

# The *Torah u-Madda* Mandate for Beth Din in Today's World

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*The following is a transcript of remarks delivered at the first annual Sheldon Rudoff Memorial Lecture, held on March 21, 2012 at the Jewish Center in New York City. Sheldon Rudoff a"h was an important leader of the American Orthodox Jewish community until his death in 2011. Mr. Rudoff was a practicing attorney and a musmach of the Rabbi Isaac Elchanan Theological Seminary at Yeshiva University. He served with great distinction as president of the Orthodox Union and president of the Beth Din of America.*

Good evening and a special welcome to Hedda Rudoff and all of the members of the Rudoff family, to Sara and Ira Olshin, to Simone and Mark Semer, to Evelyn Rochlin, to all of the grandchildren and of course, to the ever-present memory of Shaindy Rudoff *zichronah l'vracha*. Thank you to all of our guests for coming out this evening to pay tribute to a remarkable man and his legacy. I also want to acknowledge the presence of the current Director of the Beth Din of America, Rabbi Shlomo Weissmann, its President Eric Goldstein, and a member of the Beth Din's senior administration, Allen Fagin, as well as its long-time staff members, Helen Axelrod and Chanie Zahtz, who cherished Shelly Rudoff like a member of their own family.

I mentioned to Rabbi Mordechai Willig, who serves as the *Segan Av Beth Din* of the Beth Din of America, that being asked to give the first memorial lecture in tribute to the memory of Shelly Rudoff may be the highest honor that I have ever received.

I say this with the utmost sincerity. There are many figures worthy of honor and reverence, but Shelly was in a class of his own. If my sons ended up like Shelly Rudoff, I would consider myself a most successful father.

Shelly exemplified the *Torah u-Madda* ideal that we all promote at Yeshiva University and in our Orthodox communities. He was not only a combination of a Torah scholar, an accomplished attorney and a major community leader, but he was also an exquisite *ba'al midos* and family man. Both in the public sphere and in the private sphere, he was an exemplary role model for the values that we hold dear.

I still remember one of my first encounters with Shelly, when I was being considered for the position of Director of the Beth Din of America back in 1998. Shelly and I had a pleasant conversation in his office, during which he expressed

his one significant concern about my candidacy. At the time, I was 31 and still single, which was perhaps not surprising given that during the previous six years I had been working for a Wall Street law firm and putting in predictable Wall Street law firm hours. I used to say that my most stressful day in the Beth Din was less stressful than my least stressful day in the law firm – and the Beth Din could be pretty stressful. So Shelly asked me whether as a single, I would be able to relate to the hardship and emotional turmoil of the many couples who would be coming to the Beth Din for divorce matters. I responded on the spot that if anything, given my own situation, I could certainly relate to the difficulty of finding the right spouse. Shelly smiled approvingly and offered me the job. The job, I should note, turned out to be a *segulah*. I met my wife while working at the Beth Din and got married within the year.

It was only a few months ago during the *shiva* for Shelly that I learned that Shelly was also in his early 30s when he and Hedda got married, so I was able to gain a new appreciation for his ability to relate to my personal predicament during that conversation.

It was, as Shelly may have quoted from the movie *Casablanca*, the beginning of a beautiful friendship. During the years that followed, Shelly and I felt equally comfortable calling each other regarding Beth Din matters, sharing concerns, brainstorming about challenging situations, and offering and taking advice. Of course, I was more often than not the recipient of the advice, taking regular advantage of Shelly's calm and sagacious counsel.

It's an interesting thing, worthy of mention, that I don't believe I ever called Shelly anything other than Shelly. There were people much younger than him who to this day I address as Rabbi, Mister or Doctor, but Shelly was always Shelly. He was a *musmach* of RIETS and a distinguished attorney but his presence and personality bespoke humility, conveyed respect and exuded a profound sense of accessibility. He never said "just call me Shelly" – but it didn't seem to matter. It never occurred to me to address him any other way.

At one point, Shelly mentioned that as President of the Beth Din, he wanted to dedicate every Friday morning to visit the Beth Din office and watch how the affairs of the Beth Din were conducted. Now, I will be perfectly honest with you. In a normal organizational relationship, no matter how close the relationship between the director of the organization and the president of the board of trustees, this type of proposition would most likely send chills down the director's

spine. Certainly this type of request would likely spur feelings of insecurity and palpable tension. However, I can tell you with complete sincerity that my reaction to Shelly's proposal was one of joy and even exhilaration. I found him to be such a gentle, wise, reassuring and helpful presence that I couldn't wait for him to come to visit on a weekly basis. It was one of my greatest disappointments during my tenure as Director that due to Shelly's myriad commitments, he was unable to make good on his wish and I never got to enjoy the benefit of his presence in the office on a regular basis.

