirely from the realm of the possible.

In my humble opinion, one could argue that since the main point of the Sages' decree in the case of one who was lost at sea was because of the unusual minority of cases where the person survives, in our days, where the probability [that one would hear of such a thing] due to advanced communications can be added, the concern that perhaps he is living among the Bedouins or in the recesses of the desert can be considered doubly improbable, and one should not add to the decrees of the Sages. And even if one were to claim that this was not technically a double probability, nevertheless it is a powerful assumption to [rely upon in order to] be lenient, as Rabbi Isserlein wrote in his decisions, as well as the great *Mabit*, and the *Hatam Sofer*, and the *Torat Hessed*, and those who follow them, as well as other later authorities. How much more so in our days, with the immense advancement if communication equipment: telephone, wireless, telegraphs, newspapers, radios and television, which reach every corner of the entire globe. So too, there are so many airplanes, which fly to every part of the world, every day; "They are renewed every morning" (Lamentations 3:23).

The truth is that there are many among the later authorities who rely on *Rashi* (*Ketubot* 22b), that we claim that if he were alive he would have come home, based on the above mentioned reasons. Thus wrote responsa *Emek She'eila* (37, page 120a), and responsa of Rabbi Betzalel Ze'ev Shafran (2:8, page 41), and responsa *Oneg Yom Tov* (128), and responsa *Agudat Ezov Midbari* (11, 53b), and responsa *Ben Porat* of the great Rabbi Engel (2:8, page 38c), and responsa *Imrei Yosher* (2:61:3), and responsa *Havalim Bane'imim* (*Even HaEzer* 47 and on), and responsa *Shem mi-Shimon Menasheh* (*Even HaEzer* 1, 28b), and responsa *Maharsham* (3:6), and responsa *Darkhei Shalom* (59), and responsa *Atzei HaLevanon* (85), and in responsa *Halikhot Eliyahu Feinstein* (9, page 37d), and the great Rabbi Kalatzkin in his book *Devarim Ahadim* (60), and others.

How much more so in our days, where communication equipment has advanced with greater strength and greater force, as stated, such that it is certain that this theory of the later authorities has been greatly strengthened, that

if he were alive he would have come or let his friends and family know [his whereabouts]. Therefore, in our case, there is much room to rely upon this, since there is a double probability leaning tending towards leniency, following what the *Tosafot* wrote (*Ketubot* 9b) that the average [reason a] person does not return from battle is because he has been killed.

PART V

But "a harsh prophecy was announced to me" (Isaiah 21:2), when I saw that which the *Knesset HaGedolah* wrote (*Even HaEzer* 17:429): "A man was in prison with many others, and a fire broke out in the city and burned down the prison. One person came and testified that before the fire he had placed Reuven along with some others into the prison cell, and closed the door on them. After this, the fire broke out, and the roof of the prison and all that was inside it burnt up, and all that was left were the walls of the building; and this was a very tall tower with strong walls, and without an open window through which a person could climb. The above-mentioned witness [also] testified how the enclosure of the prison was not opened at all, and that he stood there until the point where the fire spread throughout every part of the tower. [Nevertheless,] despite the fact that there was no trace of [Reuven] after this, nor of anyone else among the people who were in the prison, and not one of them was ever heard from since, we should not testify to his [death] — *Rash Hakan HaLevi* in a manuscript responsum, also in his collected works 3:4."

This position would seem to be a difficult one to maintain, for in what way is this different from the law about a person who falls into a fiery pit where we do testify as to his [death], as the *Rashba*, the *Ritva* and the *Meiri* all say? Here also the witness is testifying that he stood there until the fire spread throughout the tower, and there was not even an open window through which a man could have escaped, and certainly since there has been no trace of him since, one can be lenient. Did not *Rabbeinu Yeruham* write (section 23, part 3, page 195c) in the name of *Rema* that even in a case where he falls into a lion's den, where we do not testify to his [death] (*Yevamot* 121a), for perhaps they were not hungry (see *Sanhedrin* 39a)? Or any other case where he fell into a dangerous place and remained there such that it would be impossible for him not to have died, even though it is possible that he ran away and nobody saw him? We have estab-

lished that his wife cannot remarry, this is only a priori, but if she has already remarried, she need not leave her new husband. How much more so in a case of falling into a fiery furnace, where it says that we do testify [as to his death], certainly we can testify about him a priori, and his wife can get remarried.

I also found here, in responsa *Sha'arei De'ah* (2:114) that he was asked about the following case [which is also the case cited in *Emek She'eila* 63]: Near the city of Balta, there was a wagon carrying about twenty Jewish soldiers, and because of a problem with the railroad tracks, the wagon broke, and the entire ceiling of the wagon collapsed upon the Jewish soldiers, and then the wagon flipped over and fell into the abyss, bringing with it the train's engine car, and the engine which was burning with flames cracked open, and all of the gasoline spilled, causing an enormous fire which consumed all of the wagons that fell as well as the people inside them. Only one Jew escaped, because he had been standing by the doorframe, and held on with all his strength to the doors, and the ceiling to not fall upon him, and when the door fell, he quickly climbed out and escaped from the fire. He came and testified before us that all the rest of the Jews that were there were burnt alive, and he heard their voices as they were screaming for someone to save them from the tremendous fire. He saw clearly that no one else escaped from the fire other than him. Afterwards, when an official came and asked the non-Jews who were in the wagons which were far from the fire if any of the soldiers escaped, they answered him that not one of them survived, as they were sitting far off, and were watching everything that happened with the fire, and they saw that no one had escaped.

The above-mentioned case was put before the great [rabbi] of Stanislaw, and he compared it to that which was written (*Yevamot* 121b): If he fell into a fiery furnace, we testify to his [death]. But the author of responsa *Sha'arei De'ah* wrote that one can make a distinction in this case, since it is possible that someone may have been escaped before [the fire broke out], even though this is a very unlikely possibility. Then he brought up the words of the *Knesset HaGedolah* which we saw earlier, in the case of the fire which broke out in the prison, where [he decided that] we do not testify as to his [death]. The *Sha'arei Deah* wrote that this totally contradicts the permissive ruling of the Rabbi from Stanislaw. However, a reason one might be permissive in this case is because of

the testimony of the Jew, who saw well at the time of the incident that no one had escaped. Also relevant are the words of the non-Jews who were there. Also, since the ceiling collapsed on them [first], and afterwards the fire broke out, certainly makes this case stronger than a regular case of a collapse, etc.

I am surprised that he brought up the position of the *Knesset HaGedolah* without comment, and am surprised with the permissive ruling of the Rabbi of Stanislaw because of it, since, in reality, the reason of the *Knesset HaGedolah* is not clear why it should be forbidden, and "he should be left alone, as he has only forced these difficulties upon himself." Nevertheless, in the above mentioned case, the *Sha'arei De'ah* concluded with a permissible ruling [anyway], based on the double-probability, since after the collapse there was a fire, and with a double-probability precedent was already set by responsa *Beit Ya'akov* that we rely upon it in order to permit her to remarry. Furthermore, we can also attach the position of the *Mabit* (2:49), that when there is no longer a biblical prohibition, but only a Rabbinic one, like in this case where we worry that what he really means is "I think [no one escaped]," we rely upon the testimony of a non-Jew, even though they are not speaking innocently. (The same point was made in the responsa of *Maharam ben Habib* (*Even HaEzer* 138, page 246b), that we can attach [the *Mabit*'s position] to a double doubt. See also responsa *Brit Ya'akov* (*Even HaEzer* 24, page 40b).) Also, there has been no trace of him, etc.

The great [author of] *Emek She'eila* (63) put forward a permissive ruling in this case as well. [He argued] that we do not worry that what the Jew really meant was "I think," since the non-Jews also testified that nobody survived; despite the fact that were not speaking innocently, since there is already no fear of a biblical prohibition, and the concern that he might really mean "I think" is only Rabbinic. Also, the later authorities wrote that it is not that we specifically need [a non-Jewish witness] to be speaking innocently, rather any time there is evidence that what he is saying is true, his testimony counts, and certainly in this case where the testimony of [the various non-Jewish witnesses] was in accord with each other's, and they did not testify in front of each other. Also, there had been no trace of any [of the Jewish soldiers] — which creates a strong assumption [of death], as the *Terumat HaDeshen* and the *Hatam Sofer* wrote.

Therefore, one should rely on the great Rabbi of Balta and the great Rabbi of Talne, who permitted [her to remarry] for the above-mentioned reasons.

How much more so in our case, where a terrible fire broke out, and smoke had already filled all of the stories which were above the location where [the plane] hit — for even without [the fire], the thick smoke itself was deadly. We know that some of the firefighters who came to rescue [the people stuck in the Twin Towers] suffocated in the thick smoke. Also, the language of the Talmud (*Yevamot* 115a): "The house became filled with smoke around us," was explained by *Rashi* that fire burned around it and "it became filled with smoke." Certainly in a fire as great as this one, which continued to burn for days afterwards, it is certain that he perished.

PART VI

Therefore, in our case, even according to the *Knesset HaGedolah*, one should rule permissibly, for there are two things making the case [for his being alive] weak: the spreading of the great fire to awesome proportions, and the collapse of the North Tower, since everyone who was there was buried under the ruble of the collapse. See the Jerusalem Talmud (*Gittin* 3:4), [which states] that this is should be considered a possible death, as well as the *Shulhan Arukh* (*Even HaEzer* 17:33) [which states] that most [of the people in a collapsing building] die. Thus, this is a case of a double doubt: perhaps he was consumed in the great fire, as there was no place for him to escape from the burning flames. And if one were to defend the possibility that he was not burned, perhaps he was caught in the collapsing building and died [there].

The *Maharam ben Habib*, in his work *Get Pashut* (129:13), already wrote that the standard assumption is to be lenient in a case of a double doubt, even if the prohibition is biblical and the prohibition is certain, like when a woman becomes an *Agunah* who before hand was known to have been married. Also, in *Kuntres Eitz HaDa'at*, found at the end of the book *Or Tzadikim* (page 21a in the old printing, page 125a in the new edition) it says that the accepted ruling among the Jews is that whenever there is a double doubt in the case of an *Agunah*, we rule leniently.

Further, in responsa *Pnei Moshe* (1:15, page 125a), [the author] quoted the great halakhic decisor, Rabbi Eliyahu Sasson, in order to permit an *Agunah* based simply on a double doubt, [stating]: "And I also have seen many of the great ones among the later authorities who permitted an *Agunah* based on a double doubt." The great Rabbi Eliyahu Alfandari wrote similarly in a responsum at the end of the book *Seder Eliyahu Rabba* (1, page 8), that the later rabbis have already expressed agreement that we should be lenient with an *Agunah* when there is a double doubt. And the source of all this is Rabbi Eliyahu Sasson (1, page 8d), and others. The *Kreiti u-Pleiti* brought this up as well (*Yoreh De'ah* 110), that the great halakhic authorities among the Sephardim permit an *Agunah* when there is a double doubt, despite the presumption that she is a married woman: "And praised be He who chose them and their teachings."

And even though the *Pnei Yehoshua* (*Ketubot*, chap. 1, #45) critiqued this, questioning whether a double doubt should be effective in a case where she has a presumption of having been married, and the *Sha'agat Aryeh* (*hadashot*, 18, page 68d) critiqued this point as well. Also, see further *Divrei Ya'akov Shor* (74, page 65b). [Nevertheless,] I have already written extensively on this topic in volume six of *Yabia Omer* (*Even HaEzer* 3:12) to explicate the position of the great Sephardic rabbis quoted above, that this case is different, since there is a [counter]-assumption that she will make sure [she is a widow] before she gets remarried (based on *Yevamot* 25a), just like *Tosafot* wrote in the name of *Rabbeinu Tam* (*Ketubot* 22b).

I saw this same point made by the great author of *Marot Tzovot* in his responsa *Agudat Ezov* (*Even HaEzer* 12, page 23). So too did Rabbi Yitzhak Elhanan write in responsa *Ein Yitzhak* (Vol. 1, *Even HaEzer* 22:18), that the words of *Maharam ben Haviv* in his book *Get Pashut* are essentially correct, that one should be lenient and permit an *Agunah* [to remarry] based on a double doubt, because the assumption that she will make sure [she is a widow] before she remarries counteracts the presumption that she is married. The same is written in responsa *Beit Yitzhak* (*Even HaEzer* 63:8), and that the *Noda beyehuda* already wrote this. See a lengthy discussion in the *Arukh HaShulhan* (*Even HaEzer* 17:249).

Also, in responsa *Beit Ephraim* (*Even HaEzer 7*, page 23c) it states that the assumption that she is careful before she remarries is a strong assumption, since it stems from reason, which is better than probability, and pushes off the presumption that she is married. Furthermore, the responsa *Hikrei Lev* (*Yoreh De'ah* 1:130) took a surprisingly strong stance in refuting every argument put forth by the *Pnei Yehoshua*, who wanted to be strict with a double doubt in an *Agunah* case, since [the Talmudic sages] were lenient in cases of *Agunah*, just like in the case of a non-Jew speaking innocuously, whose testimony was accepted in order to permit her to remarry. So too the *Shoel u-Meishiv* (4th, 3:118) wrote that he put forth in a responsum a refutation of the position of the *Pnei Yehoshua*, and that all of the *poskim* decided as a matter of practical Halakhah that a double doubt is effective in a case of an *Agunah*.

See further responsa *Perah Shoshan* (*Even HaEzer* 3:2) who also wrote that a double doubt would be sufficient for an *Agunah*, like most of the later authorities argued. And one should even allow her to remarry a priori, just as the *Pri Hadash* wrote in his "Rules for Double Doubts," that one should be lenient, even a priori, with a double doubt. This decision has spread. Responsa *Hesed le-Avraham Alkali* (*Even HaEzer* 6) wrote similarly, [agreeing] that this decision has spread. The same was written by the great Rabbi Eliezer di Toledo in responsa *Mishnat Rabbi Eliezer* (vol. 2, 60:4).

See responsa *Sha'agat Aryeh ve-Kol Shahal* (3) who wrote to permit an *Agunah* based on a double doubt, and he wrote that he found the same [position advocated] by the *Bah*, in a responsum, in the name of the great Rabbi Yaakov of Lublin, who permitted an *Agunah* based on a double doubt, and that this was the opinion of R. Eliyahu Sasson and *Maharanah*. [He also wrote that] this has been advocated by the great Rabbi Haim Palaggi in responsa *Haim ve-Shalom* (2:2, page 28a), as well as by responsa *Meimar Haim* (*Even HaEzer* 44, page 113b), and by responsa *Sha'arei Rahamin Franco* (vol. 2, *Even HaEzer* 14, page 62a), and by responsa *Pnei Yitzhak Abulafia* (Vol. 1, *Even HaEzer* 13, page 72d; 15, page 95b). See further responsa *Avodat HaShem* (*Even HaEzer* 10, page 85b).

This was argued, as well, by the great *Maharam Labaton*, in responsa *Nokhah HaShulhan* (Even HaEzer 14). See further R. Yosef Haim in his *Rov Berakhot*

(page 119:1) who as a pure man gathered together many later authorities who are lenient in cases of double doubt when there is an assumption of a prohibition. See further in the *Zivhei Tzeddek* (110:130), and we learn from this to our case that we should permit this woman to remarry.

PART VII

Now, the telephone conversation, which occurred between the husband and his wife, a few minutes before the attack, proves that the husband was in his office in the upper floors of the North Tower at the time of the incident. And what the later authorities have said is well-known, that even a telephone conversation has within it [the possibility of] recognition of voice, as the *Sha'arei De'ah* wrote (1:194): since one can identify a speaker on the telephone by recognizing his voice (per *Gittin* 23a), it is certainly sufficient regarding [the ending of] a marriage, to appoint a scribe to write [a *get*] and witnesses to sign. The same was written in the responsa of *Maharashag* (2:250), that if the husband, from afar, by way of telephone, appoints a scribe to write and witnesses to sign, this does count as hearing his voice, and is valid according to all authorities. So too did the Rabbi Yaakov Moshe Toledano write on his own, in responsa *Yam Gadol* (82). And responsa *Beit Yitzhak* wrote (*Even HaEzer* 1:72:2) that one should rely on the *Shevut Ya'akov* (1:100) who permitted an *Agunah* about whose husband witnesses testified that he was hit with a mortal blow, and that they recognized him only by his voice. Responsa *Avodat HaGershuni* wrote similarly (110) that whenever there is no contradictory evidence, we rely on voice recognition. If so, one should permit [the widow] in this case based on voice recognition.

Responsa *Beit Yitzhak* 'waved his hand' a second time (*Even HaEzer* 2:13) and wrote: "A woman can appoint a messenger by way of telephone, when the husband is very far from home, if the messenger can recognize the voice of the woman speaking with him, since voice recognition is sufficient in cases involving *Agunah*. And I have already written in volume 1 (72) that voice recognition is sufficient to permit an *Agunah*, and the same goes here for appointing a messenger in a case that could become one of *igun*." From his words, it would appear that we rely on voice recognition even by phone.

So too did the great Rabbi Refael al-Nakawah in responsa *To'afot Re'em* (45), that voice recognition over the phone is sufficient in a case of permitting an *Agunah*. See further responsa *Marheshet* (Vol. 2, 6:12), and what he wrote about this, regarding the position of the great Mahari of Karlin. See further the responsa of R. Shemuel Engel (4:1), but this is not the time to expand upon it. In particular, in a case of a husband speaking to his wife at home, like in our case, everyone would agree that [voice recognition] is sufficient.

Exhibits 1-15

Archives of the Beth Din of America

Descriptions of the "9/11 Documents from the Archives of the Beth Din of America"

Document A is a letter from Rabbi Meir Rebibo of Paris concerning a member of his community who was killed on September 11th, 2001.

Document B is a letter of authorization written by the widow, authorizing the Beth Din of America to act on her behalf.

Document C is a letter from American Airlines confirming the death of a passenger.

Document D is a diagram, which originally appeared in The New York Times, noting which floors and companies suffered how many fatalities.

Document E is a diagram produced by USA Today that was helpful to the Beth Din of America in understanding where the airplane struck and which staircases remained open in the North and South towers of the World Trade Center.

Document F is a letter from the Office of Chief Medical Examiner of the City of New York concerning missing husbands.

Document G is the Office of Chief Medical Examiner of the City of New York report of fatalities confirmed on June 25, 2002.

Document H is the coversheet of a pamphlet prepared by Rabbi Elly Krimsky following a Yom Iyun (day of learning) that was assembled by the Beth Din of America, the Orthodox Union, the Rabbinical Council of America, and Yeshiva University, which took place at the Washington Heights campus of Yeshiva University.

Document I is a request to the Port Authority of New York & New Jersey for swipe-card and scanner records from the World Trade Center during the months of August and September 2001.

Document J is a reply from the MTA New York City Transit with copies of the Metrocard history during the months of August and September 2001

Document K is a subway schedule of the 8th Avenue Line prior to September 11th, 2001.

Document L is a letter issued by the Beth Din of America to a woman whose husband was murdered on September 11th, 2001. (Note the special language concerning her newborn infant.)

Documents M and **N** are letters issued by the Beth Din of America to a woman whose husband was killed on September 11th, 2001. (Note the language concerning *chalitza*.)

Document O is a letter to a widow from the Beth Din of America informing the available services of the Jewish Community Relations Council (JCRC).

Rav Rebibo Meir Isaac
Membre du Grand Rabbinat de Paris
Rabbin de la Communauté Israélite de Charenton le Pont
14, rue Victor Hugo - 94220 Charenton-le-Pont
Tél : 01.43.68.24.19

הרב מאיר יצחק רביבו
רב העיר שארונטון
וחבר הרבנות הראשית לפאריש

בס"ד כ"ג אדר תשס"ה

לכבוד הר' יונה ריס שליט"א
מנהל בית-דין באמריקא.

שלום וברכה!

קבלט את הודעתכם בענין למר [redacted] הי"ו.
ומודים לכם מאד בשלכם בענין הנ"ל
בקשה יהיו מברכותיו מליבא ולב הסובבים
אתכם. ובראשם על עמנו ישראל בכל מקום
שהם. ונצטרף לתפלה שישמע אנקם.
ימנו בשורה רבתא ורצויה.
מ' רביבו. סט"ש

A. C. I. C.
Association Communautaire Israélite de Charenton
42 ter, rue des Bordeaux – 94220 Charenton-le-Pont
Tél : 01 43 76 98 29

[redacted]

September 25, 2001

Beth Din of America
305 7th Avenue
12th floor
New York, New York 10001

Dear Sir:

I hereby authorize the Beth Din of America to handle the Jewish law matters involved, including access to relevant police, medical and employment records of my husband, [redacted], who is missing in the September 11 attack on the World Trade Center.

Sincerely yours,

[redacted]

[redacted]
Notary Public, State of New York
[redacted]
Qualified in Queens County
Commission Expires July 10, ~~199~~2009

AmericanAirlines

December 10, 2001

[redacted]

RE: American Airlines Flight 11
D/A: September 11, 2001

Dear [redacted]

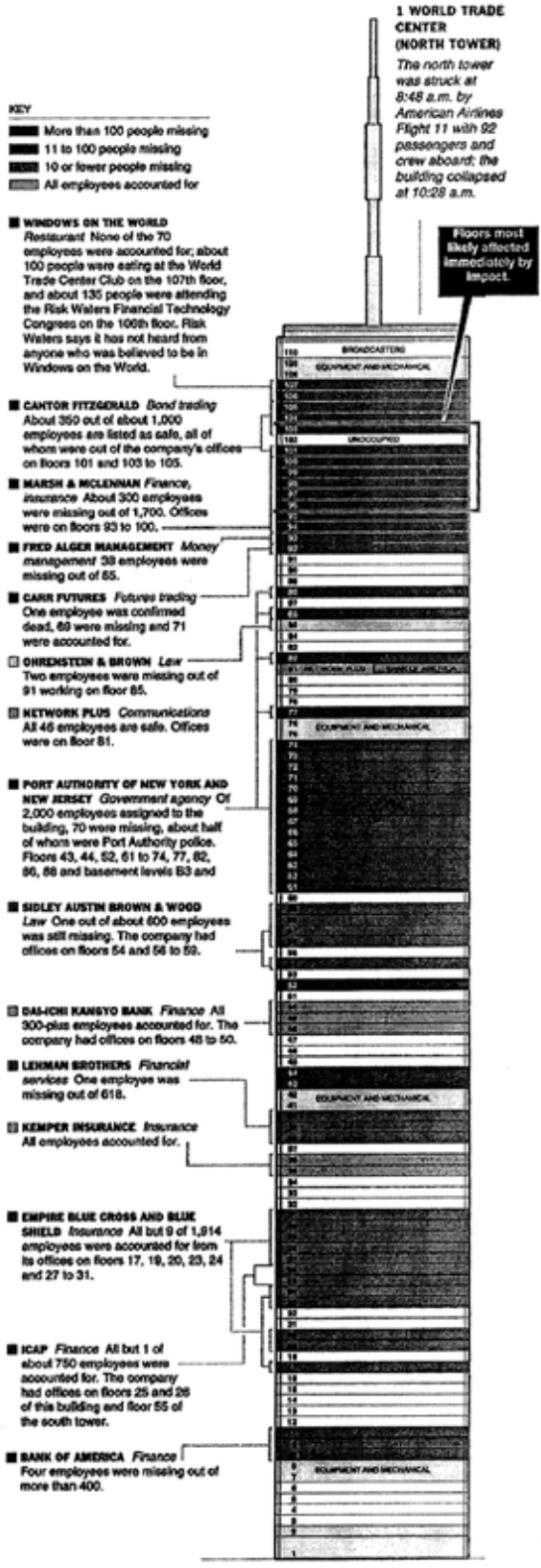
This letter is to confirm that a reservation was made and a ticket issued in the name of [redacted] for Flight 11 BOS/LAX, which departed on September 11, 2001.

American Airlines also confirms that a boarding pass was issued, and a ticket ifted for [redacted]. Unfortunately, information provided to American indicates here were no survivors.

f you have any questions or require additional information, please contact me at [redacted]

ncerely,

[redacted]


1 WORLD TRADE CENTER (NORTH TOWER)
The north tower was struck at 8:48 a.m. by American Airlines Flight 11 with 92 passengers and crew aboard; the building collapsed at 10:28 a.m.
Floors most likely affected immediately by impact.
KEY
More than 100 people missing
11 to 100 people missing
10 or fewer people missing
All employees accounted for
WINDOWS ON THE WORLD Restaurant None of the 70 employees were accounted for; about 100 people were eating at the World Trade Center Club on the 107th floor, and about 135 people were attending the Risk Waters Financial Technology Congress on the 106th floor. Risk Waters says it has not heard from anyone who was believed to be in Windows on the World.
CANTOR FITZGERALD Bond trading About 350 out of about 1,000 employees are listed as safe, all of whom were out of the company's offices on floors 101 and 103 to 105.
MARSH & MCLENNAN Finance, insurance About 300 employees were missing out of 1,700. Offices were on floors 93 to 100.
FRED ALGER MANAGEMENT Money management 38 employees were missing out of 55.
CARR FUTURES Futures trading One employee was confirmed dead, 69 were missing and 71 were accounted for.
OHRENSTEIN & BROWN Law Two employees were missing out of 91 working on floor 85.
NETWORK PLUS Communications All 46 employees are safe. Offices were on floor 81.
PORT AUTHORITY OF NEW YORK AND NEW JERSEY Government agency Of 2,000 employees assigned to the building, 70 were missing, about half of whom were Port Authority police. Floors 43, 44, 52, 61 to 74, 77, 82, 86, 88 and basement levels B3 and
SIDLEY AUSTIN BROWN & WOOD Law One out of about 600 employees was still missing. The company had offices on floors 54 and 56 to 59.
DAI-ICHI KANGYO BANK Finance All 300-plus employees accounted for. The company had offices on floors 48 to 50.
LEHMAN BROTHERS Financial services One employee was missing out of 618.
KEMPER INSURANCE Insurance All employees accounted for.
EMPIRE BLUE CROSS AND BLUE SHIELD Insurance All but 9 of 1,914 employees were accounted for from its offices on floors 17, 19, 20, 23, 24 and 27 to 31.
ICAP Finance All but 1 of about 750 employees were accounted for. The company had offices on floors 25 and 26 of this building and floor 55 of the south tower.
BANK OF AMERICA Finance Four employees were missing out of more than 400.
BROADCASTERS
EQUIPMENT AND MECHANICAL
UNOCCUPIED
EQUIPMENT AND MECHANICAL
EQUIPMENT AND MECHANICAL
EQUIPMENT AND MECHANICAL

Special report

For many, a sealed fate ...

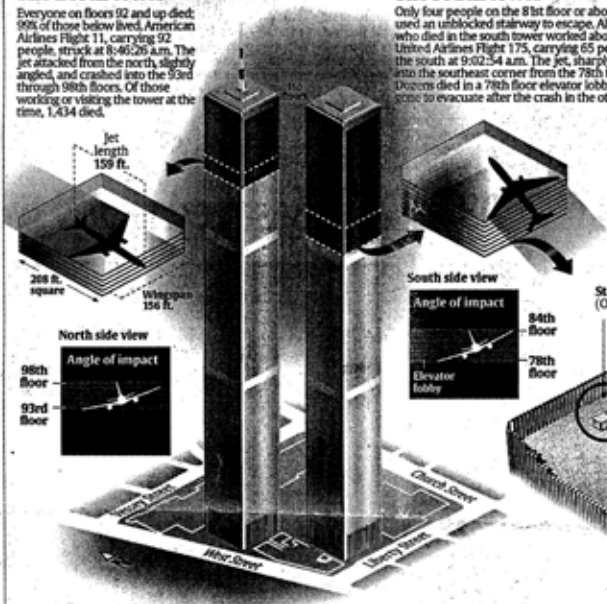
The fate of nearly everyone inside the World Trade Center was sealed the moment the hijacked jets struck on Sept 11. All but four people at or above the crash zones died. Nearly everyone below lived. Most people died in the north tower, which was hit first. But more than 1,000 people used the 16½-minute gap between the first and second crashes to evacuate the south tower's upper floors. Nearly 500 rescue workers lost their lives when the towers collapsed. Here's how the evacuation unfolded:

The north tower

Everyone on floors 92 and up died; 99% of those below lived. American Airlines Flight 11, carrying 92 people, struck at 8:46:26 a.m. The jet attacked from the north, slightly angled, and crashed into the 93rd through 98th floors. Of those working or visiting the tower at the time, 1,434 died.

The south tower

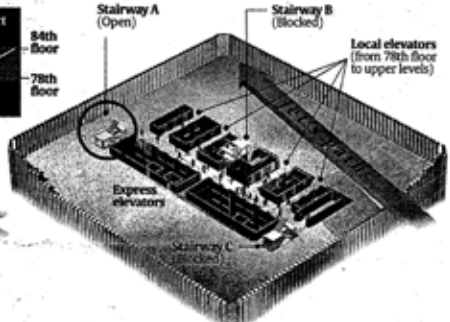
Only four people on the 81st floor or above survived; they used an unblocked stairway to escape. All but four of the 599 who died in the south tower worked above the impact zone. United Airlines Flight 175, carrying 65 people, struck from the south at 9:02:54 a.m. The jet, sharply angled, crashed into the southeast corner from the 78th through 84th floors. Dozens died in a 78th floor elevator lobby, where they had gone to evacuate after the crash in the other tower.



A narrow escape

Flight 175 destroyed two of the three stairways in the impact zone. But Stairway A, farthest from the crash, remained unobstructed from the top to the bottom of the south tower. A small number of people escaped down the stairway; several from the 78th floor elevator lobby, where dozens died, plus four from above. An unknown number of people climbed the stairs toward the roof in search of a helicopter rescue that never came.

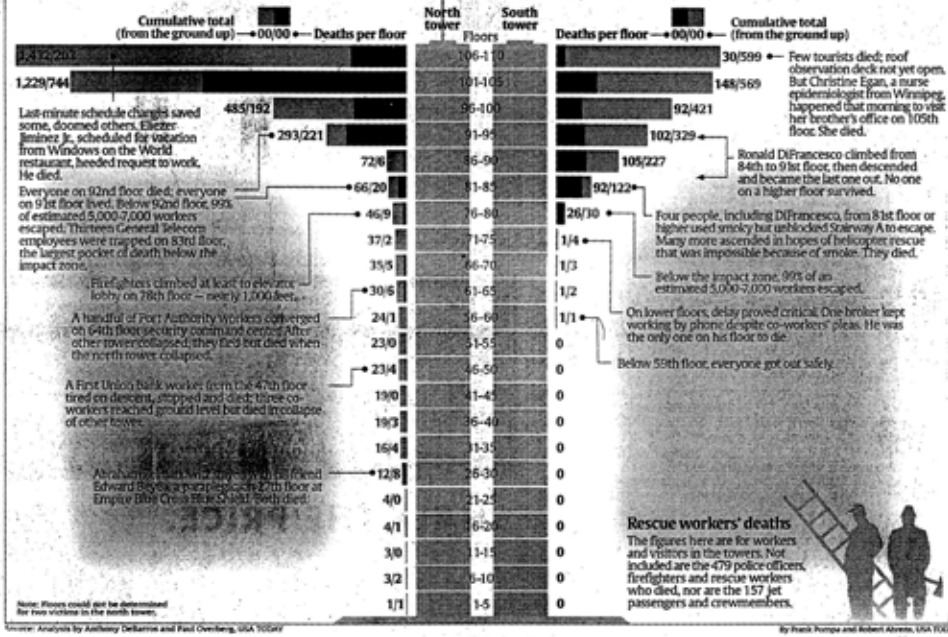
The layout of the 78th floor:



... for thousands of others, a miracle escape

More than 6,000 were feared to have died in the World Trade Center attacks, but that figure was based on missing-persons reports compiled by New York City police. A USA TODAY count shows the toll was fewer than 3,000, including 2,180 building occupants.

Where victims worked or were located:



DEPARTMENT OF HEALTH
OFFICE OF CHIEF MEDICAL EXAMINER
520 FIRST AVENUE, NEW YORK, NY 10016

CHARLES S. HIRSCH, M.D., *Chief Medical Examiner*

Dawnetta Pearson, *Principal Administrative Associate*
Telephone: (212) 779-1710 Fax: (212) 779-1223
The Official NYC Website: www.nyc.gov

November 27, 2002

Yona Reiss
305 Second Avenue, 12th Floor
New York, NY 10001-6008

Re : [redacted]
RM#: [redacted]

Dear Rabbi Reiss,

In response to your request for an official report on [redacted], the following documents are attached:

— *Copy of Your Letter*
— *Copy of Medical Examiner's Intake Form*
— *Copy of Medical Examiner's Report of External Inspection*
— *Copy of DNA Report*
— *Copy of Fingerprints*

If there is any other way our office can assist you, please do not hesitate to contact us.

Sincerely,

Dawnetta Pearson

Dawnetta Pearson
Principal Administrative
Associate

The City of New York

DEPARTMENT OF HEALTH
OFFICE OF CHIEF MEDICAL EXAMINER
520 FIRST AVENUE, NEW YORK, NY 10016

CHARLES S. HIRSCH, M.D., *Chief Medical Examiner*
Telephone (212) 447-2041 Fax: (212) 447-2755 TTY (212)447-2084
The NYC official web site www.nyc.gov

WORLD TRADE CENTER DISASTER

Fatalities with Positive Identifications and Family Notifications

25 June, 2002

●	Male	White
●	Female	Indian
●	Male	White
●	Male	White
●	Female	Hispanic
●	Male	White
●	Male	White
●	Male	White
●	Male	White
●	Female	White

TOTAL: 10

Halachic Consequences of September 11

By Rabbi Elly Krimsky

Issues addressed

- Praying for those missing but presumed gone
- Under what conditions should one recite the *'gomel'* prayer if they were saved
- Suicide – various cases
- The onset of *shiva*
- Permission to remarry – the *Agunah* issue
- *Shmuah Rechokah* and *Shmuah Krovah*
- Post 9.11 – placing ourselves in danger
- *Kohanim* and the WTC

BETH DIN OF AMERICA
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E-mail: menahal@bethdin.org • www.bethdin.org

January 29, 2002

Mr. James Begley
Assistant General Counsel of the Port Authority
of New York and New Jersey
One Madison Avenue - 7th Floor
New York, New York 10010

Dear Mr. Begley:

Our organization has been approached by the wife of [redacted] to provide confirmation of his death resulting from the September 11, 2001 attack on the World Trade Center. [redacted] who was [redacted] worked as a [redacted] on the 96th floor of One World Trade Center for [redacted]

Our goal is to gather enough evidence to provide [redacted] with a certification that [redacted] is dead from the perspective of Jewish law so that she may remarry according to Jewish law, if she so desires. Because the requirements of Jewish law for establishing death in order to enable one's wife to remarry are stricter than civil standards, we are searching for information that can confirm either that he entered the World Trade Center building on September 11 or that establishes a pattern of when he typically arrived to work at the World Trade Center.

Accordingly, we would like to request swipe-card and/or scanner records from August 1, 2001 through September 11, 2001 **(obviously, if we can have records from September 11 itself, that would be ideal)**, that indicate when [redacted] arrived at the World Trade Center on each of those days. If there are any photographic scanner records for this period, we would like to obtain those records as well.

A copy of a letter from [redacted] wife, granting us authorization to contact all relevant authorities and obtain all relevant information to deal with her Jewish law issues, is attached hereto. If there is anything else that you require, please let me know. Thank you in advance for your extremely important assistance in this matter.

Sincerely,

Yona Reiss

Rabbi Yona Reiss
Director

130 Livingston Street
Brooklyn, NY 11201

Lawrence G. Reuter
President

New York City Transit

April 30, 2002

[redacted]

Re: MetroCard Records

Dear [redacted]

Thank you for providing copies of your Letters of Administration and the [redacted] Statement.

Please find enclosed two pages, which reflect the Fare Card History from August 1, 2001 through September 30, 2001 for farecard [redacted]. In addition find a one-page document that reflects the Automatic Fare Collection Debit Credit Confirmation for the [redacted] linking it to the farecard.

I hope that these records will be of assistance to you.

Sincerely

Denise M. Fraser
Dep. Exec. Asst. General Counsel

Enclosures

File: 8 Av Schedule
Worksheet: Sheet1

Operations Planning

Revised: 12/18/01, 1:24 PM

8th Avenue Line - Scheduled Service
42 St-PABT to Chambers St/World Trade Center
8:00 a.m. - 9:00 a.m.
Prior to September 11, 2001

Route	42 St-PABT	Chambers St/ World Trade Ctr	Running Time
E	8:01:30	8:14:00	0:12:30
A	8:05:30	8:16:00	0:10:30
E	8:05:30	8:18:00	0:12:30
C	8:08:00	8:20:30	0:12:30
E	8:11:30	8:24:00	0:12:30
A	8:12:30	8:23:30	0:11:00
E	8:16:00	8:28:30	0:12:30
C	8:18:30	8:32:30	0:14:00
A	8:19:30	8:30:30	0:11:00
E	8:22:30	8:35:00	0:12:30
E	8:26:30	8:39:00	0:12:30
A	8:26:30	8:37:30	0:11:00
C	8:28:00	8:40:30	0:12:30
E	8:32:30	8:45:00	0:12:30
A	8:32:30	8:45:00	0:12:30
E	8:36:30	8:49:00	0:12:30
C	8:38:00	8:51:30	0:13:30
A	8:38:30	8:49:30	0:11:00
E	8:43:00	8:55:30	0:12:30
A	8:44:30	8:55:30	0:11:00
E	8:47:00	8:59:30	0:12:30
C	8:48:00	9:01:00	0:13:00
A	8:50:30	9:03:00	0:12:30
E	8:53:00	9:05:30	0:12:30
A	8:56:30	9:07:30	0:11:00
E	8:57:00	9:09:30	0:12:30
C	8:58:00	9:11:00	0:13:00

Total Number of Trains	27
A Express Trains	9
CE Local Trains	18

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E-mail: menahal@bethdin.org • www.bethdin.org

כ"ז אדר תשס"ב
March 11, 2002

[redacted]

Dear [redacted]

This letter is being issued pursuant to your request to have the Beth Din of America resolve Jewish law matters relating to the tragic death of your husband on September 11, 2001 in connection with the vicious attack on the World Trade Center in New York City.

The Beth Din takes this opportunity to wish you the best upon the birth of your baby daughter. May you enjoy much happiness from your child and may she be a tribute to the memory of your departed husband.

After careful investigation, the Beth Din of America has concluded that as a matter of Jewish law, [redacted] died on September 11, 2001 corresponding to the 23rd day of Elul on the Jewish calendar. Accordingly, his yahrtzeit should be observed each year on the 23rd day of Elul.

As a result of the Beth Din's determination, you are permitted to remarry according to Jewish law and have the status of a widow.

You should be aware that there are certain Jewish law guidelines regarding how much time must lapse before the mother of an infant child is permitted to remarry. It is therefore possible that you will need to obtain special permission to remarry if 24 Hebrew calendar months have not yet elapsed from the birth of your child. If necessary, you can consult with either the Beth Din of America or with your local Rabbi with respect to this issue.

We express our heartfelt condolences and deepest regrets upon the loss of your husband. May your family be comforted among the mourners of Zion and Jerusalem.

Sincerely,

Rabbi Gedalia Dov Schwartz
Av Beth Din

Rabbi Mordechai Willig
Segan Av Beth Din

Rabbi Michael Broyde
Chaver Beth Din

Rabbi Yona Reiss
Director

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כ"א אייר תשס"ב
May 3, 2002

[redacted]

Dear [redacted]

This letter is being issued pursuant to your request to have the Beth Din of America resolve Jewish law matters relating to the tragic death of your husband on September 11, 2001 in connection with the vicious attack on the World Trade Center in New York City.

After careful investigation, and confirmation of the medical examiner's identification of your beloved husband, the Beth Din of America has concluded that as a matter of Jewish law, [redacted] died on September 11, 2001 corresponding to the 23rd day of Elul on the Jewish calendar. Accordingly, his yahrtzeit should be observed each year on the 23rd day of Elul.

Because [redacted] died without children and he has a brother, there is a Jewish law requirement that the brother perform the ritual known as *Chalitza* in order for you to be permitted to remarry under Jewish law. The Beth Din of America is prepared to coordinate and supervise the *Chalitza* ceremony in a discreet and dignified manner. Following the *Chalitza* ceremony, you will be permitted to remarry anyone other than a Kohen according to Jewish law.

We express our heartfelt condolences and deepest regrets upon the loss of your husband. May you be comforted among the mourners of Zion and Jerusalem.

Sincerely,

Rabbi Gedalia Dov Schwartz
Av Beth Din

Rabbi Mordechai Willig
Segan Av Beth Din

Rabbi Michael Broyde
Chaver Beth Din

Rabbi Yona Reiss
Director

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26 Tishrei 5763
October 2, 2002

[redacted]

Dear [redacted]

We have been contacted by David Pollack of the Jewish Community Relations Council (JCRC) who advised us that there are stipends available for children of school age or pre-school age whose fathers were victims of the World Trade Center disaster.

If you are interested and would like further information about these stipends, please contact David Pollack at 212-983-4800 for details.

Best wishes,

Yona Reiss

Rabbi Yona Reiss
Director

JEWISH ETHICS AND THEOLOGY

Sacrificing the Few to Save the Many

RABBI J. DAVID BLEICH

for one life is not set aside for another...

OHOLOT 7:6

The date 9/11 is indelibly imprinted upon the national consciousness of America. The horrific loss of life in the terrorist attacks upon the Twin Towers of the World Trade Center was an unforgettable tragedy; the attack upon the Pentagon, the nerve-center of military security, exposed the vulnerability of the nation's defense apparatus. But it was the fourth, thwarted, attack that is remembered for the heroism of the victims.

A domestic passenger flight flying from Newark International Airport to San Francisco, United Airlines Flight 93, was hijacked by terrorists some forty-five minutes into the flight. The hijackers breached the cockpit, overpowered the pilots and, taking control of the aircraft, directed it towards Washington, D.C. The hijackers' intended target is thought to have been the White House or possibly the Capitol.

The terrorists' master plan apparently called for carrying out that attack simultaneously with the attacks upon the World Trade Center and the Pentagon. However, due to airport congestion, the airplane was delayed on the ground more than half an hour. During the course of the hijacking, flight attendants and passengers, using GTE airphones and cell phones, succeeded in making numerous calls to family and friends as a result of which they learned of the other terrorist attacks.

This essay will appear in the author's Contemporary Halakhic Problems *VI (forthcoming in 2011). An earlier version appeared in* Tradition *43:1 (Spring 2010).*

certainty. Early reports conjectured that the passengers were successful in overtaking the plane and that they knowingly caused the plane to crash in order to prevent greater loss of life. Strikingly, the mother of one of the passengers, herself a United Airlines flight attendant, left a message on her son's cell phone urging an attempt to take over the aircraft. Much later, a report issued by a government investigating commission gave no indication that the passengers broke through the cockpit door but made it clear that the passengers' actions thwarted the plans of the terrorists. Recordings of cockpit conversations reveal that the terrorists feared that they would imminently lose control and debated whether to crash the plane immediately or whether to delay such action. The passengers' death certificates state the cause of death as homicide and those of the hijackers list suicide as the cause of death. It is unclear whether the hijackers ultimately did crash the plane deliberately or whether they simply lost control. Had the passengers been successful in gaining control of the plane, the ending might well have been much happier. Among the passengers was an aviation executive who had extensive experience in a cockpit as a private pilot. Another passenger was experienced as an air traffic controller with the Air National Guard. Given those facts, there is scant reason to question the halakhic propriety of the course of action taken by the passengers.

Far more complex is the issue of purposely shooting down the plane and thereby causing the death of innocent passengers.[1] Air Force and Air National Guard fighter jets were unable to intercept the planes headed to the World Trade Center and the Pentagon but indications are that they would have reached the fourth plane in time to prevent it from reaching Washington. The option of shooting down the commercial jet was certainly given serious consideration and a decision to do so may actually have been reached.

The propriety of purposely causing the immediate death of the passengers aboard the plane in order to prevent further loss of life hinges upon the applicability of a provision of Halakhah recorded by Rambam, *Hilkhot Yesodei ha-Torah* 5:5:

> ...if the heathen said to them, 'Give us one of your company and we shall kill him; if not we will kill all of you,' let them all be killed but

> let them not deliver to them [the heathens] a single Jewish soul. But if they specified [the victim] to them and said, 'Give us so and so or we shall kill all of you,' if he had incurred the death penalty as Sheba the son of Bichri, they may deliver him to them... but if he has not incurred the death penalty let them all be killed but let them not deliver a single Jewish soul.

Rambam's ruling is based upon the explication of the narrative of II Samuel 20:4-22 found in the Palestinian Talmud, *Terumot* 8:12. Joab, commander of King David's troops, had pursued Sheba the son of Bichri and besieged the town of Abel in which Sheba sought refuge. Thereupon Joab demanded that Sheba be delivered to the king's forces; otherwise, Joab threatened to destroy the entire city. On the basis of the verse, "Sheba the son of Bichri has lifted up his hand against the king, against David" (II Samuel 20:21), Resh Lakish infers that acquiescence with a demand of such nature can be sanctioned only in instances in which the victim's life is lawfully forfeited, as was the case with regard to Sheba the son of Bichri who is described as being guilty of *lèse majesté*. However, in instances in which the designated victim is guiltless, all must suffer death rather than become accomplices to murder. R. Yochanan maintains that the question of guilt is irrelevant; rather, the crucial factor is the singling out of a specific individual by the oppressor. Members of a group have no right to select one of their number and deliver him to death in order to save their own lives. Since the life of each individual is of inestimable value there is no basis for preferring one life over another. However, once a specific person has been marked for death in any event, either alone if surrendered by his companions or together with the entire group if they refuse to comply, those who deliver him are not to be regarded as accessories. Rambam's ruling is in accordance with the opinion of Resh Lakish. Both opinions are cited by Rema, *Shulhan Arukh, Yoreh De'ah* 157:1.[2]

Sheba ben Bichri was doomed to die in any event. Since Sheba would perish together with the other inhabitants of the besieged city, refusal to deliver him to the hands of the enemy would have served to spare his life for only a brief period. It is evident that the discussion in the Palestinian Talmud is predicated upon the premise that it is forbidden to cause the loss of even *hayyei sha'ah*, i.e., a brief or

limited period of longevity anticipation, of a particular individual in order to preserve the normal longevity anticipation of a multitude of individuals.

Hazon Ish, Gilyonot le-Hiddushei Rabbenu Hayyim ha-Levi, Hilkhot Yesodei ha-Torah 5:1, s.v. *u-mi-kol makom*, demonstrates the same principle on the basis of his analysis of the well-known controversy between R. Akiva and Ben Petura recorded by the Gemara, *Bava Mezi'a* 62a. The case involves two people who are stranded in a desert with but a single container of water. There is sufficient water to sustain one person until he reaches safety; however, if the water is shared, neither will survive. Ben Petura declares that they should share the water and "let not one witness the death of his fellow." R. Akiva rules that the owner of the water should drink it himself in order to save his own life. In support of that ruling R. Akiva cites the verse, "that your brother may live with you" (Leviticus 25:36). That biblical command requires that a person love his fellow "as yourself" but not that he love his fellow more than himself. If so, the life of another person should not be preferred over one's own life with the result, as announced by R. Akiva, that "your life takes precedence."

Hazon Ish, as were others before him, was troubled by the fact that Ben Petura's conflicting ruling is apparently refuted by R. Akiva's quite cogent inference drawn from the verse "that your brother may live with you" — but not at the expense of your life.[3] Accordingly, *Hazon Ish* asserts that Ben Petura is actually in agreement with the basic principle enunciated by R. Akiva with the result that, in a situation in which only one person can receive any longevity benefit, one's own life takes precedence over that of another. Thus, for example, if two individuals have been poisoned and one of the two is in possession of a sufficient quantity of an antidote to save one person but, if divided, the quantity available will prolong the life of neither, Ben Petura would agree that the owner of the antidote must administer it to himself. Ben Petura would also concede that, if the antidote belongs to a third party, the halakhic rules of triage would apply. Ben Petura, asserts *Hazon Ish*, disagrees only in the case of the container of water because, if the water is shared, the life of each of the stranded persons will be prolonged at least minimally, whereas administering less than the requisite dose of the antidote would be entirely without purpose. Ben Petura, in disagreeing with R. Akiva, does so because he recognizes a duty of rescue with

regard to even *hayyei sha'ah*. Since sharing the water serves to prolong the life of both at least minimally, such sharing is an act of loving one's fellow as oneself, i.e., both lives are rendered equal. Put in somewhat different terms, since every moment of life is of infinite value and all infinities are equal, the fact that if one person drinks the entire quantity of water he will survive and enjoy a normal life-span is of no consequence. R. Akiva disagrees in maintaining that loving one's fellow as oneself, but not more than oneself, requires preservation of one's own normal longevity anticipation even if such rescue precludes prolongation of the *hayyei sha'ah* of another.

Consequently, argues *Hazon Ish*, even according to R. Akiva, it is only self-preservation that can excuse ignoring the *hayyei sha'ah* of another. It would then follow that, if the container of water belongs to a third party who is not in danger of perishing as a result of dehydration, that person, even according to R. Akiva, must divide the water equally between the two persons at risk. The principle that emerges is that a person dare not ignore the *hayyei sha'ah* of one putative victim even to carry out the complete rescue of another victim or even of many such victims.[4] *A fortiori*, an overt act having the effect of extinguishing even an ephemeral period of life-anticipation of even a single individual cannot be countenanced in order to save the lives of many.