My story with Shelly continued after I left the Beth Din in 2008 to become Dean of Yeshivat Rabbeinu Yitzchak Elchanan at Yeshiva University. Naturally, when I was making the decision whether or not to leave the Beth Din to become Dean of the Yeshiva, I consulted with Shelly. Shelly supported the decision because he thought it would be good for me personally. This was an important quality that Shelly had. He cared deeply about the Beth Din; but more than he cared about institutions, he cared about people. I believe that Shelly's devoted work for every institution with which he was affiliated, whether it was the Beth Din, the Orthodox Union or his many other causes, was inspired by a love of the people who were served by these institutions – his organizational focus was a means to an end, not an end in itself.

After I became Dean of the Yeshiva, I saw less and less of Shelly, including one memorable encounter in which I saw him at YU leaving Belfer Hall as I was going home for the evening, and we both spent a few moments bemoaning the fact that we did not have the opportunity anymore to chat. But we finally did, albeit briefly, last year. I am particularly happy that the last moments we spent with each other did not revolve around anything communal at all, but rather consisted of pleasant and casual conversation last spring as we stood outside a baseball field in Riverdale, watching my son Yosef Chaim and Shelly's grandson Yamin playing together in a Kosher Little League game. It's a pretty safe bet that his grandson's team won because my son's team lost pretty much every game last season. I enjoyed shooting the breeze with Shelly, as we discussed the state of the Beth Din, the state of YU, but mostly just enjoyed each other's company in a relaxed setting. This year I will regrettably not have the privilege of that interaction, but what is kind of nice is that Shelly's grandson Yamin (assuming he will still be playing in the league) will be joined by another of my sons whose name also happens to be Yamin. Both of our families have very good taste in names.

This appropriately is my last abiding memory of Shelly Rudoff, a passionate community leader who always remained first and foremost a doting family man. I was privileged and am privileged to serve as an honorary member of his extended family, to have felt his nurturing love and to have shared in the fulfillment of his vision and dream for the Beth Din of America.

I wanted in our remaining time to speak about that vision and dream. Shelly was a graduate of Yeshiva College, a *musmach* of Yeshivat Rabbeinu Yitzchak Elchanan, and a person who through his dedication to Torah learning and living, and appreciation for all aspects of worldly culture and knowledge, was a consummate *Torah u-Madda* personality. The challenge with the specific institution of beth din, of revitalizing the rabbinical court system for the Jewish community, was to ensure that the rabbinical court be able to function in a fashion that was informed by the world in which we lived, and enhanced through the professionalism of the professional world which he valued.

The Torah records a requirement that all disputes be litigated in front of a beth din rather than a secular court – “*ve-eileh ha-mishpatim asher tasim lifneihem – lifneihem ve-lo lifnei ovdei kochavim*” (“and these are the statutes that you shall place before them – before them, and not before idolaters”).<sup>1</sup> However, in this country, the reality was that most people were not bringing their disputes to beth din. Shelly felt that this lack of utilization of *batei din* was because there was a sense that the rabbinical courts were not necessarily functional, that they were not being conducted with the requisite professionalism, and that the *dayanim* (rabbinical court arbitrators) were not in touch with the contemporary commercial marketplace. Even if a case would be heard by a beth din, there was a widespread feeling that the decisions would be issued in a way that would be unenforceable. There was much truth to these perceptions. For example, while *halacha* might allow a *kinyan sudar*, a lifting of a handkerchief, to constitute a binding commitment, if parties did not sign a *shtar berurin*, arbitration agreement, which they often did not, the beth din’s decision could not be enforced in court.

Thus, although the Beth Din of America was established in 1960 under the auspices of the Rabbinical Council of America to be a center of *gittin* and commercial disputes, by the early 1990s the Beth Din had become simply a *Get* factory but was hearing virtually no *dinei torah* (commercial cases) at all. Even in the realm of

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<sup>1</sup> *Shemot* 21:1, as elucidated in *Gittin* 88b.