The only situation in which the life of another individual may be sacrificed in order to rescue a putative victim is in the case of a *rodef*, or pursuer. In such cases, as codified by Rambam, *Hilkhot Rozeah* 1:9, intervention in order to preserve the life of the victim is mandatory. In the case under discussion, the airplane pilot certainly must be categorized as a *rodef* even though he acts under duress. However, the passengers inside the airplane are in no way complicit in the potential death of the innocent people in the building targeted for destruction. Although the life of the *rodef* is forfeit, provided that taking the life of the *rodef* is necessary in order to rescue the victim, it is not permissible to cause collateral damage in the nature of the death of an innocent third party in eliminating the threat posed by the *rodef*. The pilot, who is intent upon using the airplane to bring death upon innocent victims, may be prevented from doing so even if it is necessary to kill him in order to accomplish that end[5] but it is not permissible to cause the death of innocent passengers who are no more

than passive bystanders even for the purpose of preserving the lives of a greater number of people.[6]

Some time ago, Philippa Foot presented a moral dilemma in formulating the "Trolley Problem."[7] The situation involved the driver of a trolley rounding a bend. Five track workmen are seen to be engaged in repairing the track. The track is surrounded on two sides by a steep mountain and the trolley is travelling much faster than the workmen could possibly run. The driver steps on the brake in order to avoid striking the five men. Tragically, the brakes fail. The driver sees a spur of track in front of him leading off to one side. The driver can quite easily steer the trolley so that it will travel down that spur and thus save the lives of the five men on the track straight ahead. Unfortunately, there is a single workman who is repairing that spur. The workman cannot possibly get off the track before the trolley hits him. If the driver does nothing, five men will perish. If he turns the trolley onto the spur only one person will die but that person is at this moment in no danger whatsoever. Is it morally permissible to turn the trolley so that it claims the life of a single person in order to rescue five individuals?[8]

A situation quite similar to that of the runaway trolley is described by *Hazon Ish, Sanhedrin*, no. 25, s.v. *ve-zeh le-ayyein*. *Hazon Ish* describes a situation in which a bystander witnesses the release of an arrow aimed at a large group of people. The bystander has the ability to rescue the intended victims by deflecting the arrow; however, if he does so, the arrow will claim a single victim who heretofore was endangered in no way whatsoever. *Hazon Ish* expresses doubt with regard to the permissibility of such intervention. If the hypothetical is changed from an arrow to a hand grenade, the moral dilemma acquires contemporary relevance.

Hazon Ish's perplexity seems to be based upon the possibility of considering the situation to be analogous to triage. A person who comes upon multiple accident victims must perforce choose which of the many victims he will attend. Triage for the purpose of rescue is quite different from selection for death. A person does not have license to designate another individual for death even if his motive is the rescue of a far larger number of lives. However, if the same

person can save one, but not all, of the victims, he is required to intervene. In doing so, he is in no way complicit in the death of others. His selection is for rescue rather than for death; acts of rescue are profoundly different from acts of homicide. A person capable of doing so may, and indeed must, save as many lives as possible even if such rescue entails abandoning one or more victims to their fate.

To be sure, in the case of the runaway trolley, the flying arrow, or the hand grenade, the original act to which the ultimate death of the victims is to be attributed was already completed before the moral agent confronts a choice between intervening for the purpose of deflecting a lethal weapon and passive non-intervention. The motive for intervention is certainly the rescue of those who will be saved, not the death of the person who will actually die in their stead. It is, however, difficult to understand how intervention in the form of deflecting a lethal weapon can be regarded as a simple act of rescue governed by principles of triage. In the given hypothetical, it is the act of deflection that endangers a previously unendangered person. The intervener has not simply rescued a larger group of victims; he has in an active, overt manner caused the death of an innocent person. *Hazon Ish* himself emphasizes that even R. Yochanan, who maintains that in the event that the victim has already been designated for execution he may be delivered to the enemy, would agree that one may not actually kill the designated victim in order to spare other victims. *Hazon Ish* argues that R. Yochanan permits only indirectly hastening the death of a designated victim by delivering him to the enemy but does not sanction a direct act of homicide.[9] It seems to this writer that deflection of a lethal weapon constitutes a direct rather than an indirect act. That objection has been raised by R. Benjamin Rabinowitz-Te'umim, *No'am*, VII (5724), 357.[10] R. Eli'ezer Waldenberg, *Ziz Eli'ezer*, XV, no. 70, addresses *Hazon Ish*'s hypothetical and concludes that passive non-intervention is the only acceptable mode of conduct.

Putting that point aside, any argument in support of deflecting the arrow must be based on the premise that a distinction can be drawn between intervention for purposes of neutralizing a direct danger and overt delivery to death in order to ward off future deaths.

There are authorities who, in certain limited cases, permit sacrificing one life to save another when failure to intervene would result in the death of both persons. The question of killing a neonate whose forehead has emerged from the birth canal in order to save the life of the mother when, otherwise, the lives of both would be forfeit is raised by R. Akiva Eger, *Tosafot R. Akiva Eger*, *Oholot* 7:6, no. 16, but left unresolved. R. Akiva Eger does however cite *Teshuvot Panim Me'irot*, III, no. 8, who rules that such a course of action is permissible. R. Israel Lipschutz, *Tiferet Yisra'el*, *Oholot* 7:6, *Bo'az*, sec. 10, similarly comments that, "perhaps it is permissible to destroy the infant in such circumstances in order to rescue the mother."[11]

R. Saul Mordecai Arieli, *Or Yisra'el*, vol. 8, no. 3 (Adar Sheni 5763), compares the case of the airplane seized by terrorists planning to crash it into the Pentagon to the situation of the mother in childbirth in arguing that it is permissible to cause the death of innocent passengers by shooting down the plane since the latter are doomed in any event. Nevertheless, it is virtually self-evident that such a comparison is inapt. If correct, that reasoning should apply as well to the situation described in the Palestinian Talmud in which one person has already been designated for death and failure to deliver him to the enemy will result in the death of all. R. Yochanan and Resh Lakish disagree with regard to whether it is permissible to become even indirectly complicit in the death of the doomed victim by delivering him for execution but all agree that he may not actively be put to death in order to spare the lives of others.[12] The case of the woman in childbirth is quite different because both mother and child are reciprocal pursuers, i.e., each is in the process of causing the death of the other. Non-intervention is mandated as explained by the Babylonian Talmud, *Sanhedrin* 72b, because "heaven is pursuing her" or, in the words of the Palestinian Talmud, because "you do not know who is pursuing whom." The rationale for non-intervention is either that a natural physiological process is an "act of God," and hence the person who is the instrument of danger cannot be categorized as a pursuer, or that intervention in cases of pursuit is warranted only in order to preserve the life of the victim but in a case of mutual pursuit each party is both victim and aggressor and, consequently, the rule is non-intervention.

The authorities who permit intervention in childbirth do so only because they regard the exception to the law of the pursuer formulated by the Gemara to be limited to activities of mutual aggression in which, barring intervention, one will prevail while the other will perish but the bystander is in no position to determine which of the two will live and which will die. In such situations the bystander may not choose between the two on the basis of the law of pursuit. However, they contend, if in the absence of intervention, both will die, each of the two must be regarded with certainty as being a *rodef*. Accordingly, those authorities regard intervention in order to rescue one of the parties to be permissible since, fundamentally, intervention is for the purpose of eliminating a *rodef* whose life is forfeit. Consequently, they regard intervention as a permissible act of rescue rather than as an act of selection for death. However, it is quite evident that this line of reasoning is not applicable in the case of innocent airplane passengers who are not at all engaged in pursuit. There are no grounds actively to cause the death of passengers in order to save others despite the fact that they, too, are doomed.

Meiri, *Sanhedrin* 72b, expresses the novel view that, in the case of a woman in "hard travail," although a third party is barred from destroying the infant in order to save the mother because of inapplicability of the law of pursuit, nevertheless the mother herself may exercise the right of self-defense to save her own life. A similar view is held by R. Joseph Saul Nathanson, *Teshuvot Sho'el u-Meshiv*, I, no. 22.[13]

Nor is the situation comparable to that described by the Gemara, *Bava Kamma* 26b, in which a child is thrown from a roof but, before landing and perishing from the fall, he is stabbed to death by another person. The majority view is that neither party incurs capital punishment. As explained by the medieval commentaries, the first performed a lethal act but did not actually kill. The second administered a *coup de grace*, but only after a lethal act had already been initiated and thus his act is comparable to extinguishing the life of a *treifah*. Causing the death of a *treifah* is an act of non-capital homicide because the cause of death has already been set in motion and capital punishment is administered only if the perpetrator has extinguished *kol nefesh*, i.e., "an entire life." The airplane passengers cannot be considered as being in that category

because no lethal act that would result in the loss of their lives has actually been initiated.[14] Moreover, in terms of normative Halakhah, a *treifah* may not be killed to preserve the life of another individual.[15]

Rescue of human life is a divine mandate, but that imperative does not constitute license to commit an overt act of homicide. At times, passive non-intervention is the only morally acceptable option.

NOTES:

1 Voluntary self-sacrifice in order to rescue the community of Israel is sanctioned by *Yeshu'ot Ya'akov, Yoreh De'ah* 157:1, on the basis of a report of such an act recorded in *Bava Batra* 10b and the approbation lavished upon those individuals. Cf., however, R. Abraham I. Kook, *Mishpat Kohen*, no. 143, who states that the incident described in *Bava Batra* demonstrates only that persons who would themselves perish together with the community may act in that manner. Nevertheless, *Mishpat Kohen*, nos. 143-144, presents another argument in sanctioning martyrdom for the purpose of rescuing the community of Israel. However, voluntary self-sacrifice is not sanctioned simply to rescue a larger number of people. Cf., *Ve-Ha'arev Na*, I, 106-107.

2 In the case of the hijacked airplane the passengers may be regarded as specified because, in the absence of intervention, they would all die. If intervention were sanctioned, sacrificing their lives would save others but there was no possibility of sacrificing others in order to save them. Nevertheless, even if victims are specified, R. Yochanan does not sanction actively hastening death in order to save others.

3 Cf., Ramban, Commentary on the Bible, Leviticus 19:18, who observes that, according to R. Akiva, "and you shall love your neighbor as yourself" should be understood in a similar manner.

4 Cf., however, *Hazon Ish*'s apparently contradictory comments, *Hoshen Mishpat Nezikin, Likkutim*, no. 20, *Bava Mezi'a* 62a.

5 The plane itself also has the status of a *rodef* despite the absence of any element of moral culpability because it is the weight and velocity of the plane that will cause the victims to perish. However, it is unlikely that the incremental weight of the passengers presents a danger that would otherwise not exist; hence, none of the passengers can be considered a *rodef*. See R. Shlomoh Zefrani, *Shimru Mishpat* (January 5, 5764), no. 128.

6 A case of such nature arose during World War II. A German "spy ring" consisting of double agents supplied the German government with information concerning the areas in which V1 and V2 rockets were falling. It was proposed that the double agent transmitting information to the German military report that most of the rockets had fallen well north of London so that future rockets would be aimed a number of miles to the south. The purpose was to assure that future rockets would fall in Kent, Surrey or Sussex where there would be far fewer casualties than in London. The proposal was reportedly placed before the Cabinet by Herbert Morrison, the Home Secretary. Churchill was abroad at the time, but the Cabinet rejected the proposal on the grounds that the British government was not justified in choosing to sacrifice un-endangered citizens in order to save others. See Sefton Delmer, *The Counterfeit Spy* (London, 1971), p. 209. Despite the Cabinet veto, the deception team continued with their efforts to trick the Germans into correcting the aim and range of the German rockets. Morrison, with furious indignation, once again brought the matter before the Cabinet. He is reported to have exclaimed, "Who are we to act as God? Who are we to decide that one man shall die because he lives on the South Coast while another

survives because he lives in London?" Morrison's view ultimately prevailed. *See ibid*. p. 14.

7 The problem was first advanced by Philippa Foot, "The Problem of Abortion and the Doctrine of the Double Effect," Oxford Review, no. 5 (Oxford, 1967), pp. 5-15, reprinted in Philippa Foot, *Virtues and Vices and Other Essays in Moral Philosophy*, 2nd ed. (Oxford, 2002), pp. 19-32.

8 Philippa Foot's example is somewhat complicated by the fact that, if the five were already on the track before the locomotive was set in motion, it is the driver who set in motion the chain of events that will lead to loss of life. Can he "remedy" an act that would cost five lives by modifying the act so that it will result in the loss of a different, but single, life? The hypothetical could just as readily involve a situation in which the driver has had a seizure and it is now a passenger who must take over the controls. The difference is that the passenger has heretofore been in no way involved in the performance of an act that will lead to fatality. May he now cause the death of one person in order to save five others? That dilemma is discussed by Professor Foot in "Killing and Letting Die," *Abortion: Moral and Legal Perspectives*, J. Garfield, ed. (Amherst, 1985), pp. 177-85, reprinted in Philippa Foot, *Moral Dilemmas and Other Topics in Moral Philosophy* (Oxford, 2002), pp. 78-87, seemingly without an awareness of the difference between the two hypotheticals. See *Moral Dilemmas*, p. 85. It is not at all clear that a distinction should be made between the two cases. If a distinction is to be made it would be on the basis of the following consideration: Although overtly causing the death of one person to save a group of individuals is forbidden because each life is of infinite value, nevertheless, if the potential intervener himself set the chain of events in motion, even unintentionally, he has a duty to minimize his own transgression. That consideration may be sufficient grounds to deflect the arrow or trolley so that he is responsible for fewer acts of homicide. A discussion of that issue is beyond the scope of this endeavor but should focus upon an analysis of *Shabbat* 4a.

9 Absent designation, even indirectly causing the death of another in order to save one's own life is included in the category of *yehareg ve-al ya'avor*. See R. Yeruchem Yehudah Perilman, *Or Gadol* (Vilna, 5684), no. 1, *Hilkhot Yesodei ha-Torah* 5:2, s.v. *ve-ha-nireh* (p. 5a) and s.v. *ve-ha-ikar* (p. 10b) and *Hazon Ish, Gilyonot le-Hiddushei Rabbenu Hayyim ha-Levi*, *Hilkhot Yesodei ha-Torah* 5:1, s.v. *ve-yesh lomar*. Cf., however, *Galya Masekhta* (Vilna, 5605), *Yoreh De'ah*, no. 5, s.v. *u-ke-ein he'arah* (p. 92a).

10 Capital culpability is an entirely different matter. The arrow, for example, reaches its goal only because of the combination of the force imparted by the archer and the channeling of that force by the intervener. The situation seems analogous to a case of an arsonist who lights a fire that is carried by the wind and causes death. In that case, it is the act of lighting a fire together with the force of wind that causes death. Capital culpability in such circumstances is dependent upon the talmudic controversy regarding *isho mishum hizav* or *isho mishum memmono*.

11 For a fuller discussion of this question see this writer's *Contemporary Halakhic Problems*, I (New York, 1977), 355-361.

12 See also *Ve-Ha'arev Na*, I, 106.

13 That view is dismissed by R. Moshe Yonah Zweig, *No'am*, VII, 55, as "the opinion of an individual" having no standing in the determination of Halakhah.

14 Depiction of such a victim as a *gavra ketila*, or "dead man," is equally specious. That classification is applicable to a transgressor actually under sentence of death pronounced by a *bet din*. Causing a death of such an individual is no more than giving effect to the sentence of the *bet din*.

15 See R. Ezekiel Landau, *Teshuvot Noda bi-Yehudah, Mahadura Tinyana, Hoshen Mishpat*, no. 59 and R. Schneur Zalman of Lublin, *Teshuvot Torat Hesed, Even ha-Ezer*, no. 42. Cf., however, *Minhat Hinnukh*, no. 296; R. Judah Rosannes, *Parashat Derakhim, Derush* 17; and R. Jacob Emden, *Migdal Oz, Even Bohen* 1:79; and R. Meir Arak, *Tel Torah, Yerushalmi, Terumot* 8:3.

Twin Reactions to the Twin Towers Tragedy

RABBI NORMAN LAMM

The enormity of the depraved atrocity that was perpetrated has not yet been fully assimilated, especially by those of us who lived here, so close to the scene of the crime. Yet a number of students felt that before the effects wear off, we ought to think about remembering — how shall we recall what happened and why.

We should not underestimate the importance of remembering. The philosopher, George Santayana, once famously said that, "Those who cannot remember the past are condemned to repeat it." Apparently, everyone agrees that it is important to remember. The question is: *what* do we remember, *whom* do we remember, and *how* do we remember? Let me therefore begin by putting this event into some kind of perspective.

There have been many catastrophes in history, both man-made and natural. We shall concentrate on the man-made disasters in my lifetime, and those which undoubtedly will continue in your lifetime. This list of horrors includes the gulag of Stalin, where millions of people perished; the experiment of the Communist regime in China — when millions of people perished; the Khmer Rouge, World War II, Cambodia.... One can give a whole list of catastrophes invented by human minds — depraved human minds, but human minds nonetheless.

And then, of course, there was the *Shoah*, the Holocaust. If you want to understand the impact of the Holocaust on the Jewish people and thereafter for the world, remember that we lost one third of our population. We started World War II with a world Jewish population of eighteen million; after the *Shoah*, we were reduced to twelve million. Now make the following very simple math-

This essay is an adaptation of remarks delivered in 2002, at a memorial service commemorating the first anniversary of the attacks on September 11th, 2001.

ematical calculation: what would have happened if the World Trade Center catastrophe had been expanded to one third of the American people? *We would have lost over eighty-two million people!* And nevertheless, despite all that, the impact of what happened exactly one year ago today — even without our calculation — was enormous. Someone put it correctly: *it exposed our vulnerability.* We Americans had been living in a fool's paradise for a long time, protected by two oceans which, at least psychologically, seemed to us to be impassable and therefore for us the permanent boundaries of our security and safety. We learned, to our dismay, that we are vulnerable, that America is no different qualitatively from every other group of human beings. And that is a very difficult lesson to learn.

Let me now turn to the question of what shall we remember, and how do we remember?

There's a great debate that is still raging as recently as this morning's newspapers and it has been raging for the past year here in New York City: How and what shall we do to remember the tragic events of September 11th, 2001?

There are two opinions about the story: one of them is that the place should be left as it is — destitute, except for a museum or a monument, an ever-lasting reminder of the cruelty that struck us and an ever-lasting tribute to the close to three thousand people who were killed, the three hundred who are still alive but who were wounded for life, and the thousands upon thousands of relatives and friends who will never forget this day of infamy and who were wounded psychologically and emotionally.

There is an opposing attitude, and that is just the reverse. They are saying, 'Yes, it is important to remember the tragedy, but we Americans are optimistic and we have to go ahead and forge our own future and not allow ourselves to be dragged down by this one terrorist strike. And if we have to rebuild, then let us rebuild. If this was the financial capital of the world, it must again become the financial capital of the world. We must show that we are not only going to *survive*, but we are going to *thrive*, and that we will not allow the terrorists to determine our future.'

So, which one ought we to emphasize? The recollection of the tragedy or the overcoming of the tragedy? Historically, we Jews have experienced both, each in its own context.

The most traumatic event in Jewish history until the *Shoah* was the destruction of the *Beit HaMikdash*, the Temple in Jerusalem, in the year 70. The destruction left our people devastated; our whole way of life had changed because so much of our religious, spiritual and communal life was built upon the service in Jerusalem. After that we were at a loss. Of course, we eventually filled in the vacuum, but it was a wrenching experience historically. And the question was, "How do we remember the destruction of the Temple?" There arose a group called the *Aveilei Zion* — the Mourners of Zion. The *Aveilei Zion* were people who determined that they would never forget what happened, that they would always mourn it and, therefore, never again would their mouths taste meat or wine. Never again would they indulge in full-throated laughter; nothing more than a smile did they permit themselves. They wanted to live an endless *shivah*, or a perpetual "Nine Days," without any relief. Indeed, many of them did just that. But the Talmud rejected that for the simple reason as R. Yehoshua and R. Chananya said, "*Ein gozerin gezeirah ella im ken rov ha-tzibbur yakhol la'amod bo*" — you may not decree a law, a form of practice, or any norm for the community unless most of the community can abide by it. And most people cannot live in perpetual *aveilut*, in endless mourning. The Sages therefore discouraged extreme mourning practices, or at least they did not encourage them. So it declined for a while, only to come up again in the Middle Ages and various other periods of Jewish history. Even to this day we occasionally mention them in our prayers, especially on Tisha B'Av — "*Nahem Hashem Elokeinu et Avelei Tziyyon va-Avelei Yerushalayim*." We mention them because there was something of value to what they said. Even if it was not put into a formal, normative framework, it was something precious, and so we remember them.

Hence, the question for us is: what shall we do? R. Chananya and R. Yehoshua advocated moderation. But are there other authorities in Halakhah? Is there any way of determining nowadays what we ought to do in Jewish law and in Jewish tradition? And the answer is "Yes," and the Talmud had two minds in its reaction to catastrophe. Those two themes are called "*zekher le'churban*"

— in memory of the *churban*, of the destruction. And the other one is *"zekher le'mikdash"* — in memory of the Temple itself. *Zekher le'churban* emphasized the pessimistic, the negative thinking: we remember the pain, the shame, and the national anguish. We must never forget; we owe it to the people who were destroyed, we owe it to the Temple that was ravished, we owe it to the People of Israel who had to suffer through this national cataclysm. The other memory was zekher le'mikdash — we will never forget the beauty of the Temple, we will never banish from our collective memory the glory, the sanctity, the holiness of the Temple, the service that took place, and how it united our people — and therefore, our hope that it will be re-established, rebuilt, and resurrected.

How do these two opposing themes play out in the Halakhah? Simple: *zekher le'churban*. This means that we observe (or should observe) memory of our defeat to this day. It means, for instance, that every home has to leave a slab of 3x3 feet unpainted in the main room, so that as beautiful as the home is, there is always a solemn note of remembering the *churban*. (Admittedly, this law is often neglected.) Or, at a wedding, the groom breaks a glass. The real reason is: *zekher le'churban,* in memory of the destruction of the Temple. At some weddings it is customary to put ashes on the head of the groom to remember the destruction of the Temple. So *zekher le'churban* is prominent and insinuates itself in many aspects of Jewish life—even at the happiest of moments.

At the same time we have practices that are *zekher le'mikdash* — in memory of the *Beit HaMikdash* itself. For instance, one of the *mitzvot* of Sukkot is not only the *sukkah* itself, but also the *arba minim*, the four agricultural species. The most prominent of the four especially in size, is the *lulav*, the palm branch. According to the Halakhah, the *lulav* was waved all seven days in the *Beit HaMikdash*; but in the *gevulin* — areas outside the *Beit HaMikdash* — it was waved only one day. That was the Halakhah before the Temple was destroyed. After the destruction of the Temple, our Rabbis legislated that in every place — even in the *gevulin* — we should wave the *arba minim* for all seven days — even though it is required only once by the Torah itself. Why all seven days? *Zekher le'mikdash*, in memory of the *Beit HaMikdash*, to give us that injection of hope and optimism.

At the Pesach *seder*, the *korech* (the famous "sandwich" of *pesach matza umaror ve'okhlam be'yachad*) is always eaten *zekher le'mikdash ke'Hillel* — because we accommodate the opinion of Hillel who ruled that one must consume all three — the meat of the Passover sacrifice, the *matzah* and the bitter herbs — together. The reason? Because we remember the *Beit HaMikdash* on this day.

Between Pesach and concluding with Shavuot, we count the *omer*. The *omer* was measure of grain, offered when the Temple was in its glory. Now, *min hatorah* (according to most *Rishonim*), we need not observe the *mitzvah* of *omer*. Nevertheless we do count the *sefirat ha-omer — zekher le'mikdash*. Interestingly, there is one minority opinion (that of the *Baal HaMaor*) that although the counting of the *omer* is *zekher le'mikdash*, nevertheless we do not recite the *she'hechiyanu* blessing — which we normally do when a *mitzvah* appears at certain regular intervals — because it is *zekher le'churban* — a reminder of the destruction of the Temple as well. Hence, we have these two divergent themes struggling with each other: on the one hand, we remember the negative, the destruction; on the other hand, we recall the beauty, the glory and our unrepressed and eternal hope to overcome the destruction and relive our ancient glory.

So the arguments, both Talmudic and contemporary, are reflections of the deeper ambivalence of the universal human psyche, the universal human mind and heart concerning catastrophes, whether natural or man-made. As a result we have paradoxical reactions: on the one hand, deep grief, mourning, bordering on despair, a sense of defeat. On the other hand: defiance, struggle, healing, hope and a striving to overcome and re-attain the glory that once was.