*gittin*, if there was a dispute regarding a Get or a potential *agunah* situation, the Beth Din was not equipped to deal with the procedural process that could bring about a resolution. It was Shelly's vision that the beth din needed to be professionalized and brought more into touch with the modern world in order to fulfill its mission and enable the realization of its Torah mandate. He thus sought to fulfill to the fullest the separate verse in the Torah requiring the Jewish community to establish proper rabbinical courts – “*shoftim ve-shotrim titein lecha bechol she'arecha*” (“judges and enforcers you shall establish in all your gates”).<sup>2</sup>

It was with this vision that Shelly undertook, with a capable team to support him but with Shelly clearly at the helm, to reconstitute the Beth Din of the Rabbinical Council of America during the mid-1990s with three essential ingredients. First, the Beth Din would be an independent entity governed by a board that combined both rabbinic leaders as well as lay leaders, or as we might say at Yeshiva University, which combined both *klei kodesh* and lay *kodesh*. Second, the proceedings of the Beth Din would be conducted in accordance with published procedural guidelines that would be binding upon its judges and that would help ensure the professionalism of its proceedings. Third, and perhaps most importantly, the personalities consisting of the professional rabbinic staff of the Beth Din and its judges would be people who were people of the world and in the world, educated both in Torah as well as contemporary business practices, and familiar with the secular knowledge and culture of our times. Both Directors of the Beth Din appointed during Shelly's tenure had law degrees in addition to our *semicha* ordination, and this trend has continued with the current Director, Rabbi Shlomo Weissmann. *Dayanim* who were appointed to sit on Beth Din arbitration cases included observant attorneys, accomplished businessmen and professional therapists, depending on the needs of each case presented to the Beth Din. Even the *Av Beth Din*, Rabbi Gedalia Dov Schwartz, harbors an English name – George Bernard – that connotes a familiarity with general culture.

These three ingredients – a combined rabbinic and lay board, a professional process, and a *Torah u-Madda* oriented staff – are the foundations that enabled Shelly to succeed in restoring the crown of beth din to its glory for the broader Jewish community. Individuals spanning from the Chassidic and Charedi population, to the Reform, Conservative and even unaffiliated Jewish populations, began to flock to the Beth Din to adjudicate their divorce and commercial disputes. Shelly took special

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<sup>2</sup> *Devarim* 16:18.

pride in the case of a major national bank that brought a 100 million dollar dispute with a member of the Orthodox Jewish Community to be resolved by the Beth Din. I still remember traveling to California to meet with the parties in order to mediate a resolution to that dispute which included a RICO claim for treble damages. The non-Jewish bank felt more comfortable pursuing its case in our beth din rather than secular court based on its conviction that the defendant would have more respect for the determination of a rabbinical court. It was truly a *kiddush Hashem*.

If you pick up a Jewish newspaper today, or even a secular newspaper, you will find regular reference to the institution of beth din as a natural forum for resolving disputes and addressing communal problems. This was not the case fifteen years ago, when many people had never heard of the institution of beth din or believed it was a vestige from the past. I believe that the popular resurgence over the last fifteen years of the institution of beth din, and its re-ascendance as part of the natural infrastructure of the modern Jewish community together with the synagogue, the Yeshiva day school, the *eruv* and the *mikveh*, is largely attributable to the contemporary beth din model envisioned and enabled by Shelly Rudoff.

One question that is worth addressing is whether this *Torah u-Madda* model for beth din is a *bidieved* one, meaning a necessary but not ideal capitulation to the realities of the modern world, or whether this structure represents the Torah ideal. In formulating this question, I am not associating the term *Torah u-Madda* with any specific formulation of the concept, of which there have been many over the last number of decades, but rather I am utilizing the slogan in the broadest possible Yeshiva University sense – as recognizing the inherent value of the wisdom and the realities of the modern world while being thoroughly grounded in Torah.

I would submit that Shelly's *Torah u-Madda* model of beth din represents not merely an accommodation, but the ideal. Furthermore, he believed that every aspect of our contemporary Orthodox Jewish culture was essential to create this ideal, including the high-quality dual curriculum focus of our educational institutions, the priorities that we set in our family life in advancing an ethic of *Torah v'derech erez*, and the eclectic synthesis of worldliness and Torah that we promote in our synagogue and communal life.

The Talmud<sup>3</sup> tells a story about when Rav (the famous talmudic sage) was training to receive *Yatir Yatir semicha*. We don't even have this version of *semicha*

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<sup>3</sup> *Sanbedrin* 5b.

anymore. We have *Yoreh Yoreh semicha*, which is the regular *semicha*. Those who are training to be a *dayan*, a Jewish law judge, train for the second tier of *semicha*, *Yadin Yadin semicha*. We award both kinds of *semicha* at Yeshiva University. But there is a third type of *semicha*, *Yatir Yatir semicha*, which was a particularly esoteric form of *semicha* reserved for those who had mastered the expertise of being able to identify permanent blemishes in first born animals to determine whether they could be slaughtered and eaten by a *koben* without having to be brought as a sacrifice in the Holy Temple. The *Gemara* says that Rav trained for 18 months – not inside the *batei midrashot*, the study halls, which undoubtedly Rav frequented in ample measure as well, but rather in the fields, so that Rav could be mentored by an expert zoologist on the fine points of zoology and zootomy and become proficient in animal anatomy. As any fine attorney knows, if you only know the law but are unable to discern the facts, you are not going to be able to decide the cases properly. Similarly, the *Gemara* understood that a necessary supplement to the Torah learning that a *dayan* needs to have is an appreciation for the facts on the field, so much so that Rav spent a year and a half apprenticing with an expert in animal anatomy in order to be qualified to make determinations about animal blemishes (he wasn't given the *semicha* anyway, but that is another story).

We are also taught in the Talmud<sup>4</sup> that members of the great Sanhedrin had to be proficient in seventy languages. We live in a time when we are barely proficient in one language – even the way that English is taught and learned in many of our institutions is a combination of Yinglish and Yeshivish – and yet effective Rabbinic figures, such as Rabbi Samson Raphael Hirsch in Germany, epitomized through their writings and speeches the importance of a Torah scholar being able to express himself fluently in the vernacular of the society in which he lived.

In any event, the members of the Sanhedrin, the greatest Torah sages, were expected to be learned not merely in three languages, but in seventy of them! In fact, we read in *Megilat Esther* how Mordechai, who was a member of the Great Assembly, was able to rescue King Achashverosh and thereby bring salvation to the Jewish people because he was capable of deciphering the conversation spoken in a foreign language between Bigtan and Teresh as they were planning to assassinate the King.<sup>5</sup>

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<sup>4</sup> *Sanhedrin* 17a.

<sup>5</sup> *Megilat Esther* 2:21 – 2:23.

The reason for this requirement was because it was essential for the members of the Sanhedrin to be able to understand everybody on their own wavelength, to be tuned in to the cultural nuances and expectations of each type of individual who might appear before them. This is not a *bidieved* tolerance for a member of the Sanhedrin who happens to have had the misfortune of becoming well-educated, but rather represents an ideal and even pre-requisite for those individuals entrusted with the judicial welfare of the nation. To put it in different terms, to be on the Sanhedrin, you needed to be a *Torah u-Madda* personality.

The *Rambam* (Maimonides) formulates this even more powerfully at the beginning of his second chapter of the laws of Sanhedrin: “Only men who are wise and distinctly understanding in the wisdom of the Torah, possessors of great knowledge and knowledgeable in parts of other wisdoms, such as medicine and calculations of astrological cycles... and similar to these, so that they will know to judge them, are appointed to a *Sanbedrin*, large or minor.”<sup>6</sup> The commentary *Kesef Mishneh* quotes an earlier authority, the *Ramach*, who raises a question against the *Rambam* – why should a *dayan* have to know medicine or math?<sup>7</sup> The answer appears to me to be precisely what we have articulated: a *dayan* must be able to understand the nuances of every type of case, and therefore must be familiar with all areas of worldly wisdom.

Furthermore, the famous eighteenth century *gaon* Rabbi Akiva Eiger makes an astonishing comment in the opening sections of *Choshen Mishpat*,<sup>8</sup> the tome of the *Shulchan Aruch* that focuses on issues of Jewish monetary law. Two merchants in a particular industry had a dispute. One of them wanted to take the other one to beth din. The other merchant who had been summoned to beth din argued that the case should be decided in accordance with the custom of their industry which had designated a special arbitration board to adjudicate any disputes that might arise among members of the industry. Rather than insist that the matter be dealt with in accordance with Torah law, Rabbi Akiva Eiger ruled that in such a case the second merchant prevails and can insist that the matter be brought before the arbitration tribunal established by their commercial industry.