We experience the same theme when a relative or a loved one passes away. One "sits *shiva*," we observe seven days of *aveilut*, of mourning. The law requires us to mourn — that is a form of *zekher le'churban*. Nevertheless, others who are required to visit the mourner for *nichum aveilim*, offering consolation to the mourner(s). We try to bring him or her back into normal life. We do this as a form of *zekher le'mikdash*. We appeal to the mourner to remember the good that once was, the beauty, the love, the happiness that they attained and thereby bring the mourners back into a state of "normalcy" where they can continue living later on. Again, the two themes are like Siamese twins — or

better, related to each other like twin stars, revolving around each other. But both themes are there and active, each in its own way and time.

Another example is the *kaddish*, the classical prayer to be recited in the case of one who lost one of seven relatives. One of the problems that occurs is: what has *kaddish* to do with death?! This classic expression of mourning does not have a single word to do with death! We ask that God's great Name be magnified — *yitgadal* — and be sanctified — *yitkadash shemei rabah* — in the world which He created and that He accept our prayers. But not a word of reference to death. Not a word! So what does the *kaddish* really mean?

Shai Agnon — the great Israeli writer and Nobelist — wrote what is called a *Reshut Le'Kaddish*, a prayer before the *kaddish*. The essence of this prayer: a human king, a human president, any human leader, involved in a calamity such as war, would throw his troops into battle and he doesn't consider each individual person. He can't; it would be criminal for him to do so because he has a responsibility for a whole army and a whole country. What does he do? He treats them like cannon fodder: ten thousand troops here, twenty troops there, a hundred thousand troops going in afterwards. He relates to them from a global point of view. Not so is the King of Kings of Kings. For Him, every human being is a precious soldier in the army. Every human being, regardless of race, religion, nationality, or anything else, is a child of God, a soldier of God, a beloved of God. If that person dies then God's name is diminished and God's *kedushah* (His sanctity) is diminished. So when someone dies, we turn to the Almighty *Hakadosh Barukh Hu* and we say, 'God, we are here to console You.' We are *menachem avel Hakadosh Baruch Hu*. 'You lost something of Your Name, of the greatness of Your Name, You've lost something of Your holiness,' so we pray *yitgadal ve'yitkadash shemei rabah* — 'may Your great Name be magnified, instead of diminished, and may it be sanctified, and never be desecrated.'

Thus, the *kaddish*, presents to us the double theme: on the one hand, of death requiring consolation; and consolation itself with its hope for a future of reconciliation with the Almighty.

Most remarkably, there are several forms of *kaddish*. They are *kaddish le'eilah*, *kaddish titkabel, kaddish de'rabanan*, and there is also *kaddish de'itchadita* — which is the most beautiful. (It is worth reading the translation if you do not understand the Aramaic.) Unfortunately, most people stumble over the unfamiliar Aramaic words. In this *kaddish* we ask of God that His name be magnified and re-consecrated in a world which He will be rebuilding, in which Yerushalayim will flourish, in which the *Beit HaMikdash* will rise again, in which the *geulah* will come to Israel and for the world. And when is this *kaddish de'itchadita* recited? On two occasions: one of them at an open grave, just before the interment. And the other — at the height of one's joy in the collation offered at a *siyyum masechet*, when you finish a volume of the Talmud and you joyously recite the same *kaddish*. How remarkable! A solemn prayer recited at an open grave as a fellow Jew is being lowered to his eternal rest, and *this Kaddish is identical in every word* to the *kaddish* of the joyous praise of the Almighty upon concluding the study of a tractate of the Talmud. One is *zekher le'churban* and the other — *zekher le'mikdash*. And again, both themes go hand in hand.

Perhaps the best symbol of this duality of *zekher le'churban* and *zekher le'mikdash* is to be found in the *shofar*. The Halakhah identifies three kinds of sounds: *tekiah* — a single long blast; *shevarim* — three intermediate sounds; and *teruah* — staccato, nine short sobs. *Shevarim* and *teruah* symbolize weeping and crying, lamentations. The three intermediate sounds are the crying and then the sobbing sounds of staccato. *Tekiah* is a sound of *simcha*, of joy. We are to take the weeping and the sobbing and surround them by expressions of joy. Hence, in one blast of the shofar we have the combination of *zekher le'churban* (the *shevarim-teruah*), and the *zekher le'mikdash* (the *tekiah),* as if to say that if you want to lead a good, proper and worthy life, a life of experiencing what is precious and invaluable, then you have got to identify what's wrong but surround it with the symbol of what is right. Thus we can overcome the defeat and despair, and achieve hope and the glory and happiness, that once was normal for us.

This morning's *New York Times* quoted something that New York's Mayor Michael Bloomberg said and which is similar to what we have been saying: 'We'll mourn in the morning, and in the evening we'll rededicate ourselves to rebuild.' I agree with him almost completely about both themes, but they are

not separate, with one period for mourning, and then forgetting the mourning and going on to the rebuilding. Rather, both tendencies must co-exist simultaneously — *zekher le'churban* and *zekher le'mikdash*. We cannot afford to dispense with either of them. As we mourn those who did not survive the World Trade Center attacks, as our hearts go out to those who were injured and who lost precious relatives, we keep both tendencies in mind. We realize that we Americans are a very proud people.

The reason the vicious terrorists struck the World Trade Center is because that is a symbol of capitalism, of democracy, of American entrepreneurship and initiative — and that is what our enemies wanted to devastate. Well, we are a proud people and we are an optimistic people. But if we forget the *zekher le'churban*, then we are unrealistic. America has learned something: we've learned that we are vulnerable, that after all is settled and done, we share the common lot of humanity. We discovered that life is sometimes risky. Life is fragile, life is fragmented and not always do we successfully achieve our ends. We have always to consider the fact that lurking behind us, maybe below us and certainly above us are the threats of death and destruction. Without that knowledge we march into life unarmed and unprepared. At the same we never must allow ourselves to become a depressed people. Rather, recognizing the *zekher le'churban*, we rededicate ourselves with equal emphasis to *zekher le'mikdash*.

We must determine that this awful and dreadful anti-human event be preserved in the collective consciousness of America. But the memory of the destruction must not dominate us for all the future. Indeed, the *zekher le'churban* as we go on must be transformed dialectically into its opposite, into *zekher le'mikdash*. And the *zekher le'mikdash* can never afford to express itself without always having at its side the *zekher le'churban*. That is the way of maturity, that is the way the Sages, the guardians of our heritage, understood the reaction to the destruction of the *Beit HaMikdash*; and how we must understand the reactions to any and all such catastrophes.

Let us hope that the victims will be remembered not only by their immediate families but by all of us and that together, they and we, will rededicate ourselves as Americans and as Jews to a greater, safer, more secure and more realistic future.

"Is Anything New Under the Sun?": Reflections on the First Anniversary of the Attack on the Twin Towers

BASED ON AN ADDRESS BY RABBI AHARON LICHTENSTEIN

On this date now identified with tragedy, we pause for reflection, hopefully to attain some spiritual meaning and growth in this period of introspection. Considering the trauma, suffering and evil of extraordinary proportions and intensity, it is natural that this tragedy should reverberate both in America and throughout the world. Yet I wish to devote my remarks to tempering somewhat our reactions to the moral and religious consequences of the event.

I hope that my words will not be misunderstood, and that they will not be construed as reflecting a lack of sensitivity. I would not, God forbid, want to make light of the tragedy of the murder of a single individual or of the anguish of a single family that suffered a loss. How much more so, when we are dealing with an atrocity of such horrendously vast proportions, must the thousands of afflicted families be accorded the appropriate sympathy and support.

On the human level, the pain is terrible. Identifying with it is not only a duty imposed by the conscience, but also a visceral, instinctive reaction. That being said, I would nevertheless resist the notion that the evil committed on that bitter day marks a revolutionary change in our world from either a religious or a moral perspective. In keeping with this theme, I have titled this address, "Is anything new under the sun?"

This essay is an adaptation and translation of oral remarks made on September 11th, 2002 (5 Tishrei 5763) at a conference in Jerusalem organized by "Mosaica: The Institute for the Study of Religion, Society and State." Originally published in Alon Shevut Bogrim 18 (5763), pp. 123-133, it was adapted by Aviad Hacohen with Reuven Ziegler, and translated from Hebrew by David Strauss with Dov Karoll.

Taking a step back, it is worth noting that, sadly, the confrontation with evil — even evil as vast as this — is familiar to us. The questions raised by such tragedies are difficult and penetrating. The absence of satisfactory answers to these questions is an age-old challenge to people of faith.

With all our pain and sorrow, we must understand and remember that no one can provide easy answers regarding Divine providence and the Holocaust, in whose shadow we still live. We must recall how dumbfounded we stood, and stand, contemplating the depth of the evil attained by a developed, cultured society. We must not forget that phenomenon, so unfathomable and incomprehensible, of God's hiding of His face from the world.

A year ago, we were witness to a scene that would have been unthinkable even in our most nightmarish imagination. And yet, and without dulling in the least our sensitivity to the value of every individual's life, we must acknowledge that this terrorist attack is utterly dwarfed by the blood spilled upon European soil over the previous century.

What are the moral and religious ramifications of this event? In great measure, the answer to this question depends on the attitudes one held on "the day before," on the 10th of September, 2001.

For theological and moral liberals, the events of September 11th surely came as a terrible shock. These groups had internalized the ethos, so prevalent in America in the last two centuries, that life is characterized by pleasantness, success and prosperity. Those who overlooked the tragic aspect of human life surely suffered a shocking blow — both conceptual and emotional — that threatened to undermine their worldview.

A similar shock presumably befell another group beholden to an entirely different perspective: those people of faith who thought they understood fully the ways of Providence. If they had managed to forget what happened in Europe in the previous century, the events of 9/11 presented a renewed challenge to their outlook.

For people who thought along either of these lines on the eve of September 11th, the danger of losing faith in man, or an erosion of faith in God, respectively, is a real one. Yet, no such cataclysmic metamorphosis in thought is demanded of one who holds a wholly different approach to life. No such shock befalls one who has internalized — conceptually, existentially and experientially — the idea that "the impulse of man's heart is evil from his youth" (Genesis 8:21), as our Sages understood it. No reorientation is required for one deeply aware of man's dangerous potential. One who is cognizant that human history, and especially Jewish history, is drenched with blood, surely shares in the agony but is not overwhelmed by shock and bewilderment.

Does history have religious meaning? For a believing Jew, the answer is clear: it certainly does. We firmly believe that God is immanently involved in the human world. Yet, this says nothing of our ability to offer explanations, especially detailed and focused ones, as to why any particular event took place. To offer such explanations involves a great deal of chutzpa, tendentiousness and arrogance.

There have been those who have professed to know the answers to such questions. Balaam proclaimed that he "knows the knowledge of the Most High" (Numbers 24:16), and our Sages indeed describe him as a great prophet. Nevertheless, the Gemara (*Berakhot 7*a) asks: "Now, he did not even know the mind of his animal; how then could he know the mind of the Most High?" Members of certain schools of thought should take these words to heart.

Do we, as Jews, see man through rose-colored lenses, with the optimism and sense of progress that characterized the nineteenth century? Or do we see man through dark glasses, viewing him pessimistically as a corrupt creature with no chance of redemption?

I believe that Judaism adopts a middle position. On the one hand, we do not share Rousseau's romantic outlook that views man as a wonderful creature by nature, corrupted only by external circumstances. Our Sages interpreted the verse, "The impulse of man's heart is evil from his youth" (Genesis 8:21), as teaching that one is born with the "evil impulse," while the "good impulse"

only takes effect from the time one reaches thirteen years of age *(Yerushalmi, Berakhot* 3:5). From birth, the evil impulse fills man with egotism, aggressiveness and selfishness. In contrast, the good impulse is inculcated through a process of socialization and education, always struggling to catch up to the evil impulse, which has a thirteen-year head-start.

On the other hand, Judaism certainly does not share the distrust of man that characterizes certain streams in Christianity. These branches of Christianity see man as corrupt by his very nature, utterly incapable of change and spiritual ascent. Rather, Judaism shares the view of classical religious humanism, according to which man is not inherently good but is capable of great good, provided that he is trained properly.

God's goodness and grace are pillars of our faith. How, then, can we account for evil? It is certainly true that "the impulse of man's heart is evil from his youth"; our Sages have told us that man's evil impulse renews itself every day (*Kiddushin* 30b). God has endowed man with free will, which sometimes goes unbridled and has catastrophic results. I have been strongly influence by the teachings of my revered teacher, Rabbi Joseph B. Soloveitchik *z"l*, who refrained, categorically, from providing answers as to why given events took place. I do not know the extent to which this was specifically because of the Holocaust; I presume that on principle he would have advocated standing humbly before the Almighty in any case. This attitude was deeply ingrained in the Rav's personality and thinking. This humility dictates the conclusion that we are incapable of understanding Divine providence. But, at the same time, we are capable of responding to catastrophe — and thus are also obligated to do so.

As such, faced with tragedy, it is our duty to respond. To whatever extent possible, we must draw the appropriate conclusions and continue on our way, determined as before. Our goal must be not to hobble along as wounded survivors, but to press forward with renewed rigor. The ideal response is a combination of humility and struggle. On the one hand, we accept God's judgment. But on the other hand, we respond with readiness and determination — to rise up and overcome.

We know not why these events happen. But when evil manifests itself, we must confront it. At one level, we must confront its perpetrators directly — a realm beyond my purview. Leaving aside direct confrontation at the practical, political or social plane, this manifestation of evil demands that we sharpen our awareness of the evil that lurks within us, and stand guard with greater vigilance against it. When I say "within us," I refer to the world at large, to the intimate society that surrounds us, and to the depths of the individual soul.

We must heighten our consciousness that "The heart is deceitful above all things, and grievously weak: who can know it?" (Jeremiah 17:9). On the one hand, in crying out "Who can know it," the prophet implicitly despairs of knowing man's heart. On the other hand, the more deceitful man's heart is, the greater must be our readiness to confront that which perpetually resides within us.

The terrorist attack at the Twin Towers was clearly an exceedingly traumatic event. However, to what measure did this event change the way of life, and world outlook, of the average American? Was his trust in humanity at all undermined, and if so, to what extent? When we consider the fundamental moral, religious, theological and philosophical impact of the event, it seems to me that it is neither unique nor unprecedented. I believe that deeming this event unique is both erroneous and fruitless in terms of advancing moral dialogue. It is liable to lessen our awareness of other phenomena, an awareness that is so central to our heritage and our very existence.

However, this event has one weighty aspect that distinguishes it to a certain degree from other recent tragedies and struggles. This element is not unprecedented, but many thought that it had disappeared from the modern horizon. I refer to the religious aspect of this attack.

In the modern world it is a matter of course that wars are fought in which thousands, and even millions, are killed. Countries are destroyed and nations suffer mortal wounds. The justifications for these battles may be given either in economic or in political-national terms. In generations past, on the other hand, religious wars were quite common. Those were fought in a world that

once was, but is no longer: the Thirty Years War in the 17th century, the wars between Catholics and Protestants, the Crusades, and wars in the early years of Islam.

Many people thought that religious wars had passed from the world. Some viewed this development favorably, others unfavorably. Some thought that it stemmed from a deficiency in religious fervor, from a spiritual decline. They lamented that people go out to war for oil, but not for the glory of God. Others thought that this stemmed from enlightenment and true tolerance, and not just from convenience.

All of a sudden, the present war has a religious background. I do not intend to assess the significance of this point, but it clearly has some bearing. It has suddenly become clear that there is a significant community of zealots who are willing to fight over religion. Those with Marxist tendencies would surely demur, claiming that the supposed religiosity is simply a façade for other motivations. I am not a Marxist, and I do not think it productive to minimize the extent, depth or strength of the other people's faith. I am willing to accept that a religious motivation underlies this terrorist act.

It is hard for many to digest this point. They thought that enlightenment had long ago wiped away such fervor, and they do not understand how to process such fundamentalism. On the other hand, for some religious people the general trend of religious revival, despite its sometimes twisted manifestations, is reassuring: God is no less important than oil.

An English literature professor once wrote an article on the development of atheism in the 18th century, in which he claimed that nobody was willing to sacrifice his life for it. Indeed, nobody was asked to do so. Yet now there are people who are prepared to sacrifice their lives for religion. From one perspective this is uplifting. But on the other hand, it is terrifying. Are these the means through which these people wish to advance their beliefs and worldview? Who would not tremble before such people? Who would not be stricken with dread when faced with the danger that this fire may spread? We must confront this approach, recognizing the power of its fervor and seeking to grasp its significance.

Our confrontation with this worldview should lead us to examine ourselves and take care that our own fervor not overpower our conscience and our faith. We must redouble our efforts to draw people closer together. As Jews, we proclaim a universal vision, while simultaneously preserving our uniqueness. We pray for and await the day when "the Lord will be one and His name one." During this season we turn to God in supplication:

> Reign over the whole universe in Your glory; be exalted over all the earth in Your grandeur; shine forth in Your splendid majesty over all the inhabitants of Your world. May every being know that You have made it; may every creature realize that You have created it.

These are very universal terms, but the next sentence moves from the universal to the particular: "May every breathing thing proclaim" not only theological unity, but also that "the Lord *God of Israel* is king, and His kingdom rules over all."

This formulation, established by the Sages, draws from the visions of Isaiah and Micah. It embraces the universal, eschatological aspiration, while directed through a uniquely Jewish channel — which, at that time, will become the shared vision of all of humanity.

> And many people shall go and say, Come, and let us go up to the mountain of the Lord, to the house of the God of Jacob, and He will teach us of His ways, and we will walk in His paths: for out of Zion shall go forth Torah, and the word of the Lord from Jerusalem (Isaiah 2:3).

I know not how Divine providence will direct the paths of humanity, Jewish and general, to arrive at the realization of that vision, to close the gap between history and truth. Such a resolution has not yet appeared on the horizon. We lack the tools — practical and perhaps even conceptual — to bridge the abyss that lies between these worlds. However, as individuals and as a community, as believers and as educators, it is within our hands to try and influence the emphases and the direction. While preserving our uniqueness and our faith, we must try to narrow our differences with the broader world.

I am not among those who initiate, or call for, ecumenical activity. But there is much that can be done within one's own camp. Moslems can do a great deal in their camp, and we can do a great deal in ours. We can try to close the gaps, to diminish the hatred, to bring people together. We are obligated to do this from a human, religious and moral perspective.

I opened with a statement that I hope was properly understood, that my words might temper the spirits and reduce the tension that is felt these days. I do not retreat from this, but I wish to close by clarifying one point. On the theoretical plane, we must see this tragedy in its broader historical and religious context. To my mind, much of what has been said in this regard exaggerates the moral and religious significance of this specific event.

However, we are not living, and we do not wish to live, solely in a world of theory. We do not wish to live exclusively as theologians or philosophers, even if we are talking about religious and moral philosophy. We experience, and wish to experience, the existential dimension of our being, and this needs to be accorded proper significance. Whatever theoretical perspective or explanation one can advance, anyone who witnessed the horror and destruction, the wickedness and the murder, will be both unwilling and unable to maintain a distance. Whoever experienced this dreadful bereavement, even indirectly, felt shock and inner turmoil, even if these did not lead to a paradigm shift.

Exposure to both the suffering and the bravery of 9/11 cannot but increase the human sensitivity of anyone with an open heart. This exposure must intensify our commitment and deepen our determination to pursue the good. We must do our best to remember those who were killed; to support those whom they left behind; to build a better world, one that is more trusting and more humane. Especially during these days of reckoning, we cling to the realization of our shared destiny: "a world built by kindness" (Psalms 89:3).

"From the Depths I Have Called To You": Jewish Reflections on September 11th and Contemporary Terrorism

PROFESSOR DAVID SHATZ

"From the depths I have called to you, O Lord" (Ps. 130:1). Expounding this verse, R. Joseph B. Soloveitchik *zt"l*, reverently known as "the Rav," asserts that prayer and turning to God arise specifically "*mi-ma'amakkim*," "from the depths" — that is, from the experience of crisis.[1]

True to this insight, in the aftermath of September 11th, 2001, many people here and abroad found comfort and hope in religion. After the tragedy we witnessed a revival of the religious spirit, a "spiritual thunderclap," as *The New York Times* put it. "Stunned Americans," the paper reported, "flocked for prayer and comfort not only to their local house of worship, but also to sport stadiums, public plazas, and convention centers."[2] This turn to God in the wake of assault calls to mind the words of God delivered to Isaiah. The prophet's message is addressed specifically to one who fears attacks by others, who "live[s] all day in constant dread because of the fury of an oppressor who sets out to destroy" (Isa. 51:13). To such individuals God says: I am the one who is your consoler (*Anokhi Anokhi hu menahemkhem*)" (Isa. 51:12). We turn to God, and He to us, when we need comfort and consolation.

The surge of religious devotion, however, was only one side of a complex story. Many thoughtful and sensitive people felt not spiritually aroused, but spiritually challenged. Today, one full year later, those people will look beyond America's pragmatic measures and will be beset by hard, brooding questions that form the eternal problems of faith.

Religion is under siege — not necessarily in the public domain, but in many minds and hearts. The challenges to trust in God are formidable, affecting believers of many persuasions.

First of all, the attacks were undergirded and propelled by religious beliefs. This led many to wonder whether religious convictions *by their very nature* contain the seeds of fanaticism, whether they inevitably and inexorably give rise to the bursting of ethical restraints in the service of a higher cause. Such questioning has led and will continue to lead morally sensitive Christians, Jews and Muslims to ponder danger that they might feel lurk in their own religions.

Second, the numbing numbers of lives lost, a number made worse still by the fact so many died in the midst of selfless acts or rescue or in a radiant prime, leaving children, spouses, parents, siblings and friends to grieve, makes us wonder about that oldest of theological conundra: how does God allow evil, particularly horrific evil? How does one sustain a commitment to God in the face of such tragedy? True, many of the people who in the aftermath of 9/11 pondered why God allows evil have done so before. They have thought deeply about the many victims of terror in Israel and elsewhere, as well as about the unprecedented destruction that was wrought in Europe six decades ago. But this particular adversity has its own poignancy for Americans. Despite prior attacks on America, such as the 1993 bombing of the World Trade Center, Americans thought this country was different, that it was safe. Now it too is a place where citizens feel vulnerable, fragile and frightened. With the Arab-Israeli conflict escalating at the same time to horrible proportions, the world itself at times seems to lie on the brink on destruction. Americans therefore feel acutely the force of the question, "Where is God?"

There are no quick, definitive answers to challenges to profound. But we must find a *modus vivendi* with them, even an unstable one; we need some starting point for absorbing what we are living through and for girding ourselves for the future. This essay is devoted to mapping out some issues of faith posed by last September 11th and to evaluating possible reactions. The positions are not meant to be novel; more importantly, in no way are they meant to be final. On the contrary, the task of living with faith is arduous and ongoing. R. Soloveit-

chik denounced the idea that religion is meant to be "an enchanted stream for crushed spirits." It is, rather, "a raging, clamorous torrent of man's consciousness, with all its crises, pangs and torments."[3] If we take seriously this conception of what a faith-full life entails, and if we further understand that religious growth must be ongoing, we cannot see any questions as easy. Answers, while never glib, must be fluid and tentative; they should be tested against reason and our collective religious experience, and most importantly should reflect the intensity and turmoil of our inner struggle.

In what follows, I deal with these two problems of fanaticism and evil. In part I, I explain how the passion that religion demands of its adherents may lead to fanaticism, and will identify some resources that Judaism offers to deal with that danger. In parts II and III, I turn to the problem of evil, and in particular sketch how the approach of R. Soloveitchik to the problem of evil affords a meaningful way of coping with the horrific events we have recently experienced. As we will see, the questions of fanaticism and evil are connected in a striking, ironic way.

Religion and Fanaticism

THE IMPORTANCE OF PASSION

However well-grounded a person's commitment to God is from a purely intellectual standpoint, it cannot be truly religious if it functions in an emotional vacuum. Judah Halevi, the great medieval Spanish poet and thinker, saw clearly that intense passion is crucial to religious life. Halevi's *Kuzari*, in fact, is a famous attack on a certain type of religion. Specifically, it criticizes forms of religion in which a believer's convictions are based upon a theoretical argument, rather than on the intense, living experience of God's presence.

A crucial complaint Halevi lodges against philosophically-based religion is that because it is grounded in philosophical or rational proofs, on what we would consider a detached, objective weighing of "the evidence," such a religion can never generate in its adherents the level of passion exemplified by a martyr. He made this point by saying that philosophy could bring a person only to Elokim, the impersonal God of the cosmos, and not to the caring, personal deity denoted by the Tetragrammaton, which we pronounce "Hashem" in ordinary parlance:

> One yearns for Hashem as a matter of love, taste and conviction; whilst attachment to Elokim is the result of speculation [philosophizing]. A feeling of the former kind *invites it votaries to give their life for the love of Him, and to prefer death to His absence*. Speculation, however, makes veneration only a necessity as long as it entails no harm, and bears no pain for its sake. (*Kuzari* 4:16; my emphasis).[4]

Passion for an idea, Halevi suggests, is manifest through willingness to die for it. A purely rational religion cannot bring that passion about. On the contrary, intellectualizing cools the passions.