The modern day analog would be an architect insisting that an architectural dispute be brought before the Arbitration Association of Architects, or a diamond

<sup>6</sup> Rambam, *Mishneh Torah, Hilbot Sanbedrin veba-Onsin ba-Mesurin La-bem* 2:1.

<sup>7</sup> *Kesef Mishneh, id.*

<sup>8</sup> R. Akiva Eiger (1761-1837), *Glosses to Shulchan Aruch, Choshen Mishpat*, 3:1.



merchant insisting that a dispute in that industry be decided by the diamond dealer arbitration board in accordance with industry custom.

The fundamental point in this ruling is that even when such a dispute is presented to a beth din, it is incumbent upon the beth din to be familiar with the local customs of the industry and to rule in accordance with those customs. A beth din must be conversant in the *minbag ha-socherim*, the customs and practices of the contemporary commercial marketplace.

Therefore, as Shelly remarked in a lecture that he delivered at Yeshiva University in 2002, when the Beth Din has a securities case, it is appropriate to put a member of the stock exchange on the panel to join the other rabbinic members of the Beth Din, or when the Beth Din has a dispute about the meaning and interpretation of a synagogue constitution, it is not a bad idea to place a constitutional attorney on the case, or at least a good contract attorney. In my own experience at the Beth Din, we would routinely include an experienced therapist in the Orthodox community to sit on child custody dispute cases, and an anti-trust partner from a respected law firm to sit on *basagat gvul* cases (such as when one pizza store opens up across the street from an existing pizza store) which implicate anti-trust considerations and concerns. When we adjudicated a case involving an allegation that one band had misappropriated the underlying score of another band's music, which required in-depth knowledge of both musical copyright law as well as expertise in deciphering musical compositions, the Beth Din retained a partner from the law firm of Fried Frank to present a review of the musical copyright issues, and a highly regarded musicologist to assist the Beth Din in figuring out whether or not any part of the musical composition had indeed been copied. Each report was shared with the parties, and in accordance with the Rules and Procedures of the Beth Din, the parties were given the opportunity to respond to the report and engage in cross-examination with respect to its findings. The ultimate decision melded a detailed analysis of the musical elements of the underlying composition with a careful analysis of the secular law, and then the application of the secular law and industry custom to the *halachic* determinations of the case. It was a classic illustration of the fine-tuned *Torah u-Madda* processes that went into the production of a Beth Din of America decision for the modern age.

This type of process brought pride to Shelly Rudoff in his role as founder of the reconstituted Beth Din for two reasons. First, it enabled the Beth Din to be relevant to the contemporary business world and issue decisions that were responsive

to the realities of the modern day commercial marketplace. Significantly, the volume of commercial cases presented to the Beth Din skyrocketed from approximately zero to one hundred a year as attorneys and business folks became more and more comfortable trusting the Beth Din to handle their disputes. Secondly, the process was transparent and fully professional, bringing a *kiddush Hashem* (sanctification of G-d's name) to the Beth Din experience. Indeed, one of the reasons Shelly liked the idea of the experts actually sitting as members of the panel, whenever feasible, was to ensure that every expert opinion was shared with the parties in a completely open and interactive fashion.

By contrast, we discovered over the years that one of the main challenges in the beth din world were ZABLA cases where the two sides cannot agree on a beth din, and each side then picks someone (known as a *borer*) to represent them and the two of them pick a third *dayan*. Generally speaking, the two members of the panel chosen by the sides are engaged in steady ex-parte communications with the sides that chose them and are expected to advocate on their behalf rather than sit as neutral judges.

This arrangement is problematic for a couple of reasons: first, it allows for ex-parte communications, prohibited both according to *halacha* and according to the secular arbitration law. It was already noted by the *Aruch ha-Shulchan* one hundred years ago that in his day parties to a ZABLA proceeding worked with the assumption that there would be ex-parte communications.<sup>9</sup> The *Aruch ha-Shulchan* tried to justify the practice on the basis that the sides were presumed to waive any objection since each side wished to engage in ex-parte communications with their *borer*, but the fact is that this is clearly not the ideal.

Second, the current ZABLA process engenders an expectation that the panelist chosen by one side will invariably rule in that party's favor. However, the *halacha*, as emphatically noted by the *Rosh* in his commentary to the third chapter of Sanhedrin,<sup>10</sup> requires that each member of the panel remain fundamentally neutral and be capable of ruling in favor of either party. This is the type of ZABLA process described in the Talmud, but we found that this ideal was simply not being met in contemporary ZABLA practice.

These concerns were shared by other *batei din* as well. The Beth Din of America over the years worked out a different and superior system together with some of

<sup>9</sup> *Aruch ha-Shulchan*, *Choshen Mishpat* 13:4.

<sup>10</sup> *Rosh*, *Sanhedrin* 3:2.

the other *batei din* in the broader Jewish community. When parties would disagree about whether to go to the Beth Din of America or beth din #2, the Beth Din of America would work out with beth din #2 that the Beth Din of America would designate a *dayan* in the case, beth din #2 would designate a *dayan*, and those two *dayanim* would designate a third *dayan*. This way each of the *dayanim* would be members of institutional *batei din* who were not specifically agents of the different parties, and there would be both a protection against ex-parte communications and a greater guarantee of neutrality among the arbitrators.

Among the *batei din* who participated in these types of cases when parties were in dispute whether to submit to our beth din or their beth din were Machon E'hoyroa, Kollel Harabonim, the Rabbinical Court of Bet Yosef, the Bet Din of Elizabeth, the Igud Harabonim and the Bet Din of the Va'ad Harabonim of Queens. There was one time, however, when I remember being gently rebuffed in my efforts to bring about this type of cooperative effort. There was a Chassidic Rebbe in Brooklyn who was the son of a famous Chassidic *posek* (Jewish law authority) who had famously written *teshuvot* (responsa) attacking college study. It happens that I became friendly with the grandson of this famous *posek*, who was also the nephew of the current Rebbe, because this fellow was a practicing attorney in the firm of one of our board members, Eric Goldstein, who of course succeeded Shelly as President of the Beth Din.

This grandson of the original Rebbe thought that it would be a wonderful idea if I could meet his uncle, the current Rebbe, so that we could discuss ways of fostering better cooperation between our respective rabbinical courts. It happens that there had been a case or two in which one party had wanted to go to the Beth Din of America and the other party wanted to go to this particular Chassidic beth din, and the case degenerated (if I can use that word) into an unsavory kind of ZABLA. Thus, it seemed to make sense to have a conversation about each of our *batei din* assigning an arbitrator for that type of case and have the two beth din-appointed arbitrators pick the third judge to round out the panel. A meeting was arranged for *Chol Hamoed Sukkot* and I remember having a very pleasant meeting in Borough Park with the Rebbe and one or two of his *dayanim*, together with my friend his nephew. After we were able to reach agreement on virtually all issues, including the premise that the current regime of ZABLA was less than the *halachic* ideal, I mentioned my proposal to him. He shook his head and replied that it just wouldn't work. They couldn't use our *dayanim*. When I asked why, he explained

that he felt an allegiance to his father's writings, and his father could not countenance anybody who went to college. Since most of our *dayanim* had attended college, he couldn't deem them as qualified to serve as *dayanim*. I tried to reassure him that most of us had forgotten the bulk of what we studied in college. But it was clear that this tack was not going to be persuasive.

So I said something else. Even if the *dayanim* in question might not have been brought up in the same universe, and even if they had experienced college, wasn't it better to have such *dayanim* if they would be neutral and conduct themselves in a principled fashion, than for the ZABLA to deteriorate into a war between two advocates and only one neutral arbitrator? This argument certainly sounded pretty cogent, but it was clear that there was something of a cultural divide nonetheless.

One thing, however, that I learned from the Beth Din and from interacting regularly with Shelly was to be respectful of such cultural differences. In each attitude, and in each perspective, there was something to learn, there was a valuable lesson to be instilled. Much of the job of adjudicating cases in the Beth Din was to understand each party's cultural sensibilities, to be able to appreciate both their commercial customs as well as their cultural norms. This effort to understand and to relate to all segments of the Jewish community was a pivotal reason why many members of the Chassidic community were comfortable bringing their cases to us, as well as members of the non-Orthodox community.