If, as Halevi says, the possibility of martyrdom is essential to a religion that views God as personal, there arrives the possibility, which Halevi does not address, of fanaticism or "radical religion," which expresses itself in such forms as mass suicides, suicide bombers and other forms of violence. Willingness to die for one's religion does not logically lead to willingness to kill for it; but insofar as both a willingness to die and a willingness to kill reflect religious passion, a slide from one to the other is all too easy.[5]

The centrality of religious passion and its potential connection to immorality is brought out especially vividly, if somewhat radically, by R. Abraham Isaac Kook (1865-1935). As a mystic, R. Kook believed that all existence emanates from a single divine source — all things are holy. For him, therefore, no phenomenon in the world — no thought, no idea, no movement — is entirely without worth, and one must pierce through ugliness and perversity to get at the positive in everything. True to this vision, R. Kook found value even in idolatrous religion: "The source of the idolatrous urge is in holiness (*mekor yitzra da-avodah zarah bi-kedushah hi*)."[6] Idolatrous religion may be morally and intellectually odious,[7] but it involves, among several worthy characteristics,[8] intense passion for the divine. This passion, Rav Kook held, is, in isolation, holy. "In the pollution of idolatry is to be found the greatness of the spirit of faith in all its wildness and grossness, in its hot-bloodedness and in its horse-like power, in the burning of sons and daughters."[9] "The deep passion of idol worship… is a darkened consequence of the recognition…that the Divine is more previous than anything else, and all that is lovely and beloved is as nothing in comparison to Him."[10]

However distorted and perverse this passion, however grotesque its expression, we may learn from it, says Rav Kook; it teaches us something of the quality of heart needed to experience the infinite God. What is needed is not that the quality be eradicated, but that it find its proper expression.[11]

The nineteenth century Danish existentialist philosopher Søren Kierkegaard took the importance of passion in true religion beyond anything entertained by Halevi and R. Kook. For Kierkegaard, a religious commitment must never be confused with, for example, an intellectual one. If you believe in religion because it is "rational" to do so, because the "facts" support it, that is a *secular* gesture, not a religious one. To be religious you would need to go, or at least be prepared to go, contrary to what is intellectually safe and sound. Passion and intensity are measured by the degree to which one is willing to take risks. A man's love for a woman, his passion for her, is measured by how much he is willing to risk and give up for her; so, too, your passion for God is measured by how much you are willing to give up for Him, and *part of the required price is the surrender of intellect and the willingness to act against all odds and all evidence*. Furthermore, just as a religious commitment must not be confused with an intellectual one, likewise a religious act must not be confused with a *moral* one. Morality is valuable — on that Kierkegaard is clear. But a religious person, Kierkegaard asserts, is not merely someone who does the moral thing. That makes religion too easy. The religious person is someone who takes, or is at least ready to take, moral risks by going against that which seems obvious to his or her moral conscience.

Kierkegaard elaborated this view in his famous essay *Fear and Trembling*, which focuses on the *akedah*, the Binding of Isaac narrated in chapter 22 of Genesis. If Abraham is commanded to sacrifice his son Isaac, Kierkegaard says, then religious commitment requires that he do it, even though from a moral point of view it constitutes murder. This, to him, is the point of the *akedah*.[12] It is not that ethics has no value for Kierkegaard; on the contrary, it is precisely because morality has value, and Abraham would ordinarily cling to it, that Abraham's religious commitment is significant. To be religious he must override all else that is valuable in his life. Even where religion and morality do not conflict, the religious commitment is adulterated if reason and morality are marshaled

to strengthen the commitment in any way. There is nothing religious about rational or moral considerations, Kierkegaard maintains.[13] Rather, to repeat, religious commitment finds its highest, clearest expression in the overriding of other modes of thinking and feeling that we value, when those modes conflict with the religious demand.

When we confront people who in the name of religion aim at randomly killing people who are innocent, we must discern what we are up against. What for the stunned observers is fanaticism, for the perpetrators is religion. To be sure, the perpetrators in this case are not Kierkegaardian philosophers (nor has Kierkegaard's exegetical path historically led to violence, despite its seeming potential to do so). Al Qaeda do not see themselves as overriding morality; in their self-conception, they are fighting the just and moral fight. They see themselves as warring for Allah against wrong ways of life, they deem the innocent victims guilty by complicity, and they explain their actions in terms of "rational" arguments for inflicting violence on foes of true religion, so as to keep the world on the straight path. To this extent their religion is "rational." Nevertheless, as Jerome Gellman incisively remarks, "A belief system can be rational — yet crazy."[14] It can be internally coherent and logical, but crazy nonetheless. It seems to me that in al Qaeda's case and others, the passion generated by religion is what leads to the come-what-may rejection of moral and prudential considerations that otherwise might deter action and that in fact are accepted by moderate Muslims. The passion closes off the extremist from perceiving other dimensions of life that have value, and in this way it permits a suicide bomber to see the world as he does and to translate his conclusions into deeds.[15] Normal standards of decency and, for that matter, self-interest have no hold, not just because they may not be valid for the terrorist, but because even if they were, they would be outside the religious sphere and hence of no real account in the context of religious demands.

In sum, religion celebrates extreme devotion, and seems not satisfied with less. Hence the natural and very intimidating question: is religion — at least when it contains a political component or agenda — too dangerous to human security to be pursued with confidence, commitment and verve? Does the history of religious wars and extremism signal that religion, or religion mixed with poli-

tics, is too grave a social threat to be encouraged? Why continue as before with an idea that carries such dangers? Religious "insiders" may see these questions as reflections of the questioners' own spiritual coldness and alienation, their inability to muster in themselves adequate religious feeling. But this perception, even if accurate, surely would not constitute a rebuttal of the objections; it would only be an excuse for avoiding them, a timid flight from a genuine issue. Eugene Korn eloquently puts that issue on the table:

> [T]he very form of human relationship to God requires that a religious person surrender himself to the Divine word, disregarding practical concerns and conventional moral judgments. Yet who is the fanatic if not the unreasonable person who ignores normal considerations and social constraints to pursue and ideal without limit? The religious fanatic is not someone with faulty reasoning. On the contrary, he is the perfectly consistent religious servant, unwilling to allow any personal interest or ethical constraint to interfere with his understanding of the divine command.... Therefore fanatical extremism is a philosophical difficulty for all theologies and a potential ethical horror for all faith communities.[16]

What shall we say about this challenge?

On Balancing Values

We may begin our reply as follows. Any idea can be taken to extremes. Hence, if we resolved to abandon ideas that individuals or societies might take to extremes, we would have to jettison many of the best and noblest ideas there are. As R. Norman Lamm has written in a different context:

> Any idea contains the risk of distortion; and the nobler the idea, the greater the danger and the uglier the perversion. The concept of government can be reduced to tyranny; must we, therefore, all be anarchists in order to avoid such dangers? Religion can become superstition; democracy, mobocracy; liberty, libertinism; respect, subservience; love, lechery. Shall we abandon the former because they can and often do denigrate into the latter?[17]

Ideologies, secular as well as religious ones, frequently take healthy values to unhealthy extremes. Even having witnessed in our time the degeneration of some of the very ideals R. Lamm identifies, we must surely go along with his conclusion that the ideals are still, for all that, worth holding. Thus, religion can be worth holding even if some religious ideologies take it to an extreme; religious passion can still be worth striving for even if some allow it unbridled reign.

But this reply, as it stands, is not adequate for the case of religion. For let us ask: how can the taking of ideals to extremes be stopped, once they are taken as values?

In R. Lamm's examples, the answer is clear: by placing some competing ideal or ideals against them — law against liberty, self-respect against respect for others, discipline against love. In the case of religion, however, this placement of a competing ideal is *prima facie* inappropriate. After all, tempering the religious ideal would require placing some value against religion, a value, furthermore, that overrides religion in some cases; and surely to allow one's religion to be superseded in this way is to miss the whole point of its being a *religious* commitment. For religion, we said, is supposed to be overriding; it trumps all rational and moral calculation.

There is a solution to this problem, however. There is a way to have the passion for God tempered by morality and rationality without compromising the religious framework. That way is to embrace morality and rationality *not as external to the religious outlook but as part and parcel of it*. One must allow for religion to balance and integrate competing values *and see them all as part of religion*.

Such an approach, which is called "dialectical," sees religion as requiring not a single-minded commitment to one of a pair of values — freedom vs. submission, fear vs. love, self-negation vs. self-affirmation, emotion vs. intellect, and so on — but rather a commitment to each of these values and a careful calibration and balancing on them, perhaps an oscillation (or dialectic) between one and another.

Dialectic is a brake on extremism, because it refuses to absolutize. In a dialectical approach one value can be overridden, in some circumstances, by another, and that latter, in other circumstances, by the original one. In our time what we experience is a failure to *balance* passion with restraints both of cool reason and moral sense. The key to defusing fanaticism is to infuse not only reason with passion but also passion with reason, to understand God's will with the aid of general moral judgment, and to view moral and rational judgment not as antithetical to the religion but as part, albeit not the whole, of it.[18]

"It is forbidden," writes Rav Kook, "for the fear of heaven to push aside man's natural morality. There is a sign showing that the fear of heaven is pure, when the natural morality, planted in man's honest nature, ascends through it [the fear of heaven] to higher levels than it would attain without it."[19] Introducing natural morality does not reduce the quality of one's commitment, it enhances it. R. Kook saw the need to integrate passion with intellectual reflection, obedience to God (or fear of heaven) with a natural sense of morality. The avoidance of extremes is in the spirit of Maimonides' famed "middle path" in ethics.[20]

A Kierkegaardian theory of religious commitment, which sets religion against all other human values like morality and rationality, is singularly unattractive. Such a conception would see Jim Jones's cult as more religious than Roman Catholicism just because the latter integrates rationality and "natural law" (a moral standard grasped by reason) into religion. Kierkegaard's approach simply conflates the concept of religion with that of insanity and immortality. Ironically, secular critics of religion view religion much in the way Kierkegaard does: as irrational and immoral. A dialectical approach that integrates morality into religion justly escapes the critic's barbs.

The Akedah Revisited

Even if religion need not *absolutize* passion, we must face the question as to how far Judaism, our particular religion, goes in advocating passion. The passage just cited from Rav Kook refuses to demand a passion so strong as to disregard morality and forsake moral sanity vis-à-vis the preservation of human life. But what shall we then say about the *akedah*, where Abraham's willingness to sacrifice his son seems so contrary to morality and, in particular, to moral

principles about taking life? To answer this question, I propose now to examine an approach Rav Kook developed to the *akedah* narrative. In effect, he converts that narrative from one that epitomizes religious passion to one that calls, on the contrary, for the tempering of passion via moral and intellectual reflection on the value of human life.

As background for explaining Rav Kook's reading, it must be noted that Kierkegaard's interpretation of the narrative as depicting a clash between religion and Abraham's sense of morality, and as identifying religious heroism with the suspension of morality for a higher purpose, is, for all its power and popularity, neither the understanding of the talmudic Sages nor the best literary fit to the text.[21] First of all, from a certain point of view, sacrificing an only child to God could be said to make sense. This is not just because in Abraham's culture, child sacrifice was practiced, making sacrifice "relatively" permissible. Nor is it just that if our possessions are on loan from God, God might want them back. Rather, the point is that to live in the presence of God is to be prepared to part with one's most precious possessions. It therefore may have made sense to Abraham to offer his beloved son to God. Abraham, on this view, would not have seen such a sacrifice as immoral, any more than others in his time and place did.

Instead of viewing God's command as contrary to morality, Abraham may have seen the divine command as a call to suppress fatherly love for the son in whom he had invested all hopes, this for the sake of serving God properly. "He conquered his *rahamim* [compassion]," as we say in our prayers, "so as to do your will wholeheartedly."[22] This suggests the suppression of parental feeling. So in the first place, whereas Kierkegaard views the *akedah* as a clash between morality and God's command, it is more compelling to view it as a clash between parental love and God's command.[23] Accordingly its message is not necessarily, or at least not exclusively, that God's commands may at times clash with morality.

A more basic reason for rejecting Kierkegaard's reading is that, even assuming that God's command to Abraham is at odds with rational and moral judgment, at the bottom line, Abraham never kills Isaac. An angel of God comes down

and enjoins him from going ahead. "Do not lay your hand upon the child; do nothing to him…" (Gen. 22:12). Yes, Abraham expresses his passion for God by bringing Isaac up to the site of the altar — but ultimately God forbids him to touch his son. Commitment to God may require readiness to do for God what God commands us — but God will not allow child sacrifice. Although such sacrifice makes *religious* sense, it is at the end of the day objectionable to God after all, as God *will shape His own demands according to the value of human life*. The *akedah*, thus read, testifies to God's wanting religious acts to be controlled by sanity, moral judgment, and compassion. The consequence is that we, emulating God, won't abandon morality and compassion neither; in our lives, we will find a way to have both (along with obedience). Had Kierkegaard assigned the ending of the narrative due weight, he could not have sustained his thesis that religion is contrary to everyday morality. The lesson we draw from the end of the episode is the opposite of Kierkegaard's: the lesson is that "murder is never a legitimate way to worship the God of Israel because true *Avodat Hashem* [service of God] entails valuation together with obedience."[24]

For a powerful rendition of the *akedah*'s significance along these lines, we turn, again, to Rav Kook. Rav Kook understands the akedah as extolling "passion without fanaticism":[25]

> The permanent essence of life is expressed only through ethically pleasing behavior. "Its [Torah's] ways are pleasantness, and all its paths are peace" (Proverbs 3:17). That deep addiction to paganism, which to primitive man was the main ideal [of life], overcoming even parental mercy, and making cruelty to sons and daughters an established institution of the worship of [the Canaanite fire god] Molekh, is a nebulous outcome of the realization deep within the recesses of man's heart that the divine is the most precious of all things… [The *akedah*] showed that fervor and addiction to the divine idea does not necessitate that the perception of the divine should be covered in shameful trappings as those of pagan worship, where the spark of divine goodness loses its way, but it [the same fervor and submission] can also be reached by a pure perception….[W]ithout [the *akedah*], humanity would have continued to relate to the divine either savagely

> and wildly, through powerfully pulsating emotions, or with a cool disposition and reservedness lacking the characteristics of a profound life....Idolaters used to claim that it was impossible for human culture to exist without this [unbridled passion]....Came "the father of many nations" and taught what had to be taught, so that no matter how low subsequent generations sink, there is room for the penetration of the pure light. And the binding of Isaac is mercifully remembered for his children forever and ever.[26]

In the end, the *akedah* testifies that divine morality cannot contradict natural morality, the human being's innate moral sense. As one observer paraphrases Rav Kook's point: "Man is not forced to choose between the throbbing savagery of pagan enthusiasm and the shallow frigidity of lifeless detachment. Abraham finally expressed his deepest religious striving without having to take the final step of killing his son."[27]

While at certain points Rav Kook's presentation may reflect homiletic excess, his general approach affords a way to think about and teach the *akedah* to our children and also to adults without inviting the charge that Abraham is a child abuser. The usual lesson preached is, "Look how eagerly Abraham went to sacrifice His child because He saw it as a *mitzvah*, so it is permissible and even obligatory to kill children and perhaps other innocents when God beckons." But if that's the lesson, then I daresay that listeners today don't need Genesis 22 to learn it. They can find it in the daily papers. Common sense dictates that which part of the *akedah* narrative should be stressed in *derashot* — the beginning of the chapter, which depicts Abraham's readiness to comply with God's command, or verses 12 and following, which relate his withdrawal of the knife — depends on circumstances, and on how the *darshan*'s words reverberate and are processed in the immediate community and the larger world. In our time, the ending of the story, not its beginning, is the punchline we need to get across.[28] We must not allow anyone to conflate *akedah* and al Qaeda.

I stress that this is what we, in our time and place, ought to emphasize. I well understand that in other circumstances, for example, one in which society stresses moral conscience so greatly that people have no appreciation of God's

commanding authority, but only of their own moral autonomy, a *darshan* might emphasize the beginning of the episode: Abraham's alacrity in rising early to follow God's command, preparing the wood himself, and so on. Indeed, if one means it when one claims to embrace a dialectical approach to religion, one must perceive not only the pole of morality but also that of on occasion surrendering morality, rationality or human emotion to God's command. Certainly R. Soloveitchik, master of dialectic, emphasized this point.[29] It is the greatness of Torah that it has "seventy faces." But no one can display all those faces at once. One must select a message appropriate to the context by perceiving the needs of one's own times.

Recent events should sensitize us to the problem of religion run amok. In our situation, therefore, we must let moral constraints and intuitive moral judgments have their say. We must be judicious in our preaching, knowing when to kindle fires and when to wet them down.[30]

Morality and Religion

It cannot be gainsaid that within Judaism, as within the other major religions, there are strains that stress the supremacy of God's will over moral principles, just as there are strains (like Rav Kook's view) that see God as consistently and necessarily conforming to moral demands. So, on the one hand, we must admit that some strands in Judaism court extremism and reject ordinary moral constraints. On the other hand, to be obsessed with these extremist strands, to see them as exclusive or even dominant, is equally to be in denial.

In the first place, R. Yitzchak Blau has shown in detail that recent writings coming out of militant groups in Israel on topics like war and peace, *kiddush ha-Shem*, and the role of moral judgment in decision-making perpetrate serious distortions and falsifications of traditional texts and concepts. The attempts to justify violence do violence to sacred texts.[31] Moreover, even if we acknowledge with a full throat that we have not escaped laying seeds for bigotry, cruelty, and fanaticism in our long history, we may argue that many or most voices in our tradition call for ordinary moral principles to restrain religious acts. Those calls are as conspicuous as they are forceful.

In the name of triumphing over the forces of evil, God commands His people to destroy the people of Amalek and "the seven nations" (Ex. 17:14-16; Deut. 20:16-17; 25:17-19). We ought not to suppress this fact, and we ought not let it pass without feeling concern about it. But we are a people whose understanding of the Bible is based on the authoritative traditions of *Hazal* as well as subsequent traditional exegesis, and the history of interpretation of the command to destroy Amalek testifies to Judaism's ultimate stance on the value of innocent life. Our commentators have developed a variety of approaches to the law, the thrust of many of which is that these laws apply only in a highly limited way in concrete situations, and/or that their primary relevance is symbolic.[32] It is clear that the position from which these commentators operate is one that sees the need either to justify the command morally or to limit its application and concretization in the physical world. Without entering into details, suffice it to say that the thrust of this position is to place the commandment to eradicate Amalek within a morally more satisfying framework. Thus Maimonides, reflecting talmudic sources, severely limited the command's practical application, saying that the nation is not to be killed if they make peace with Israel and choose to accept the Noahide laws, and that we cannot identify those who are from Amalekite seed.[33] Moving to another example of troubling behavior in the Bible, Jewish biblical conquerors used what strike us as cruel or barbaric practices. Rav Kook addresses this too. The harsh scale of wars conducted by Jews in biblical times is geared, he said, to an earlier stage in the development of morality. The biblical morality is calibrated to the moral level of people at a particular time, in that since all nations conducted themselves with extreme cruelty in war, the Jewish people would have been destroyed had they rejected the prevailing canons of war.[34] No doubt this approach cries out for more detail. How should we understand this notion of a contextual morality? What are its implications?[35] Should we posit an evolving morality? What are its implications? But the general direction of the argument should be clear: interpersonal morality is a value within religious life.

Unfortunately, declarations of distrust of the human moral sense come disturbingly easily to the lips of some religious individuals committed to Halakhah. They belittle natural human moral sensibilities as unreliable and contrast them with the sure, clear dictates of Halakhah. While distrust is in place

in certain contexts, wholesale distrust is out of place. To see why, let us briefly think about how different religious life would be if we really denied the claims of natural morality, our own intuitive moral judgments. When we realize the implications, we must conclude, as I remarked earlier, that logic is on the side of those who acknowledge the value of human moral intuitions.

This point can best be illustrated by means of a single verse: "Give thanks to the Lord because He is good (*hodu la-Shem ki tov*)" (Ps. 18:1, 136:1). We thank God for good things He has done and also praise Him for His actions — based on our estimation of what is good. Gottfried von Leibniz made a telling point about the conception of goodness that allows goodness to stimulate praise: "In saying that things are not good by virtue of any rule of goodness but solely by virtue of the will of God, it seems to me that we unknowingly destroy all of God's love and all of His glory. For why praise Him for what He has done, if He would be equally praiseworthy in doing the exact contrary?"[36] The same would apply to thanks: why thank Him for what He has done, if you would thank Him even had He done the contrary? There must be some standard of goodness *besides* "God willed it," or else thanks to God or praise of God *for his works* would make no sense. So much for distrust of human judgments of value.[37]

Consider also the following point about the obligation of "*hodu*" (give thanks). *Hakkarat ha-tov*, gratitude, is a central Jewish teaching. Sa'adyah Ga'on explains, "Reason bids us respond to every benefactor either by returning his kindness if he is need of it, or by offering thanks if he is not in need of recompense."[38] We all believe we must be grateful to God for good things that He does. In other words: "One should thank God" follows logically from "God has done good for us." But how can this inference hold unless we endorse the *moral principle*, "One should be grateful to a benefactor"? R. Yitzhak Hutner, in fact, maintained that the duty to be grateful precedes the revelation at Sinai and exists independently of it.[39] Anyone who thinks that human moral judgment is irremediably flawed (the position adopted by Martin Luther, John Calvin, and others) will have a hard time explaining why we can trust our moral judgment that a person owes gratitude to his or her creator.[40]

There is a larger lesson here. What people really believe about a philosophical question is not what they say about the question when they are asked about it explicitly in a philosophical *shmooze*, but how they think and act when their guard is down and they are living their ordinary religious lives. You may, when asked, insist that human moral judgments have no validity. But when not thinking about the philosophical questions, you will find God to be *worthy* of our worship *because* He has done for us X,Y, and Z, in which case you are using your native moral sense.

Other religious gestures and attitudes make no sense if there is no independent ethical standard. Think of the problem of evil, which is so central to religious thinking and pervades biblical and rabbinic thought. Anyone who is troubled by the existence of evil, anyone who asks how God could allow the Temple's destruction or the Holocaust or September 11th, is imposing some external standard of morality on God. Since the prophets wondered how these-or-those events can happen, they must be endorsing such a standard.[41] Perhaps you will say by way of retort, "Well, the prophets are not asking how God violates *our* standards, they're asking how He violates His *own*," or "They're asking how God violates His own promises to His people." But if you ask even how God can violate His own standards or how He can break His promises, you are *still* using a standard of ethics that is independent of God's will. For you are endorsing the judgment, "It is wrong for one to violate one's own standards," or the judgment "It is wrong to break promises." Again, it is easy to deny that one is using moral judgment when one thinks about that question outside of a concrete context like the problem of evil. But once we look at our actual reactions and judgments, we see how central such judgments are in religious life. Judaism assigns importance to natural moral intuitions even in the determination of Halakhah. I will not try here to document this last point; others have done that work.[42] Their observations will only reinforce the role that morality plays for Jews.

To summarize: quite apart from mountains of traditional texts that endorse intuitive moral judgments implicitly or explicitly,[43] quite apart from the many interpretations of Scripture and of law that use morality as an interpretive tool to choose between differing interpretations, quite apart from the fact that

commentators seek to explain and evaluate the behavior of patriarchs in moral terms that we can accept,[44] quite apart from the moral assumptions made by those authorities who seek to understand problematic biblical commands such as executing the "stubborn and rebellious son" (Deut. 21:18-21) in human moral categories that preclude or severely limit the law's application (*Sanhedrin* 71a), we have seen that the most basic religious attitudes and practices — praising God, worshipping Him, calling Him good, feeling gratitude to Him, wondering how He allows evil — depend upon human beings trusting their own moral judgments, on their having standards that allow them to affirm with surety, "God is worthy of worship," "We ought to praise Him for the good He has done," "We ought to thank Him," and so on. In religious life, you can't escape making moral judgments of your own; religious life requires such judgments on a daily basis. While human moral intuition may on occasion mislead, a complete distrust in it would destroy the basis for many proper attitudes and practices.

The alternative approach, which denies validity to human moral intuition, pictures a god who could theoretically call for the torture of innocent children — and pictures, along with that, a person of faith who wouldn't be bothered by such a command if it were to come to pass. Hence, religious passion must be balanced by moral sense; and when it is, the power of fanaticism is curbed.