But I also appreciated that the fact that many of our *dayanim* were college educated, and that many *dayanim* also received graduate school education in law, economics or psychology, actually made them more accessible to our broad clientele, and enabled our collective panels to synthesize more effectively the sine qua non of *halachic* expertise with an understanding of the contemporary commercial marketplace, as required by the *halacha*. Just to provide one illustration, one of our distinguished *dayanim*, Rabbi Aaron Levine of blessed memory, actually published the Oxford Handbook on Judaism and Economics, and would regularly incorporate scholarly economic analysis into his decisions.

For my part, while I was at the Beth Din, I co-authored a law review article<sup>11</sup> in which I demonstrated that the cheapest cost avoider test made famous by Guido Calabresi, pursuant to which the burden of removing a property nuisance is placed

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<sup>11</sup> Karen R. Cavanaugh, Daniel Pollach, Jonathan Reiss, & Ruth Sonshine, "Liability for Environmental Damage: An American and Jewish Legal Perspective," 19 *Temple Environmental Law and Technology Journal* 77 (2000).

on the party who can avert the nuisance at the cheapest cost, was actually a principle derived from Talmudic law by the *Rosh* and later explicated by the *Netivot ha-Mishpat*, a super-commentary on the *Shulchan Aruch*. It was the YU Yadin Yadin Kollel that acquainted me with the position of the *Rosh* and the *Netivot ha-Mishpat*, and Yale Law School that enabled me to appreciate the applicability of the talmudic principle to nuisance cases in the contemporary legal world. The Beth Din enabled me to meld both of these worlds in dealing with real life cases. This type of perspective is what made the Beth Din of America both unique and able to serve the integrated needs of the larger Jewish community.

It was with this appreciation that I approached the new President of Yeshiva University, Richard M. Joel, about building more of a partnership between the Beth Din of America and the training center for *dayanim* at Yeshiva University, the Rabbi Norman Lamm Kollel L'Horaa, also known as the Yadin Yadin Kollel. It was precisely at Yeshiva University where *dayanim* could be trained to have the requisite erudition in Jewish law sources as well as the sensitivity to incorporate a broad world view into the decision making process. During the course of these discussions, President Joel offered to set aside a section of the new Glueck Center for Jewish Study building at Yeshiva University to include a satellite space for the Beth Din of America, so that it could become a “teaching” beth din for Yeshiva University rabbinical students. It was also in the course of these conversations, that I was invited to become the new Dean of the Yeshiva, so the connection between the new entities is not only institutional but also personal.

The respect that the approach of the Beth Din of America has engendered throughout the larger world is evident almost every day. Just prior to this lecture, the New York Times published an article about the effectiveness of the Beth Din's pre-nuptial agreement, skillfully drafted under the guidance of its *Segan Av Beth Din* Rabbi Mordechai Willig, pursuant to which parties who are getting married agree that if they end up having marital difficulties, any dispute regarding a *Get* will be submitted to the Beth Din of America. The agreement also provides for the husband to provide a quantifiable support amount of \$150 a day from the time of separation until the couple is no longer married according to Jewish law. As related in the article, this combination of provisions has led to the resolution of scores of divorce cases and has ensured that a *Get* is given in a timely fashion. What the article doesn't mention is that the steps taken to perfect and popularize the pre-nuptial agreement took place under the tenure of Shelly Rudoff at the Beth Din.

What the article also doesn't mention is that part of the popularity of this document is that it adopted a *Torah U'Mada* approach, if you will, to the exercise of the Beth Din's jurisdiction. The agreement enables couples to submit all future monetary disputes to the adjudication of the Beth Din, as well as child disputes. For those couples who feel more comfortable with adjudicating any such disputes in accordance with secular law, the agreement enables them to choose the option to authorize the Beth Din to decide their case in accordance with principles of New York's equitable distribution law, or Connecticut's community property law. This way the case is still properly brought before a beth din in accordance with Jewish legal principles, while at the same time enabling the parties to have their assets divided in accordance with their reasonable expectations based on their monetary practices. And of course, when such cases are brought before the Beth Din, the Beth Din has a capable cadre of trained attorneys to participate on the Beth Din panel and make the determinations in accordance with the parties' choice of law request.

I would be remiss if I did not mention the aspect of Beth Din proceedings that at times seemed to generate the most passion on Shelly's part, and that is that once the Beth Din issued a decision, it was actually binding. In other words, the same way that a secular court decision could be enforced by the civil court system, any arbitration before the Beth Din of America, where the parties had signed an arbitration agreement and the Beth Din issued a written decision, was capable of being enforced in the identical fashion.

Shelly's exuberance about the enforceability of the Beth Din's decisions was based on two considerations. First, the fulfillment of the mitzvah of appointing *shoftim*, of establishing *dayanim* and rabbinical courts, is dependent, as the verse indicates, on having both *shoftim ve-shotrim*. Without *shotrim*, the enforcers of the beth din decisions, there could be no *shoftim* – the beth din would not be able to function.<sup>12</sup> It is thus necessary to ensure that the decisions of the beth din are rendered in a fashion will be enforced by those with the power to enforce, namely the secular court system. Second, there is a metaphysical element. We recite in our Tuesday morning prayers that “*Elokim nitzav ba-adat Kel be-kerev elohim yishpot*” (“G-d stands amongst the congregation of the Lord, amidst judicators He will judge”).<sup>13</sup> The Gemara<sup>14</sup> understood from this verse that the Divine Presence

<sup>12</sup> See R. Yoezer Ariel, “*Hatzorech Habelchati Be’Shtar Borerut*”, *Techumin* 14 (1994), 147.

<sup>13</sup> *Tebillem* 82:1.

<sup>14</sup> *Brachot* 6a.

rests upon the members of a beth din when they hear a case and render a verdict. A proper beth din process – “*baleich achar beit din yafeh*” (“go after a desirable beth din”)<sup>15</sup> – engenders a religiously meaningful experience. The beth din experience presents an opportunity to connect with the divine in what would otherwise be a relatively mundane dispute resolution process. This is the significance of the Talmudic passage that relates that when “*mi-bei dina shakel glima*,” when beth din has ruled that the defendant in a case has to lose the shirt off his back, rather than be depressed over the verdict, “*lizamer zemer ve-leizal be-orcha*,” literally meaning “he should sing a song and dance along”.<sup>16</sup> In other words, there should be a sense of jubilation that everybody involved in the case, including *dayanim* and litigants, have fulfilled a mitzvah and come closer to G-d because of their commitment to the beth din process and to the fact that the beth din was able to bring finality to the dispute in the manner required by the Torah.

Shelly was fond of a certain explanation of the juxtaposition between the *parsha* (weekly Torah portion) of *Sfofetim*, dealing with laws of judges, and the conclusion of the previous *parsha*, *Re'eh*, which states “*ish ke-matnat yado ke-birchat Hashem elokecha asher natan licha*” – that on the holy festivals, everyone should ascend to the Temple with whatever sacrificial offerings they could afford to contribute based on the blessings bestowed upon them by *Hashem*.<sup>17</sup> Shelly quoted an explanation that the Torah is saying that having *sfofetim*, having a beth din, is “*ke-birchat Hashem*,” is itself the greatest source of blessing. Shelly added one footnote of his own: the verse says “*ish ke-matnat yado*” – each person according to his means. This teaches us, he understood, that every person should contribute his or her unique talents in order to ensure that we have the best possible beth din system. Attorneys should contribute their legal expertise, businesspeople should contribute their business expertise, communal leaders should contribute their communal leadership skills, everybody should contribute their worldly wisdom and expertise to enable the beth din to be responsive and responsible, *halachic* and at the same time holistic.

I would add one last footnote to Shelly’s footnote: the *Netziv*, in response to the same question regarding what the juxtaposition of these verses teaches us, takes the message in the opposite direction. If you have respect for the judges, for

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<sup>15</sup> *Sanhedrin* 32b.

<sup>16</sup> *Sanhedrin* 7a.

<sup>17</sup> Deuteronomy 16:17 – 16:18.

the institution of beth din, for the decisions that are issued by the beth din, says the *Netziv*, “*bi-zeman she-mechabdin et ha-dayanim*,” then it will be “*ke-birchat Hashem elokecha asher natan licha*” – then the community will be truly blessed with prosperity and happiness.<sup>18</sup> Shelly Rudoff caused all of us to be truly blessed through his tremendous respect for the beth din process, and through his monumental efforts in resurrecting the Beth Din of America and restoring the glory of the Jewish court system. Shelly’s indelible mark, his broad worldview grounded in Torah and in his love for his fellow Jew, will continue to be imprinted upon every proceeding of the Beth Din of America. May we all be inspired by his example. *Yehi zichro baruch* – may his memory be a blessing.

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<sup>18</sup> R. Naftali Tzvi Yehuda Berlin (1816 – 1893), *Haemek Davar*, *id.*