In light of the link between martyrdom and religious passion that was brought out by Judah Halevi in the quotation we cited earlier, a brief point should be made about Jewish conceptions of martyrdom. A clear distinction exists between the core Jewish concept of martyrdom and the vision that drives suicide bombers to their zealous acts of destruction. The commandment of "sanctifying the Lord's name" (*Kiddush ha-Shem*) requires, in its core, dominant application, that a Jew give up his life, let *himself* be murdered, rather than murder another. This act of "sanctification" does not devalue innocent life — to the contrary, it expresses the value of the innocent life the Jew refuses to take. This is a far cry from urging, as a route to heaven, that people kill themselves in order to bring about the deaths of innocent people. Certainly there is no analogy, for example, between letting oneself be killed to present one's own forced violation of the cardinal sins of idolatry, sexual immorality, and murder, and

killing someone else for not being part of my religion, for the sake of attaining personal reward in the hereafter. More generally, authorities have held that a Jew is considered to have died *al kiddush ha-Shem* if, like the victims of Nazism, he is killed because he is a Jew. The sanctification is achieved through submission, not aggression.[45] It bears noting that *kiddush ha-Shem*, the same idiom used for martyrdom, also connotes the ideal of ethical behavior. Unethical behavior desecrates God's name. That is really they key point behind mandated martyrdom as well. Furthermore, even when Judaism allows active martyrdom, the circumstances are decidedly different from those in which suicide bombers commit their evil acts.[46]

Responding to Radical Evil

Earlier I wrote that the two questions of fanaticism and evil "are connected in a striking, ironic way." Let me explain.

We have just seen that Judaism accords credibility to human moral judgment. But once a religion does this, once it sees human moral judgment as worthy and reliable, the problem of evil becomes more difficult for that religion to address. In particular, the problem of why God allows evil cannot glibly be dismissed as a symptom of poor human capacities for moral judgment; after all, in our discussion we have invested human moral judgments with credibility and force. Inexorably, therefore, our reflections on the use of human moral judgment in religion lead us to reflect also on whether, post-September 11th in America, or while witnessing the carnage in Israel, we can continue to believe in God's goodness. This is the ironic connection I had in mind between the problem of fanaticism and the problem of evil: solving the problem of fanaticism makes the challenge of evil loom larger and more intimidating. That is to say, the stance I have taken against fanaticism — that religion must allow for moral judgment — exacerbates the problem of evil.

The evil overwhelms us. First there is the sheer loss of life with all that goes with it — the torment of those trapped in the fiery furnace of the World Trade Center, the trauma and pain of the survivors, the anguish of the families, the brutal catalogue of death after death. Second, there is the stark, utter depravity of the perpetrators, their hatred, their callousness, which is evil independent of

any deaths and sufferings they wrought. Although we know the biblical teaching that "the *yetzer* (inclination) of man is evil from his youth" (Gen. 8:21), our commentators rarely took this to mean that each individual is fundamentally evil.[47] Decent people cannot fathom the kind of malice nor the utter, total indifference to — or, worse, joy over — the evils endured by victims. Can we continue to praise Him, worship Him, thank Him? Our Sages teach: "Just as one must bless [God] over the good, one must bless [God] over the bad" (*Mishnah Berakhot* 9:5). How can a believer do that?

To view these problems as new, or the evils as unprecedented, would be absurd. And so it is natural for believers to turn to time-honored solutions. A classic religious response to questions about evil is to construct a "theodicy," an explanation or justification of God's ways. In a theodicy one attempts to show that evil is somehow necessary logically for a greater good — in other words, that in the big picture, *sub species aeternitatis* (under the aspect of eternity), the evil contributes to a greater good that could not be attained otherwise. To use well-worn analogies, what we call "evil" is like a musical note that is jarring in isolation but contributes vitally to a lovely symphony, or like an ugly paint dab on a canvas that, in combination with others, helps make a painting beautiful.

Often people assume that Judaism knows but one theodicy: that "there is no death without sin, and no suffering without transgression" (*Shabbat* 56a, the view of R. Ammi). This assumption accounts for offensive statements, heard with disturbing frequency after a calamity, by those who claim to know the precise sin for which God brought about this or that tragedy. The Versailles wedding hall in Jerusalem collapses, we were told by one rabbi, because it was the site of improper dancing; the United States was bombed, some Jews have suggested along with Jerry Falwell (who later retracted), because God is punishing the country for its sexual permissiveness and other sins of excessive liberalism.

In truth, while the approach of "no death without sin, no suffering without transgression" is affirmed by R. Ammi, the Talmud ultimately rejects R. Ammi's view.[48] Rejection of R. Ammi of course in no way entails that in Jewish tradition *no* suffering is punishment for sin, or that *no* death is retribution. That would

be flatly inconsistent with tradition and the notion of *hashgahah* or providence. But it is a fallacy, or at least problematic, to infer that *all* suffering and death are retribution.[49] And to assume that one has fathomed God's reasons in a particular case — not only that God is administering punishment, but that He is administering punishment for this or that sin — is, in R. Aharon Lichtenstein's phrase, "the height of arrogance vis-à-vis the *Ribbono Shel Olam*."[50] No wonder the Sages taught (*Bava Metzi'a* 58b), "One must not speak to the sufferer as his companions spoke to Job." The friends had insisted, "Who ever perished, being innocent?" (Job 4:7). Those words are grossly inappropriate, not only in their tactlessness but in their substance.

In fact, putting aside the offensiveness and crassness of the friends' words, the book of Job is cogently read as a *protest* against the view that suffering implies sin. Job's friends, whatever the differences among them, are united in affirming that Job deserves his bad fortune. The friends are determined to uphold the traditional theodicy of justified retribution at all costs: all suffering is due to sins, known or unknown. Job, by contrast, had complained that he was a good man, and that his actions do not warrant his fate. Yet, at the end of the book (42:7), Job's friends need Job to pray on their behalf because (God says), "You (the friends) did not speak to me correctly as did my servant Job." But it was the friends who *defended* God, and Job who spurned their defense! A stronger indictment of the retributivist view could hardly be imagined.[51]

In a series of illuminating studies, Yaakov Elman has shown that the Sages of the Babylonian Talmud realized full well that innocent people suffer, and that they devised a range of explanations for this phenomenon.[52] These include, *inter alia*, the ideas of sufferings of love,[53] *nissayon* (trial), and vicarious atonement. Jewish exegetes and philosophers developed some of these ideas further, for example by explaining "sufferings as love" as tribulations that righteous people suffer in this world to permit them greater reward in the next. Strikingly, some rabbinic explanations of evil are not so much a theodicy as an explanation that imputes certain outcomes to astrological causes (*mazzala*): witness Rav's dictum that "length of life, children and sustenance depend not on merits but on *mazzala*" (*Mo'ed Katan* 28a).[54] Again, there is the view of R. Jacob that "the reward for a *mitzvah* is not found in this world" (*Kiddushin* 39b). To be sure,

there are numerous Jewish texts that prod a sufferer to introspect when evil comes upon him, implying, it seems, that sin must be explained by wrongdoing.[55] However (and this we shall see in more detail later), to say that one ought to use occasions of suffering to reflect on one's deeds and character is not yet to say that one always comes up with the correct explanation of the evil this way. It may be salutary for a person to treat evil *as if* it is due to his or her misdeeds, but this is not the same as saying that one has hit upon the true explanation.

The enterprise of giving theodicies is, as I said, time-honored. I certainly do not want to minimize the cogency of some of the explanations offered by philosophers through the centuries. But nearly *all* theodicies carry a danger, and theodicy-building looms as a potentially inappropriate response to tragedy.

The point is not just the routine one that logical explanations for evil often cannot be psychologically assimilated by the sufferer. Rather, the point is that treating evil as if it were explicable would blunt our moral responses. Imagine for a moment that you accept a particular theodicy — for instance that all suffering is punishment for sin. Suppose I meet a friend who is undergoing a terrible illness and needs my help. No one would deny I am obligated to help. But why should I help? After all, he (presumably) deserves this suffering. Suppose, alternatively, that you accept the thesis that God increases the suffering of the righteous in this world in order to maximize their reward in the next. Or suppose that you think suffering is a way of improving the sufferer. Or suppose you think that the suffering of the righteous atones for the community's sin. No matter what the specific explanation, endorsing that explanation means that the evil is being viewed as something positive, something contributing positively to the totality. Given that fact, it is clear that any theodicy, any attempt to explain why suffering occurs, ought to diminish our perception of the evil as something negative, as something to be removed. If translated into action, theodicy would make nonsense out of attempts to fight evil. Theodicies can be not only ineffectual, but even harmful.[56]

R. Soloveitchik on Evil

The underlying problem is this. The objective of a theodicy is to make peace with evil. But the objective of ethical action is to make *war* with evil (metaphorically). If we focus too much on the ultimate reasons for evil, we lose our appreciation of its horror. We see it as part of a beautiful, harmonious whole, as conducing to a greater good. All seems right with the world. Clearly, we must not let the aim of theodicy, namely, to render evil palatable, override the aim of ethical response, which treats evil as unacceptable.

R. Soloveitchik expressed this thought in several works, but most fully in an essay titled "A Halakhic Approach to Suffering," delivered as a lecture in 1961 to a conference on mental health.[57] In the lecture, the Rav distinguishes two forms that halakhic creativity can take. One is the "topical" Halakhah, the term deriving from the Greek word *topos*, meaning surface. At the "topical" level, the Halakhah posits formal legal categories and rules that relate to the human mind and will, resulting in action. In its topical mode, Halakhah is a formal cognitive system that is applied in practice.

But there is a second form of halakhic creativity, the "thematic," from the Greek word for root. The thematic Halakhah is addressed to "the axiological gesture," that is, the apprehension of values and metaphysical motifs. The topical Halakhah is understood; the thematic is beheld, tasted or confronted.

Thus, on the one hand, Halakhah is "a reasoned, clearly defined, precise system of thought," which is applied via concrete actions (topical); but, on the other hand, Halakhah is "a singular, unreasoned order of experiential themes" (thematic). It may be easiest to think of "thematic Halakhah" as what we commonly call *Aggadah* — the non-legal part of Judaism, the part that deals with, *inter alia*, theology. For example, when the topical Halakhah addresses the Sabbath, it formulates legal categories of, and rules about, the prohibited forms of *melakhah* (work) on that day; but the thematic Halakhah treats the Sabbath as a living reality, as a great experience of a sacred, blessed time, a period of *kedushah* (holiness). The Rav maintains that whereas the topic Halakhah deals exclusively with the physical universe, the world known to science and to our

senses, the thematic "envelops Being in its majestic totality." The thematic Halakhah enters into the realm of a transcendent reality unfettered by bounds of time and space — the realm of the infinite.

Accordingly, the topical and the thematic Halakhah treat suffering and evil in profoundly different ways. The thematic Halakhah views evil, or rather what we call evil, as something that we can transcend after death, or as something that is swallowed up in the totality of boundless Being.[58] But the topical Halakhah, grounded as it is in the world of the physical, the transient, the here-and-now, could not accept the idea that evil can be explained.

> Thus, the topical Halakhah (the formal legal system) saw death as a dreadful fiend with whom no pact may be reached, no reconciliation is possible....Death appears in all its monstrosity and absurdity, and an encounter with it knocks out the bottom of human existence. If the topical Halakhah concurred with the thematic in its interpretation of death as deliverance, as a victory over nihility, then why mourn and grieve for the departed? Why rend our garments, sit on the floor...[59]

For the topical Halakhah, then, which is practically oriented, there is no metaphysic of suffering, no grand picture that makes evil inconsequential or unreal. Instead there is only an *ethic* of suffering, a way of responding to it. This ethic regards evil as real, as something to which we must never acquiesce. "Man is summoned by God to combat evil, to fight evil, and to try to eliminate it as much as possible." We must marshal for this battle all scientific resources at our disposal. We will lose from time to time, but the war is long, and the time will come when "He will swallow up death forever, and the Lord God will wipe off the tears from all faces" (Isa. 25:8).

Without entering into further detail, suffice it to say that for R. Soloveitchik we must, in responding to evil, follow the way of the topical Halakhah. R. Soloveitchik summarized this approach in a letter (dated April 15, 1965) to Dr. Dan Vogel, then dean of Stern College for Women, Yeshiva University, in which he summarizes a lecture (albeit one which differs from the one we have considered so far).[60]

> Therefore, Judaism has recommended that the metaphysical inquiry be replaced by the halakhic ethical gesture. Man should not ask: Why evil? He should rather raise the question: What am I supposed to do if confronted with evil; how should I behave vis-à-vis evil? The latter is a powerful challenge to man and it is the duty of man to meet this challenge boldly and courageously. Suffering, in the opinion of Judaism, must not be purposeless, wasted. Out of suffering must emerge the ethical norm, the call for repentance, for self-elevation. Judaism wants to convert the passional frustrating experience into an integrating, cleansing, and redeeming factor.[61]

We must not let the aim of theodicy override the aim of ethical purpose. "Response, not explanation, is focal."[62]

Upon hearing the Rav's philosophy of evil expounded, people have sometimes said, "Oh, I see: his point is that we have no answers." No, that is only *part* of the point. The whole point is not that we do not know the answers, but that *having an answer* would logically lead to abandoning the fight against evil. We must *act as if* there were no answers in any specific case we encounter — as if suffering is not integral to a higher good. Were we to do otherwise, we could not explain the ethical responsibility of eliminating evil.[63]

Applications

R. Soloveitchik's approach has several crucial applications.[64]

MESSIANIC FERVOR

Almost immediately after the tragedy of September 11th, 2001, some Jews called attention to a passage in the *Zohar* according to which three walls of Rome and a great building will fall on the 25th of Elul, and the city's leader will die, seventy days before the Messiah comes.[65] Speculation was quickly rife that we were living through what is widely known as the war of Gog and Magog, the apocalypse foretold by Ezekiel (chs. 38-39), a prelude to the Messiah. It is not unusual that when major events transpire in the world, and especially tragedy, believers look for signs that they were foretold by the Bible or by the Sages.

Recall, for example, the attention given to the assertions that the assassination of Yitzchak Rabin was encrypted in the Torah portion of *Lekh Lekha* read that week, and that the crash of two Israeli helicopters in 1997, in which seventy-three soldiers lost their lives, was foretold in a verse in Isaiah. The war between Napoleon and Russia was viewed in its time as the battle of Gog and Magog, as was World War II in 1940. Current readings of history join such earlier ones.[66]

Put aside for now the inconvenient fact that the text of the *Zohar* speaks of the toppling of Rome, identified with Edom, so that in the desired interpretation, the United States — of all countries! — has to stand in for Edom. Such details aside, what is the point of such readings? What exactly is accomplished by saying the events were foretold? R. Yosef Blau has suggested, incisively, that the attempt to find events of our time in biblical predictions (after the fact, notice) is a coping mechanism.

> If the crash of two helicopters…was foreseen by the prophet Yeshayahu, then instead of a problem of how a just G-d could have allowed the tragedy to happen, we have another indication that we are living in an era where prophecies are being fulfilled… Unable to find a rational explanation for all that is occurring, many have turned to messianic speculations. Events are thereby explained in terms of their being fulfillment of prophetic visions or necessary components of the unfolding of the messianic process. Dealing with the complexities and inconsistencies of actual events is no longer necessary.…Most of the Jews who repeat these biblical interpretations are not consciously messianic. They are relieved, however, not having to face the difficulties in trying to come to terms with these unexplained tragedies.…A play on a verse…adds nothing to our response to the tragedy but can serve to distract us from facing it.[67]

Faced with a bewildering reality and ravaged by seemingly uncontrollable, insane forces, people seek solace in the fact that it was all foretold. For that means it is all fated — and all part of a divine plan. But insofar as such an approach diminishes the horror of evil, insofar as it "proclaims peace when there is no peace" (Jer. 6:14, 8:11), it must be rejected, as R. Blau insists; for it

is an instance of minimizing evil in a way that can blind us to its horror and absurdity and dull the urge to ethical action. As such, the Rav's approach precludes it. And well it does: the supposed prophecy never materialized.

BLAME

Also in the category of improper responses are responses that blame the victim. Blame American capitalism. Blame the decadent morality wrought by freedom, or America's flouting of precepts of modesty in dress and conduct. What exactly is the thought here? If you can find fault in the victim, the evil becomes at least partly justified; blaming the victim thus minimizes the evil. But if we really believe that this is adequate reason for God to permit the deaths at bin Laden's hands, why not say equally that it was adequate reason for bin Laden to order them?[68] By blaming the victim, we once again obscure the need for ethical response (besides mitigating the perpetrator's responsibility).

MORAL RELATIVISM

There is one more approach that would minimize our sense of evil, and that is the position, often promoted in academic circles, known as moral relativism. The latter denies that moral judgments have only universal validity; all such judgments, relativism submits, are culturally and temporally bound. We can speak of acts being evil from this-or-that cultural perspective, but other cultures, this thinking goes, can claim no less validity for their own judgments. So if Osama bin Laden thinks that making war on the United States and bombing the World Trade Center is a correct course, he is right from his perspective.

Relativism, along with various cousins such as "post-modernism," lost some favor after the attacks. Intellectual fashions change in the face of atrocities. Prior to World War II, for example, moral philosophy was dominated by ideas like "ethics is subjective," i.e. that morality is a matter of personal likes and dislikes (a theory that came in a variety of versions). After the Nazi horror, philosophers, understandably realizing the tenacity of the judgment that this was clear, objective evil, sought to reconstruct ethical theory so that it includes an objective component after all. Likewise, before World War II, philosophers of law often espoused the view that law and morality are totally separate; a

law can be a law even if it is horrendously immoral. Such a view could easily support those who followed Nazi laws — they were after all just loyal citizens obeying the law. As a result of the experience of the war, some of these erstwhile adherents of positivism defected to the view that at some point a legal system might become so immoral that it loses its status as law.[69] Some observers believe that we will witness a parallel repudiation of post-modernism, and that school of thought indeed has come under heavy attack for its relativist implications.[70]

Of course, post-modernism seeks to contribute something positive, for by weakening convictions and delegitimizing certitude, it could be a brake on extremism and intolerance. But in point of fact it can have the opposite effect: it can lend succor to dogmatism by allowing people to justify their perspective in their own terms and then walk away from further discussion and debate. Moral judgments do vary wildly depending upon what individual or society is making the judgment. Relativists are right about this. But keeping R. Soloveitchik's approach in mind, we must not let this lessen in our minds the atrocity perpetuated by bin Laden and others like him in recent and ancient history. If you try to rationalize evil away by saying that moral judgments cannot be trusted, you run afoul of the Rav's insistence that evil must be recognized for what it is.

Closing Thoughts: Evil and Yishuv Ha-Da'at (Composure of the Mind)

It is fascinating to contrast R. Soloveitchik's perspective with that of Ramban (Moses Nahmanides). Ramban, in his commentary to Job, explicitly encourages and legitimizes the pursuit of theodicy. Having presented a theodicy in the commentary (the details of which need not concern us), Nahmanides turns to the objection that it is improper to try to fathom God's ways. He replies:

> This [objection] is the claim of fools, despisers of wisdom; for through the above mentioned study [of theodicy], we will benefit ourselves by becoming wise people and knowers of God may He be Blessed, from [contemplation of] His ways and deeds... Likewise, it is the obligation of every creature who serves [God] with love and fear to investigate

> in order to make [His] justice right and to show the judgment true, according to his ability... in order that his mind become composed [*kedei she-tityashev da'ato*] in this matter, and the verdict of his creator will be true to him.[71]

Absorb the contrast: for Ramban, the pursuit of theodicy is legitimate and encouraged because it affords us "*yishuv ha-da'at*," repose, tranquility, peace of mind, equanimity. For R. Soloveitchik these effects are the mark of complacency, of having made inner peace with evil. And complacency with evil is the very antithesis of what we are called upon to experience.

I suggest, nonetheless, that the question "why?" has a legitimate use even for the Rav. There are times that the question "why?" is not a demand for explanation; it is, rather, an expression of woe over the tragedy, a cry that betokens empathy and love, not theological rumination. Uttered in this spirit, "why?" is of a peace with *hesed*, with benevolent action — it affirms one's grasp of the depths of the evil, which is a prerequisite to meaningful ethical action. The prototype for this "why?" is the biblical lament "Eikhah (how)." Jeremiah in Lamentations is not really expecting an answer to his question. The question is an exclamation, a "*krekhts*," a wail, rather than a query. An answer would not even be an appropriate response, for *Eikhah* is really an attempt to absorb the depth and scope of one's loss.

One year after the September 11th attack, we still ask "why?" and "how?" But it is a "why?" and "how?" that do not await an answer. It is a "why?" and "how?" that makes us reach deeply into ourselves, into reservoirs of generosity and care we never knew we had, a "why?" and "how?" that drives us to action, to sympathy with the victims' families, to multifarious and wide-ranging acts of kindness, to concern for victims of evils anywhere and everywhere. Asking "why?" and "how?" can also give us a more penetrating understanding of religion. Finally, during these *Aseret Yemei Teshuvah* (Ten Days of Repentance), the classic response of introspection could not be more appropriate.

That the destruction of the World Trade Center led to creative ethical responses and to spiritual strengthening does not *justify* the evil of that dark day. Many, if not most, would forego the benefits of moral growth which suffering can breed if that meant foregoing the adversity, just as several sages, when asked "Is suffering welcome to you?" responded, "neither they, nor their reward" (*Berakhot* 5b)[72]. Still and all, we can seek to battle evil by containing its effects and on the contrary making good come out of it. In turn, perceiving acts of human goodness can itself lead the disillusioned back to God.[73] Let us seize this opportunity to develop sensitivities, refine our moral character, and make the world a safer, more comforting place, even while never forgetting the victims of these horrific events. Let us also renew our commitment to forms of religious life that are healthy and morally sound. May God the consoler ultimately "wipe the tears from all faces."[74]

NOTES:

This essay was published by Yeshiva University in September 2002 to mark the first anniversary of the attacks of 9/11. It is presented here with minor revisions and a postscript, which were introduced when the essay was reprinted in my *Jewish Thought in Dialogue: Essays on Thinkers, Theologies, and Moral Thinkers* (Boston: Academic Studies Press, 2009). I extend my profound appreciation to R. Norman Lamm, then President and now Chancellor of Yeshiva University as well as head of the Rabbi Isaac Elchanan Theological Seminary (*Rosh ha-Yeshivah*), for his interest in the project and his copious comments on both an early and a late draft of the original publication. In addition many people offered valuable comments at that time: David Berger, Pearl Berger, R. Yitzchak Blau, R. Yosef Blau, Shalom Carmy, Bernard Firestone, Dedi Firestone, Meira Gross, R. Dov Linzer, Meira Mintz, Charles Raffel, Atara Segal, Chani Shatz, Michael Shmidman, Joel B. Wolowelsky, and R. Reuven Ziegler. To all of them, my gratitude. I thank R. Menachem Butler for helping prepare the essay for publication in the present volume.

1 See, for example, *Halakhic Man*, trans. Lawrence Kaplan (Philadelphia, 1983), 143 (n.4); "Ra'ayonot al ha-Tefillah," in *Ish ha-Halakhah: Galuy ve-Nistar* (Jerusalem, 1979), 239-271.

2 *The New York Times*, Nov. 26, 2001, A1.

3 *Halakhic Man*, 143.

4 Judah Halevi, *Kuzari*, trans. by Hartwig Hirschfeld (New York, 1964), IV:16, p. 223. Halevi's stress on the nexus between passion and martyrdom has roots in the Sages, who remark on the verse "Love the Lord your God... with all of your soul" that love of God is mandated "even if He takes your soul" (*Sifrei* 32 to Deut. 6:5). Even rationalist philosophers like Maimonides, who did present philosophically-based conceptions of the divine, made love central to religious experience, and believed in the need for a kind of intellectualist passion. Indeed, Maimonides' description of the love of God in his *Mishneh Torah* (*Hilkhot Teshuvah* 10:2, 6), is one of the most passion-centered descriptions of God in our literature, notwithstanding that Maimonides elsewhere has negative things to say about emotion. See also *Guide of the Perplexed* III: 51.

5 In a trenchant passage, the Khazar (the king who converts to Judaism) says to the Rabbi that Jews prize humility only because they are powerless, and that "If you had power, you would slay." The Rabbi answers: "You have touched our weak spot." Ibid., I:113-115, 78-79.

6 R. Abraham Isaac Kook, *Arpelei Tohar* (Jerusalem, 1983), 32. A *midrash* portrays Abraham as worrying, "I have sin on my hands, for I worshipped idols all those years." In the *midrash*, God tells him, "'To you is the dew of your youth' (Ps. 110:3) – just as dew rises, so your sins rise up. Just as dew is a sign of blessing for the world, so you are a sign of blessing for the world" (Gen. Rabbah 39:8). Rav Kook, as pointed out by Jerome I. Gellman, quotes the *midrash* as follows: "Just as dew is a sign of blessing to the world, so, too, those years that you worshipped idols are a sign of blessing to the world" (*Orot ha-Emunah* [Jerusalem, 1985], 77). Idol worship could contribute to Abraham's spiritual development! See Jerome Gellman, *The Fear, The Trembling, and the Fire: Kierkegaard and Hasidic Masters on the Binding of Isaac* (Lanham, MD, 1994), 106.

7 As Eugene Korn notes, Menahem ha-Meiri, in his famous distinction in *Beit ha-Behirah, Avodah Zarah* 20a, between idolatrous and non-idolatrous non-Jewish societies, saw morality as an essential component of non-idolatrous religion and its absence as characteristic as idolatrous ones. See Eugene Korn, "*Tselem Elokim* and the Dialectic of Jewish Morality," *Tradition* 31:2 (Winter 1997): 6. See also Moshe Halbertal, *Between Torah and Wisdom: Rabbi Menachem ha-Meiri and the Maimonidean Halakhists in Provence* (Jerusalem, 2000; Hebrew).

8 Gellman, 106, lists also spiritual novelty, imaginative representations, and infinite commitment to the Divine.

9 *Orot ha-Emunah* (Jerusalem, 1985), 3, as translated by Gellman, 108.

10 *Iggerot Ha-Reayah* II (Jerusalem, 1985), #379, p. 43, as translated by Gellman, 109.

11 A homily of R. Meir Shapira of Lublin is but one illustration that passion is central in traditional rabbinic consciousness. In Genesis 36, Jacob flees Laban's house, and Rachel, who is to travel with Jacob, steals her father's *terafim*, or miniature idols. Laban pursues Jacob hotly and traverses a seven-day distance in three, eventually catching up to Jacob. Jacob asks, "What is my transgression and my sin that you have hotly pursued me?" (36:36). The explanation of these words, R. Shapira suggests in the classic style of *derush*, is that after witnessing how Laban's attachment to his idols led him to move so energetically and frenetically as to travel a seven-day course in three days, Jacob felt embarrassed by his comparative lack of zeal for a real God: "What is my transgression and my sin? – You have shown me such dedication to inane idols; what comparable dedication have I shown to the true God?" (I thank R. Joseph M. Baumol and R. Norman Lamm for referring me to R. Shapira's homily.)

12 Readings similar to Kierkegaard's are often adopted in Jewish and Christian circles, but I will later argue that the text is better read along different lines.

13 In our time the late Jewish thinker Isaiah (Yeshayahu) Leibowitz has advocated at least this minimal position.

14 Jerome Gellman, "In Defense of a Contented Religious Exclusivism," *Religious Studies* 36 (2000): 415.

15 There is a school of thought that seeks to dissociate terrorist acts from religion and to view them as powered by purely political or other motives. I do not know whether this view is correct, but believe we are obliged to consider the possibility that terrorism can arise from within the very soil of religion. Professor Mark Lilla writes cogently in a *New York Times* op-ed piece ("Extremism's Theological Roots," October 7, 2001, section 4, p. 13) that "If any religion is to cope with these deviations it must recognize that they do not arise from nowhere but have roots, however twisted, in the faith itself. Christians who bomb abortion clinics appeal to the Christian Bible and persuade others to join them on biblical grounds. That Islamic fundamentalism and its militant offshoots appeal to the Koran is therefore

not an incidental matter. It means that they have found a way to breed in the religious space opened up by the revelation Islam presupposes...Reflections on this matter must begin with the uncomfortable fact that in religion, as in nature, there is no such thing as spontaneous generation." Again, a secular political vision like communism can lead to violence too, but the question is not whether *only* religion leads to extremist acts, but whether religion can lead to such acts. In Israel, suicide bombing clearly serves political goals, whatever next-worldly prizes are thought to await the bomber as a result of certain religious beliefs he or she holds.

16 Korn, 7. My analysis differs somewhat from Korn's in that I do not stress obedience so much as the realization of some religious ideal or other, whatever it may be. But, in the present context, the difference does not matter much.

17 Norman Lamm, in *The Condition of Jewish Belief*, ed. Milton Himmelfarb (New York, 1965), 125.

18 See also Korn, "Tselem Elokim."

19 *Orot ha-Kodesh* (Jerusalem, 1985), III, *rosh davar*, 27; the translation is by Shalom Carmy and Bernard Casper and is found in *The World of Rav Kook's Thought*, ed. Benjamin Ish-Shalom and Shalom Rosenberg, trans. Shalom Carmy and Bernard Casper (Jerusalem, 1991), 423. (The essay in which their translation appears is R. Yehuda Amital, "The Significance of Rav Kook's Teaching for Our Generation.")

20 See for example *Mishneh Torah, Hilkhot De'ot*, chap. 1; I comment on this chapter in David Shatz, "Maimonides' Moral Theory," in Kenneth Seeskin, ed., *The Cambridge Companion to Maimonides* (Cambridge: Cambridge University Press, 2005), 167-192 [reprinted in Shatz, *Jewish Thought in Dialogue*, 27-49]. On the ideal of moderation and the danger it produces of losing passion, see Norman Lamm, "Centrist Orthodoxy and Moderationism: Definitions and Disiderata," in his *Seventy Faces: Articles of Faith* (Hoboken, New Jersey, 2002), vol. 1, 54-64. Commenting on the verse, "And God saw that it [the creation] was very good" (Gen. 1:31), R. Meir remarks: "'Very good' [*tov me'od*] – this is death" (Gen. Rabbah 9:5). R. Joseph Engel glosses R. Meir's words as follows: all "me'od," all extremes, spell death. See *Otzerot Derush*, 8, p. 45, quoted by Lamm, Seventy Faces, 61-62.

21 On this point, see, among recent thinkers, Ronald Green, *Religion and Moral Reason* (New York, 1998), 77-102; Korn, 23-25; Jon D. Levenson, "The Abusers of Abraham," *Judaism* 47:3 (Summer 1998): 259-277. See also Lippman Bodoff, "The Real Thrust of the Akedah: Blind Obedience vs. Moral Choice," *Judaism* 42:1 (Winter 1993): 71-92, and Shalom Carmy and David Shatz, "The Bible As a Source of Philosophical Reflection," in Daniel Frank and Oliver Leaman, eds., *History of Jewish Philosophy* (New York and London: Routledge, 1997), 10-29 [reprinted in Shatz, *Jewish Thought in Dialogue*, 3-26].

22 The *selihot* prayers that refer to the *akedah* suggest that Abraham and Isaac complied without conflict or ambivalence. In its own way, this could bring up questions of both a psychological and ethical nature.

23 R. Soloveitchik, "Majesty and Humility," *Tradition* 17:2 (Spring 1978): 36.

24 Korn, 24.

25 The paraphrase is in Shalom Carmy, "Paradox, Paradigm, and the Birth of Inwardness: On R. Kook and the Akeda," in Yaakov Elman and Jeffrey S. Gurock, eds., *Hazon Nahum: Studies in Jewish Law, Thought, and History Presented to Dr. Norman Lamm on the Occasion of His Seventieth Birthday* (New York, 1997), 473-478.

26 *Iggerot ha-Reayah* II (Jerusalem, 1985), #37; the translation is, with slight modifications, from *Rav A.Y. Kook: Selected Letters*, trans. Tzvi Feldman (Maale Adumim, Israel, 1986), 158-160. Cf. *Olat Reiyah*, I (Jerusalem, 1985), 84-97. See also Gellman, *The Fear, The Trembling, and the Fire*, 104-116.

27 Carmy, "Paradox," 472-472. It has been noted that whereas God Himself commands the *akedah*, an angel calls it off. One moral to draw from this is that even though human sacrifice might express religious devotion, Abraham should not undertake it without a specific command of God. This point should prevent us from extrapolating ongoing duties from special, occasion-specific divine commands in the Bible.

28 Unfortunately, one pernicious effect of Kierkegaard's influence is that modern thinkers portray Abraham simply as a child abuser, someone who took the wrong horn of the dilemma Kierkegaard sets out between morality and religion. For examples, see the writers criticized by Levenson in "The Abusers of Abraham."

29 See Shalom Carmy, "Pluralism and the Category of the Ethical," *Tradition* 30:4 (Summer 1996): 145-163. See also the discourse of R. Aharon Lichtenstein, "Being Frum and Being Good," in *By His Light: Character and Values in the Service of God*, adapted by Rabbi Reuven Ziegler (New York, 2002), 122-125.

30 This contextual approach accords with that which emerges from Shalom Spiegel's historical study of *midrashim* concerning the *akedah*, The Last Trial, trans. Judah Goldin (New York, 1979).

31 Yitzchak Blau, "Ploughshares Into Swords: Contemporary Religious Zionists and Moral Constraints," *Tradition* 34:4 (Winter 2000): 39-60.

32 See Avi Sagi, "The Punishment of Amalek in Jewish Tradition: Coping With the Moral Problem," *Harvard Theological Review* 87:3 (July 1994): 323-346; Josef Stern, "Maimonides on Amalek, Self-Corrective Mechanisms, and the War Against Idolatry," in Jonathan W. Malino, ed., *Judaism and Modernity: The Religious Philosophy of David Hartman* (Burlington, VT, 2004), 371-410. Cf. R. Aharon Lichtenstein, "*Halakhah ve-Halakhim ke-Ushiyyot Musar: Hirhurim Mahshavtiyyim ve-Hinnukhiyyim,*" in *Arakhim be-Mivhan Milhamah* (Jerusalem, n.d.), 23-24, and a parallel passage in R. Aharon Lichtenstein, "Being *Frum* and Being Good," 126-129; R. Ahron Soloveichik, *The Warmth and the Light* (Jerusalem, 1992), 197-210.

33 *Mishneh Torah, Hilkhot Melakhim*, 6:1, 4; see also *Guide of the Perplexed* III:50.

34 Rav Kook, *Iggerot ha-Reayah*, vol. I (Jerusalem, 1985), 100 (#89).

35 See R. Aharon Lichtenstein, "The Human and Social Factor in Halakhah," *Tradition* 36:1 (Spring 2002): 14-19.

36 Leibniz, *Discourse on Metaphysics* (1686), sect. 2, trans. by Roger Ariew and Daniel Garber in *Leibniz: Philosophical Essays* (Indianapolis, 1989). I thank Atara Segal for valuable suggestions that improved my formulations in this and the next paragraph.

37 Anyone who thinks that God's goodness is totally unrelated to human standards of goodness should ponder this challenging, if strident, statement of the 19th century British thinker John Stuart Mill:

> If, instead of the 'glad tidings' that there exists a Being in whom all the excellences which the human mind can conceive, exist in a degree inconceivable to us, I am informed that the world is ruled by a being whose attributes are infinite, but what they are we cannot learn, nor what are the principles of his government, except that the highest human morality which we are capable of does not sanction them; convince me of it, and I will bear my fate as I may. But when I am told that I must believe this, and at the same time call this being by the names which affirm and express highest human morality, I say in plain terms that I will not. Whatever power such a being may have over me, there is one thing which he shall not do: he shall not compel me to worship him. I will call no being good, who is not what I mean when I apply that epithet to my fellow-creatures; and if such a being can sentence me to hell for not so calling him, to hell I will go.

See Mill, *An Examination of Sir William Hamilton's Philosophy* (4th ed., London, 1865), 127.

38 Sa'adyah Ga'on, *Book of Doctrines and Beliefs*, partially translated by Alexander Altmann in *Three Jewish Philosophers* (New York, 1974), III:2, p. 95.

39 R. Yitzhak Hutner, *Pahad Yitzhak: Rosh Ha-Shanah* (New York, 1974), 121-123. I thank R. Dov Linzer for this reference.

40 See the vigorous statement by Mill, "Sedgwick's Discourse," *The Collected Works of John Stuart Mill* (Toronto, 1969), vol. 10, 53: "Why should I obey my maker? From gratitude? Then gratitude is itself obligatory, independently of my maker's will. From reverence and love? But why is he a proper object of love and reverence?.... Is it because he is just, righteous and merciful? Then these attributes are in themselves good, independently of his pleasures." I thank R. Yitzchak Blau for this reference.

41 Cf., however, the assertion of R. Kalonymous Shapira, rav of the Warsaw Ghetto, that the problem of evil disappears – or rather does not even arise – once we realize that goodness and truth are determined by what God lets happen or doesn't let happen. See his *derashah* (5701) in Mendel Piekarz, *Hasidut Polin bein Shtei Milhamot Olam u-bi-Gezerot 5700-5705* (Jerusalem, 5750/1990), 68-69. The notion that one should be untroubled by evil has its own costs, as will be clear from the final sections of this paper.

42 This literature is huge; I mention here only two of the best known treatments in English: Aharon Lichtenstein, "Does Jewish Tradition Recognize an Ethic Independent of Halakhah?" reprinted in Menachem Kellner, ed., *Contemporary Jewish Ethics* (New York, 1978), 102-123; Walter Wurzburger, *Ethics of Responsibility* (Philadelphia, 1994). See also, *inter alia*, Korn 17-22, and Yitzchak Blau, "The Implications of a Jewish Virtue Ethic," *Torah u-Madda Journal* 9 (2000): 19-41. I discuss these issues in "Beyond Obedience: The Ethical Theory of Rabbi Walter Wurzburger," *Tradition* 30:2 (Winter 1996): 74-95 [reprinted in Shatz, *Jewish Thought in Dialogue*, 305-325].

43 Routine but still cogent biblical examples are Abraham pleading that God not destroy the righteous of Sedom together with the wicked (Gen. 18:20-33), and God responding to the moral arguments of the daughters of Tzelofhad (Num. 27:1-11), endorsing, ostensibly at least, both their position and their argument. In the book of Genesis, after the sin of Adam and Eve, individuals are largely left on their own to make moral decisions and are held accountable for the judgments they make. For development of this last point about Genesis, see Carmy and Shatz, "The Bible As a Source of Philosophical Reflection," 12-16 [reprinted in Shatz, *Jewish Thought in Dialogue*, 6-11]. These Genesis examples, I believe, force us to seek an interpretation of the *akedah* that does not yield the conclusion that ordinary morality is not to be trusted.

44 See David Berger, "On the Morality of the Patriarchs in Jewish Polemic and Exegesis," in Shalom Carmy, ed., *Modern Scholarship in the Study of Torah: Contributions and Limitations* (Northvale, NJ, 1996), 131-146.

45 Shortly after the attack of 9/11, R. Yehuda Amital of Yeshivat Har Etzion asserted that Muslim *shahidim* (martyrs) are not surrendering themselves to a principle; they die to achieve the World-to-Come. "Their self-sacrifice is not for the sake of God, but rather for the sake of their own physical desires." While I continue to view suicide bombers as devoted to a deity, the element of self-interest complicates the picture.

46 Let me elaborate. It must be acknowledged that during the Crusades in Ashkenaz, many Jews took their own lives actively to prevent forced conversion. They regarded Christianity as *avodah zarah*, worship of a foreign god, and, further, took the lives of their children rather than allow them to be converted. Since the core instances of *kiddush ha-Shem* mandate only passive submission to death at the hands of others, the halakhic justification for such active taking of one's own or others' life is not clear, and scholars are divided as to whether the acts can be accorded such justification at all. If these killings for the sake of one's principles are morally troubling, as they are to some observers, this may suggest that normative Judaism, on occasion, has crossed moral bounds because of religious enthusiasm, albeit in a way that could *post facto* be backed up by some halakhic argument.

Critics of the Jews' actions during the Crusades argue that there is a large moral distinction between passive martyrdom (allowing oneself to be killed) and active martyrdom (actively taking one's own life). While not questioning the moral propriety of passive martyrdom, they object to active martyrdom. But even so, there is no analogy between killing someone (oneself or a family member) to prevent one's own or another's forced conversion from a religion he or she accepts, and killing someone else for not being part of that religion. Those who kill themselves or others to escape conversion by the sword are hardly comparable on the moral scale to those who seek to convert them that way. Moreover, it must be recalled that the killing is done in response to a difficult, cruel choice forced upon a person by an aggressive attacker. In context, the act takes on an element of spiritual self-defense that gives it a different moral color. This is hardly comparable to instigating a scenario in which one wants to kill. I thank R. Yitzchak Blau for this last point.

R. Blau also noted (in correspondence) that parents have a right to make difficult choices for children as responses to acts of aggression by others. For example, a parent might raise a child to rebel in a totalitarian society even if that puts the child at risk. Likewise, a parent might teach a child to prefer death to violating some moral code. While this analogy per se does not justify killing a child, it does underscore the importance of context with regard to understanding acts of martyrdom.

"Martyrdom" carries in English an aspect of "testimony" ("martyr" is from the Greek for "witness") and in Hebrew of (publicly) "sanctifying" God's name by refusing to abandon His law under pressure. The martyred Jew sees his own life as less important than higher demands. Symbolic actions of this sort cannot be reduced to considerations of utility and are subject to their own moral principles. For an analysis of martyrdom in terms of symbolic action, albeit from a non-Jewish perspective, see Robert Merrihew Adams, "Symbolic Action," in Peter A. French, Theodore E. Uehling, Jr., and Howard Wettstein, eds., *Midwest Studies in Philosophy XXI: Philosophy of Religion* (Notre Dame, IN, 1997), 1-15).

On the suicides and killings of others engaged in by Jews during the Crusades, see Haym Soloveitchik, "Religious Law and Change: The Medieval Ashkenazic Example," *AJS Review* 12 (1987): 205-221. Cf. Avraham Grossman, "*Shorashav shel Kiddush ha-Shem be-Ashkenaz ha-Kedumah*," in Isaiah Gafni and Aviezer Ravitsky, eds., *Kedushat ha-Hayyim ve-Heruf ha-Nefesh: Kovetz Ma'amarim le-Zikhrono shel Amir Yehutiel* (Jerusalem, 1993), 99-130; Israel Ta-Shema, *"Hit'abbedut ve-Retzah ha-Zulat al Kiddush ha-Shem: Li-She'elat Mekomah shel ha-Aggadah be-Masoret ha-Pesikah ha-Ashkenazit,"* in Yom-Tov Assis, Jeremy Cohen, Aharon Kedar, Ora Limor, Michael Toch, eds., *Yehudim mul ha-Tzelav* (Jerusalem, 2000), 150-156; and David Berger, "Jacob Katz on Jews and Christians in the Middle Ages," in Jay M. Harris, ed., *The Pride of Jacob: Essays on Jacob Katz and His Work* (Cambridge, Mass., 2002), 1-23.

I thank David Berger for comments that enhanced my discussion of martyrdom.

47 See for example the commentaries of Nahmanides and of R. Samson Raphael Hirsch to this verse.

48 The Tosafists (*Shabbat* 56b, s.v. *u-shema mina*) point out that technically the Talmud's refutation – based as it is on a text identifying four individuals who died without sin – proves only that there is death without sin, not that there is suffering without transgression. On one reading of the Tosafists, they are saying that once one half of R. Ammi's statement is rejected, so is the other half. It is as if the Tosafists see R. Ammi's view not as two isolated statements, but as a total package, one overall outlook on the bad things suffered in the world. To refute the part is to refute the whole.

But there is more to the story. The Midrash (*Va-Yikra Rabbah* 37:1, *Kohelet Rabbah* 5:4) does not reject R. Ammi's assertion. Further, we could interpret the Tosafists differently, as leaving the proposition about suffering unrefuted. Nahmanides differentiates between death and suffering as regards the Babylonian Talmud's refutation. See *Torat ha-Adam, Sha'ar ha-Gemul, in Kitvei Ramban*, trans. Charles B. Chavel (Jerusalem, 1963), 274. (I thank R. Yitzhak Blau for noting this.) Maimonides, *Guide of the Perplexed*, III:17 and III:24, accepts R. Ammi (contrary to the sugya's conclusion). Maimonides' view of providence is unusual, so his acceptance of the statement must be viewed in these terms. Note that the Talmud's disproofs on the "death" part of the statement could be read technically and narrowly as rejecting R. Ammi's view for just the four cases that are cited as refutation. (As regards Nahmanides, it is good to keep in mind that, for Nahmanides, most if not nearly all suffering is the result of God consigning all but exceptionally righteous people to the operations of natural law. See David

Berger, "Miracles and the Natural Order in Nahmanides," in Isadore Twersky, ed., *Rabbi Moses Nahmanides [Ramban]: Explorations in His Religious and Literary Virtuosity* [Cambridge, Mass., 1983], 107-128, esp. 113-128.)

A particularly powerful story that rests on assuming a retributivist theodicy is in *Mekhilta de-Rabbi Yishmael, Nezikin*, at *Mishpatim* 18. On a communal level, of course, the dominant explanation is, "Because of our sins we were exiled from our land."

At the end of the day, in forming a theology based on traditional texts it does not decisively matter whether certain sources accept R. Ammi. What matters is that other sources propose non-retributivist theodicies.

49 Careful reading of R. Ammi's proof texts show that they prove that evil deeds bring about suffering as a punishment – but not that all suffering is retribution for evil.

50 Aharon Lichtenstein, "The Duties of the Heart and Response to Suffering," in Shalom Carmy, ed., *Jewish Perspectives on the Experience of Suffering* (Northvale, NJ, and Jerusalem, 1999), 46.

51 See also Carmy and Shatz, "The Bible As a Source of Philosophical Reflection," 10-29 [reprinted in Shatz, *Jewish Thought in Dialogue*, 3-26].

52 See, e.g., Yaakov Elman, "The Contribution of Rabbinic Thought to a Theology of Misfortune," in Shalom Carmy, ed., *Jewish Perspectives on the Experience of Suffering* (Northvale, NJ, and Jerusalem, 1999), 155-212. He points out that the Jerusalem Talmud by and large does not offer these alternatives.

53 This notion may be understood in various ways, including two broad ones: (a) the righteous suffer more in this world to increase reward in the next; (b) the suffering of the righteous gives them an opportunity to display virtue, independently of any reward they will receive. Regarding (a) (a view later stressed by the Geonim), see *Kiddushin* 39a, *Berakhot* 61b. Cf. Joel B. Wolowelsky, "A Talmudic Discussion on *Yissurin Shel Ahavah*," *Judaism* 33:4 (Fall 1984): 465-468.

54 In an attempt to reconcile this statement of Rava with the accepted view that "Israel is not subject to *mazzal*" (*Shabbat* 156a-b), the Tosafists and other commentators posit that a person can override the constellations by righteous deeds. However, in the text in *Mo'ed Katan*, Rava came to his view that length of life, children and sustenance depend not on merit but on mazzal based on the fact that of two equally meritorious individuals, R. Hisda and Rabbah, one had a life filled with good or happy things and the other one filled with hardship. If good deeds override the constellations, they should have had the same fates. Even Tosafot states on that good deeds "*sometimes* can override *mazzal*." See also *Tosafot Ha-Rosh, Rosh Ha-Shanah* 18a, s.v. *Rabbah va-Abbayei*, where it appears that *mazzal* can override the merit of Torah study. I thank Yehuda Galinsky for this reference and R. Gedalyah Berger for further discussion of it.

55 See n. 63 below.

56 There is at least one exception, and that is the "soulmaking" theodicy. On this view, evil is present because it is logically necessary for the development of such virtues as sympathy, benevolence, courage, and faith. This theodicy makes it easy to see why we should aid the sufferer, since our free benevolent acts toward the sufferer justify the evil he or she is undergoing. I set this theodicy aside in what follows.

57 Published in The *Torah u-Madda Journal* 8 (1998-1999): 3-24, and then in *Out of the Whirlwind: Essays on Suffering, Mourning and the Human Condition,* ed. David Shatz, Joel B. Wolowelsky, and Reuven Ziegler (New York, 2003), 86-115. See also the opening sections of "*Kol Dodi Dofek*," delivered on Yom Ha-Atzmaut (Israel Independence Day), 1956, published in English as *Fate and Destiny*, trans. Lawrence Kaplan (Hoboken, NJ, 2000), 1-17. There are differences between "*Kol Dodi Dofek*" and "A Halakhic Approach to Suffering." See n. 60 below.

58 See also the statement by the school of R. Akiva in *Berakhot* 60b: "Whatever God does is for the good."

59 A Halakhic Approach to Suffering," *Out of the Whirlwind*, 101.

60 The difference lies in the following statement:

> The gist of my discourse was that Judaism did not approach the problem of evil under the speculative-metaphysical aspect. For such an inquiry would be a futile undertaking. As long as the human mind is unable to embrace creation in its entirety and to gain an insight into the very essence and purposiveness of being as such it would not succeed in its attempt to resolve the dilemma of evil. The latter is interwoven into the very fabric of reality and cannot be understood outside its total ontological configuration. Job was in error because he tried to grasp the nature of evil.

In "A Halakhic Approach to Suffering," R. Soloveitchik did not say that Judaism does not quest for theodicies, but on the contrary identified a tradition of thematic Halakhah. And he did not say that the reason we must act is that we do not know the reason for evil, but rather that, if we had a reason, we would not fight evil. The approach in the letter reflects that of *Kol Dodi Dofek*, not that of "A Halakhic Approach to Suffering."

61 I thank Dr. Dan Vogel for permission to quote the letter. In *Out of the Whirlwind*, xxxvi, the editors misidentify the lecture being summarized.

62 Lichtenstein, "The Duties of the Heart," 25. Several talmudic and midrashic sources suggest that there is no answer at all, thereby encouraging the idea that we can only respond to tragedy but not explain it. Samples include *Berakhot* 7a, *Yoma* 69b, *Avot* 4:19 and 5:6, *Menahot* 29b, *Va-Yikra Rabbah* 20. The idea that we must respond creatively to suffering is found as well in an insight offered by R. Samson Raphael Hirsch with regard to a verse in Psalms. "*Keli Keli lammah azavtani*" (Ps. 22:2) normally translated as "my God my God, why have you abandoned me?" R. Hirsch suggests that "*lammah*" means here not "Why?" but "For what purpose? What should I derive from this?" R. Norman Lamm cited R. Hirsch's comment in an address at a gathering at Yeshiva University on the afternoon of September 11th, 2001.

63 An obvious question about this view is that it seems to run contrary to various statements by the Rabbis. *Hazal* encourage both individuals and communities to locate the sins which may have been brought on by adversity. "If a person sees that tribulations have come upon him, he should search his deeds" (*Berakhot* 5a). Also see *Shabbat* 2:6, *Sotah* 1:7, *Bava Kamma* 38b, *Mekhilta de-Rabbi Yishmael* at *Mishpatim* 18, and the festivals and High Holidays musaf service, "Because of our sins we were exiled from our land." Maimonides is clear that, when adversity strikes the community, that is a time for *teshuvah* (repentance) (*Hilkhot Ta'aniyyot*, ch. 1). Regarding communal tragedy, *Hazal* do not present alternative explanations other that retributivist ones, but in the wake of the Holocaust, numerous writers have sought theodicies based upon the notion of *hester panim*, the hiding of God's face. See R. Norman Lamm, *The Face of God: Thoughts on the Holocaust* (New York, 1986).

However, as I remarked earlier, to say that one ought to use occasions of suffering to reflect on one's deeds and character is not yet to say that one always comes up with the correct explanation of the evil this way. It may be salutary for a person to treat evil as if it is due to his misdeeds. *Hazal*'s statements that individual suffering should lead to self-examination make eminent sense even if the introspection will not pinpoint the true culprit, and even if there is no culprit sin. Finding fault with myself leads me to improve myself and to strengthen my deeds of repentance, prayer, and charity. The logic of responding this way does not depend on my being able to *explain* evil in this manner.

Indeed, if every person were to assume that all his or her suffering is punishment for sins, how could this be reconciled with the fact that *Hazal* propose other explanations, besides punishment, or declare that we do not know the reason for certain evils? One way to do justice both to the variety of responses *Hazal* propose *and* the frequent calls to improve one's ways in the face of suffering, is to say that the sufferer must act as *if* the suffering has come because of a flaw. In this way the sufferer develops and grows in spiritual character. R. Soloveitchik's discussion of Job in Fate and Destiny ("*Kol Dodi Dofek*"), 11-17, should be understood this way; otherwise "*Kol Dodi Dofek*" would be self-contradictory.

64 R. Soloveitchik describes other positive responses to suffering besides benevolent action. For example, he identifies loneliness that brings one closer to God and a healthy sense of finitude as products of suffering. See the title essay in *Out of the Whirlwind*, 116-150.

65 *Zohar, Balak*, 212b.

66 R. Menahem Mendel of Rymanov saw the war between Napoleon and Russia as ushering in the end of days and prayed that Napoleon be victorious (*Ateret Menahem*, ed. Avraham Simha Bunam [Lublin, 1910], 38b). Cf., however, R. Naftali Horowitz of Ropshitz, *Ohel Naftali*, ed. Abraham Haim Simhah Bunim (Lemberg, 1912), 13b.

67 R. Yosef Blau, "Biblical Prophecy and Israeli Events," *The Commentator* 61:8 (February 19, 1997): 14.

68 Cf. however, Nahmanides' commentary to Gen. 15:14. Nahmanides believes that a perpetrator who in fact is doing God's will can be credited with having fulfilled a *mitzvah*, a commandment, but only provided that the person is motivated by the decree of God. Lacking this motivation, the perpetrator is culpable for the outcome rather than deemed praiseworthy. Cf. R. Isaac Arama, *Akedat Yitzhak*, 1:28; and Walter Wurzburger, *Yavneh Studies in Parashat Ha-Shavua: Bereishit*, ed. Joel B. Wolowelsky (New York, 1969), *Ya-Yechi*, 40-42, who raise objections to Ramban's justifying of certain deeds on the grounds that the individual is consciously fulfilling a divine plan. See also Carmy and Shatz, "The Bible As a Source of Philosophical Reflection," 19-22 [reprinted in Shatz, *Jewish Thought in Dialogue*, 15-18].

69 An oft-cited example is Gustav Radbruch, who moved from positivism to a "natural law" theory as a result of the war. Ironically, the German philosopher Martin Heidegger, an ideologue of Nazism, declared: "Do not let principles and 'ideas' be the rules of your existence. The Fuehrer himself, and he alone, is the German reality of today, and of the future, and of its law." After Germany lost World War II, and the French confiscated Heidegger's property because he was a known Nazi, he wrote angrily to the French forces: "What justice there is in treating me in this unheard of way is inconceivable to me." The inconsistency is noted by Eleonore Stump, "The Mirror of Evil," in *God and the Philosophers*, ed. Thomas V. Morris (New York, 1994), 245, n.7.

70 See the symposium "Can Postmodernists Condemn Terrorism?" in the summer 2002 issue of *The Responsive Community* (www.gwu.edu/~ccps).

71 Nahmanides, *Torat ha-Adam* (*Sha'ar he-Gemul*) in *Kitvei ha-Ramban*, vol. 2, ed. Chaim B. Chavel (Jerusalem, 1964), 281.

72 See also Lichtenstein, 46.

73 See Stump, "The Mirror of Evil."

74 Postscript (2009): This essay presumes that religion can cause violence and does so in today's world. Recent (and not so recent) studies give much weight to other causes of fanaticism – social, political, psychological, economic – and sometimes view religion as a veneer that in itself plays little role in the explanation of the violence. In contrast, atheists like Richard Dawkins and Christopher Hitchens maintain that religion has breed violence throughout its history and is culpable again today, and thus attack religion on moral grounds. Their critics respond that the butcheries of Hitler, Stalin, and Mussolini prove that secular ideologies, too, bred moral horrors, and they criticize Dawkins's and Hitchens's attempts to dispel this counter-argument. I obviously lack the expertise to adjudicate the escalating debates about the causes of violence, but were I writing this essay I would devote some space to the relevant issues. Still, I believe that religion can and sometimes does create violence, that religious people need to acknowledge this potential and reflect deeply on it, and that they should examine how a religion can limit or quash its own potential for fanaticism. (See also note 15.) For Jewish perspectives on violence, see the essays in Roberta Rosenberg Farber and Simcha Fishbane, eds., *Jewish Studies in Violence* (Lanham, MD, 2007).

PRAYERS

Prayer for the Souls of the Departed for the Victims of September 11th, 2001

הזכרת הנשמות שנספו בטרגדיה של האחד עשר בספטמבר

אֵל מָלֵא רַחֲמִים שׁוֹכֵן בַּמְּרוֹמִים, הַמְצֵא מְנוּחָה נְכוֹנָה עַל כַּנְפֵי הַשְּׁכִינָה
בְּמַעֲלוֹת קְדוֹשִׁים וּטְהוֹרִים כְּזֹהַר הָרָקִיעַ מַזְהִירִים
אֶת נִשְׁמוֹת הָאֲנָשִׁים וְהַנָּשִׁים שֶׁנִּסְפּוּ בְּמִגְדְּלֵי הַתְּאוֹמִים וּבְבִנְיַן מַטֶּה הַהֲגָנָה
שֶׁנִּשְׂרְפוּ וְשֶׁנֶּחְנְקוּ בְּגָפְרִית וּבָאֵשׁ, שֶׁנִּקְבְּרוּ חַיִּים, וְשֶׁקָּפְצוּ לְמִיתָתָם
נוֹסְעֵי מְטוֹסִים וְיוֹשְׁבֵי מִשְׂרָדִים, כַּקוֹנִים כַּמּוֹכְרִים, כַּמַּלְווִים כַּלּוֹוִים
וְאֶת כּוֹחוֹת הַהַצָּלָה שֶׁמָּסְרוּ לַמָּוֶת נַפְשָׁם בִּכְנִיסָתָם לְהוֹשִׁיעַ בְּנֵי אֱנוֹשׁ מִתֹּפֶת
שָׁעָה שֶׁבְּנֵי עֲוֹלָה עָלוּ עַל בָּמֶתֵי עָב לְהַשְׁחִית וּלְהַחֲרִיב
וּלְהוֹרִיד אֶל חַדְרֵי מָוֶת בְּנֵי אָדָם עַל לֹא עָוֶל בְּכַפֵּיהֶם
בְּנָיְנִים הִתְרוֹעֲעוּ, יְסוֹדוֹת נִרְעֲשׁוּ, מִגְדָּלִים הִתְמוֹטְטוּ וְלֹא יָסְפוּ קוּם
וְנִשְׁאַר בָּעִיר שַׁמָּה וּשְׁאִיָּה, אַיִן בָּאָרֶץ וָאָפֶס בָּאֲדָמָה
לָכֵן בַּעַל הָרַחֲמִים יַסְתִּירֵם בְּסֵתֶר כְּנָפָיו לְעוֹלָמִים
וְיִצְרֹר בִּצְרוֹר הַחַיִּים אֶת נִשְׁמוֹתֵיהֶם
בְּגַן עֵדֶן תְּהֵא מְנוּחָתָם וְיָנוּחוּ בְּשָׁלוֹם עַל מִשְׁכָּבָם וְנֹאמַר אָמֵן

חובר בידי אבי שמידמן ובן-ציון שפיץ. מקורות: כקונים כמוכרים וכו': ישׁ' כד, ב. עלו על במתי אב: ישׁ' יד, יד. להוריד אל חדרי מות: משלי ז, כז. בניינים התרועעו... ולא יספו קום: ישׁ' כד, יט-כ. ונשאר בעיר שמה ושאיה: ישׁ' כד, יב.

God, full of mercy, dwelling in the lofty heavens,

Produce sustained peace, under the wings of the Divine Presence,

On the levels of the holy and pure people, who shine like the sheen of the firmament –

For the souls of the men and women who perished in the Twin Towers and in the Pentagon Building (headquarters of the Defense Department),

Who were burned and strangled in brimstone and fire, and who were buried alive, and who jumped to their deaths,

Whether flying in airplanes or sitting in offices, whether buyers or sellers, lenders or borrowers,

And the rescue forces who gave up their lives to enter the burning wreck, to save people from it.

For wicked men had ascended to the heavens, to destroy and kill,

To bring people to their death, though the victims had done no wrong.

The buildings shook, the foundations trembled, the Towers tottered and could no longer stand,

And desolation and emptiness was left in the city, nought in the land, and nothing in the ground.

Therefore, may the Master of Mercy conceal them in the secret places of His wings for eternity,

And keep them bound in the bind of the living.

May their resting-place be in Paradise, and may they rest in peace in their final location.

And let us say: Amen.

Composed by Avi Shmidman and Ben-Tzion Spitz
Translation by Gabriel Wasserman

Commentary to Prayer for the Souls of the Departed for the Victims of September 11th, 2001

This prayer is based on the classical "Prayer for the Souls of the Departed" that has been used by the Jewish community for centuries, and has been specially adapted for the victims of the tragic events of the September 11th terror attack. After the traditional opening phrase, the prayer mentions the two main locations of the attack, as well as the painful deaths. The adaptation weaves numerous biblical references and imagery into the text of the prayer.

Most of the references are from the Book of Isaiah, as follows:

Chapter 14, Verse 14, Isaiah gives a parable about the King of Babylonia, who in his pride and arrogance declared he would reach above the clouds, as the attackers did on that fateful day. In the end, the evil King was brought low by God.

Chapter 24: In this chapter Isaiah describes a disaster of enormous proportions. In verse 2 he explains that when such disaster strikes, nobody is safe - whether rich or poor, whether lender or borrower - all are swept up equally in the tragedy. This verse seemed particularly and specifically relevant, since the World Trade Center was a center of trading and commerce. The quote almost appears to be a direct prophecy of 9/11.

Verse 12 depicts the desolation and wasteland of the city.

Verses 19-20 describe further destruction, where the very foundations tremble, sway, totter and crumble, to fall, never to rise again.

The prayer finally returns to the classical format, requesting of God, that he place the souls of those that perished in Heaven, in the Garden of Eden, where they may rest in Peace. *Amen*.

Prayer for the First Responders and Emergency Workers of September 11th, 2001

ברכת 'מי שברך' לכוחות ההצלה של האחד עשר בספטמבר

מִי שֶׁבֵּרַךְ אֲבוֹתֵינוּ אַבְרָהָם יִצְחָק וְיַעֲקֹב משֶׁה וְאַהֲרֹן דָּוִד וּשְׁלֹמֹה הוּא יְבָרֵךְ אֶת

אַנְשֵׁי הַבִּטָּחוֹן וְהַהַצָּלָה, הָאַמִּיצִים בִּלְבָבָם וְהַגִּבּוֹרִים בְּמַעֲשָׂם

שֶׁקָּלוּ כַּנְּמֵרִים בִּכְנִיסָתָם לְכִבְשַׁן הָאֵשׁ וְהֶעֱלוּ אֵבֶר כַּנְּשָׁרִים בְּטַפְסָם בְּמַעֲלוֹת עָשָׁן

לְמִשְׁךְ בְּנֵי תְּמוּתָה מִשַּׁעֲרֵי מָוֶת, לְחַלֵּץ מְתֵי תֹם מִמְּצָרֵי שְׁאוֹל

לְהוֹשִׁיבָם בַּיְתָה אֲלֵי מִשְׁפַּחְתָּם, וּלְהַחֲזִירָם חַיִּים לְחֵיק אוֹהֲבֵיהֶם

עַל כֵּן בְּשָׂכַר זֶה הַקָּדוֹשׁ בָּרוּךְ הוּא יִמְלֵא רַחֲמִים עֲלֵיהֶם

לְהַחֲלִימָם וּלְרַפְּאוֹתָם וּלְהַחֲזִיקָם וּלְהַחֲיוֹתָם

בּוֹרֵא רוּחַ יַשִּׁיב רוּחַ נִשְׁמָתָם, אֶרֶךְ אַפַּיִם יַאֲרִיךְ קֹצֶר נְשִׁימָתָם

וְיִזְכּוּ לְחַיִּים אֲרֻכִּים וּפַרְנָסָה טוֹבָה, וַעֲטֶרֶת כָּבוֹד תּוּשַׁם עַל רֹאשָׁם

הַשְׁתָּא בַּעֲגָלָא וּבִזְמַן קָרִיב. וְנֹאמַר אָמֵן

חובר בידי אבי שמידמן ובן-ציון שפיץ. מקורות: קלו כנמרים: חבקוק א, ח. העלו אבר כנשרים: ישעיה מ, לא. בני תמותה: תהלים עט, יא; קב, כא. משערי מות: תהלים ט, יד. מצרי שאול: תהלים קטז, ג. להושיבם ביתה: תהלים קיג, ט. בורא רוח: עמוס ד, יג.

May He who blessed our ancestors, Abraham Isaac and Jacob, Moses and Aaron, David and Solomon, bless the first responders, the security and rescue personnel, who were brave in their hearts, and heroic in their deeds —

For they were as swift as leopards, when they entered the fiery furnace, and they mounted up with wings like eagles, when they climbed up the smoking towers,

To snatch those on the brink of death from the gates of doom, to extricate those facing their end from the Straits of Sheol (Hell),

To bring them back home to their families, and return them alive to the bosom of their loved ones.

Therefore, in reward for this, may God be filled with compassion for all these heroes,

And bring them health and security, and keep them alive and strong.

May the Creator of wind blow spirit into their souls, and may the one who is long-suffering relieve their shortness of breath.

And may they merit long life, and good sustenance.

And may a crown of glory be placed upon their heads – soon, shortly, and speedily.

And let us say: Amen.

Composed by Avi Shmidman and Ben-Tzion Spitz
Translation by Gabriel Wasserman

Commentary to Prayer for the First Responders and Emergency Workersof September 11th, 2001

The brave men and women, the first responders, of the FDNY and the NYPD, the emergency workers from the spectrum of services and organizations of New York and elsewhere who valiantly entered the living hell of the burning Towers of the World Trade Center to rescue their brethren. Though they survived, many of them suffered physically, emotionally, and even financially. This prayer, based on the classic "Prayer for the Sick," recited in all synagogues, was composed for the full and comprehensive recovery of these heroes.

As in much of Jewish liturgy, the prayer is modeled and weaved into an existing formula of supplication. The introduction calls on God, who blessed our illustrious forefathers and ancestors, to bless these noble souls. A host of biblical imagery is drawn upon to describe the courageous responders and their daring rescue efforts:

- "swift as a leopard," (Habakuk 1:8) they unflinchingly ran into danger;
- "wings like eagles," (Isaiah 40:31) it was as if they sprouted wings to propel themselves upward, climbing dozens of stories on foot in the smoke-filled stairwells. The full quote from Isaiah reads:

  "He gives power to the faint; and to him that has no might He increases strength. Even the youths shall faint and be weary, and the young men shall fall. But they whose hope is in God shall renew their strength; they shall mount up with wings as eagles; they shall run, and not be weary; they shall walk, and not faint."
- "those on the brink of death," (Psalms 79:11) and "those facing their end," (Psalms 102:21) though similar in meaning, diverge. In the Bible, the first phrase refers to all mortals, who are at God's mercy every day of their lives. The second phrase, in its primary meaning, refers to "innocent people," an apt phrase for those in the towers who had done nothing to provoke this attack.

- "the gates of doom," from Psalms 9:14, in which the supplicant (King David) praises God for saving him from certain death.
- "the Straights of Sheol (Hell)," from Psalms 116:3, in which King David describes the hopeless depths from which God saved him. Further on in the same chapter:
- "For You have delivered my soul from death, my eyes from tears, and my feet from stumbling. I shall walk before God in the lands of the living."
- "who created the wind," (Amos 4:13), a request of God, who first gave life to mankind by breathing air into Adam's nostrils, that He may also breathe a healing air into the rescue workers who are suffering in their breath to this day due to the chemicals and particles inhaled at that time.

Aside from concluding the prayer with the basic request for health and sustenance, there is the addition of glory. The heroism and sacrifice of these noble warriors has yet to be fully recognized or rewarded, but we rest assured that God is the ultimate benefactor.

May He do so speedily. *Amen.*

Prayer for the Safety of the United States Armed Forces

תפילה לחיילות ארצות הברית

אַדִּיר בַּמָּרוֹם שׁוֹכֵן בִּגְבוּרָה, מָלָךְ שֶׁהַשָּׁלוֹם שֶׁלּוֹ,

הַשְׁקִיפָה מִמְּעוֹן קָדְשְׁךָ וּבָרֵךְ אֶת חַיָּלֵי צְבָא אַרְצוֹת הַבְּרִית,
אַמִּיצֵי-כֹחַ, הַמְּחָרְפִים נַפְשָׁם לַהֲגָנַת שְׁלוֹם כָּל בְּרִיּוֹתֶיךָ.

אָנָּא רַחוּם, הֱיֵה נָא לָהֶם מַחֲסֶה וּמִשְׂגָּב, וְאַל תִּתֵּן לַמּוֹט רַגְלָם.
יְהִי שָׁלוֹן בְּחֵילָם, נִצָּחוֹן בִּגְדוּדֵיהֶם.

מַלֵּא לִבָּם אוֹמֶץ וֶאֱמוּנָה לְסַכֵּל עֲצַת אוֹיְבִים וּלְהַשְׁבִּית כָּל
מֶמְשָׁלֶת זְדוֹנִים. הָגֵן עֲלֵיהֶם בַּיַּבָּשָׁה בָּאֲוִיר וּבַיָּם, וְאֶת קַרְנֵי
אוֹיְבֵיהֶם תְּגַדַּע.

בְּשָׁלוֹם תּוֹלִיכֵם וּלְשָׁלוֹם תַּצְעִידֵם, וּלְחֵיק מִשְׁפְּחוֹתֵיהֶם חַיִּים
וּשְׁלֵמִים בְּמְהֵרָה תְּשִׁיבֵם, כַּכָּתוּב: ה' יִשְׁמָרְךָ מִכָּל רָע, יִשְׁמֹר אֶת
נַפְשֶׁךָ. ה' יִשְׁמָר צֵאתְךָ וּבוֹאֶךָ מֵעַתָּה וְעַד עוֹלָם."

הַנְחִילֵנוּ שְׁלוֹם אֱמֶת לְקַיֵּם מַה שֶּׁנֶּאֱמַר: "לֹא יִשָּׂא גוֹי אֶל גּוֹי
חֶרֶב וְלֹא יִלְמְדוּ עוֹד מִלְחָמָה." לְמַעַן יֵדְעוּ כָּל יוֹשְׁבֵי תֵּבֵל כִּי לְךָ
ה' מִלּוֹכָה יָאָתָה, וְשִׁמְךָ נוֹרָא עַל כָּל מַה שֶּׁבָּרָאתָ. וְכֵן יְהִי רָצוֹן,
וְנֹאמַר אָמֵן.

חובר בידי משה מרקוביץ

God on High who dwells in might, the King to whom peace belongs, look down from your heavenly abode and bless the valiant soldiers of the United States Armed Forces who risk their lives to protect the wellbeing of all your creation.

Benevolent God, be their shelter and stronghold, and let them not falter.

Fill their hearts with courage and faith to thwart the wicked schemes of enemies and to end the rule of evil.

Protect them on land, in the air and in the sea, and defeat their adversaries.

Guide them in peace, lead them toward peace, and return them safely and speedily to their families, as is written: "God will shield you from all harm; He will guard your soul. God will safeguard your going and coming, now and for evermore."

Grant us true peace in fulfillment of the prophecy: "Nation shall not lift up sword against another nation, nor shall they learn war any more."

Let all inhabitants on earth know that Dominion is Yours, and Your Name inspires awe upon all You have created.

May this be Your will, and let us say, Amen.

Composed by Milton Moshe Markovitz
Translation by the author

Commentary to the Prayer for the Safety of the United States Armed Forces

Following the terror attacks on the morning of September 11th, 2001, and the subsequent presidential decision to launch the War on Terror, Americans maintained their resolute spirit and displayed a heightened zeal of unity and national pride. The public response to the tragic loss of nearly 3,000 innocent lives on that day was expressed through compassionate acts of loving-kindness and a determination to support the soldiers of the United States Armed Forces who were dispatched to reclaim peace around the world.

The unique response by the American Orthodox Jewish community to the historical events was demonstrated via a meaningful religious medium. Shortly after the attacks of September 11th, 2001, Milton Moshe Markovitz was urged by Rabbi Fabian Schonfeld, founding rabbi of the Young Israel of Kew Gardens Hills, NY, to compose a new prayer in gratitude for the heroic sacrifice of each soldier serving in the United States Armed Forces.

Drawing upon biblical and liturgical texts, the prayer endeavors to preserve the religious flavor of these sources and incorporates biblical phrases and references from the traditional prayer book. Its composition was inspired by the overwhelming desire to express both an individual and a collective quest for peace and a spiritual hope.

The challenge in preparing the text of this prayer was to reflect the contemporary reality of war against terror in a language thoroughly anchored in the Jewish literary tradition. Simultaneously, the Prayer was written with the hope that it will appeal to all synagogues around the United States to be recited as a meaningful supplication by a diversified spectrum of worshippers. Accordingly, the prayer accentuates the positive, focuses on the quest for peace rather than on vengeance, and incorporates an inspirational, universal, and inclusionary message of faith and optimism.

Over the past decade, the response to this prayer has been very positive. Hundreds of synagogues around the United States have already incorporated it into their Shabbat and holiday morning services. The prayer has also been included

in the The Koren Sacks Prayerbook, edited by Chief Rabbi Lord Jonathan Sacks of the United Kingdom, who has also adapted this prayer for the British Armed Forces. Such acceptance is a fulfillment of the Rabbinic requisition to "pray on behalf of the host government and its agents" (*Avot* 3:2) and demonstrates the communal acknowledgement and gratitude for the heroism of the members of the United States Armed Forces.

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שנספו בפיגועי הטרור במרכז הסחר העולמי
בכ"ג באלול ה'תשס"א
(אחד־עשר בספטמבר)

This volume is dedicated to the
memory of the brave men and women
who were killed in the terrorist
attacks at the World Trade Center
on September 11th, 2001