

# **PERFIDY IN IOWA**



**THE SAGA OF  
Sholom Mordechai  
Rubashkin**

**AS REPORTED IN THE PAGES  
OF YATED NE'EMAN**



## TABLE OF CONTENTS

Group Campaigns Against Kosher Meat	6	Government Fumbles in Rubashkin State Trial	123
Kosher Meat-Packing Plant Raided; Hundreds Arrested	7	Watching a Case Crumble	126
Immigration Raid Shakes Small Town	9	Not Guilty	129
Rubashkins: Buckling Isn't An Option	11	Behind the Smoke and Mirrors	132
Agriprocessors Steps Up Production	13	Massive Monsey Rubashkin Event	135
Who Do They Think They Are?	15	Draws 3,000 People	135
Uri L'Tzedek Cancels Rubashkin Boycott	17	The Numbers Don't Add Up	137
Rhyme and Reason	18	Rallies Across the Country for Reb Sholom Mordechai	140
Lynch by Media	20	Free Sholom Rubashkin!	143
Why?	23	Perfidy in Iowa	146
The Lies & the Facts	25	Global Response	148
What We Saw in Postville	27	Rubashkin Achdus Goes Global	151
In Every Generation	29	Never Again	153
An Interview with Rabbi Menachem Genack	31	Outpouring of Solidarity in Lakewood	156
Equal Protection Under the Law	34	Voices Added to the Growing Chorus for Rubashkin	158
Protests Against Incarceration Without Bail	35	A Ray of Hope	160
What a World We Would Have	37	Examining the Motion	161
Do Your Part	39	Emergency Motion for Mistrial	163
Why are you Guys so Busy with Shalom Rubashkin	40	Weiner Writes AG On Rubashkin	166
Rubashkin Gets Bail	42	Motion in Rubashkin Case	167
Yisro and Apathy	43	Supporting The Rubashkin Motion	169
Shalom Mordechai Responds to Media Attack on Shechitah	46	Divrei Chizuk Mima'amakim	171
A Modern Day Blood Libel?	48	Kiruv Imperatives	173
Real Ahavas Yisroel	50	"Unity for Justice" - The Video	175
The FBI Unmasked	52	Achdus Lessons	176
What If?	54	Pressure Mounts for Justice Dept. Investigation	178
Rubashkin Trial Underway	57	"I Will Thank You Forever"	179
Rubashkin On Trial	59	Letters from Congressmen	180
An Exhilarating Shabbos in Sioux Falls	63	Rubashkin Case Tests American Justice	182
Yemei Hadin	67	The Lie At The Heart Of The Postville Documentary	185
Sunsets and Headlines	69	Congressional Hearing On Overcriminalization	188
Rubashkin Defense Begins Presenting its Case	70	One Nation Under... Arrest?	190
Rubashkin Trial Wraps Up	73	Rubbing Salt On Fresh Wounds	193
A Travesty of Justice	77	Rubashkin Attorney Speaks Out About New FOIA Lawsuit	195
Justice Denied	78	Taking Chanukah's Infinite Power Into The Year	196
Klal Yisroel, Where Are You?	80	Massive Asifa in Far Rockaway	197
Sadness in Sioux Falls	82	Massive Turnout at Five Towns Rally for Rubashkin	200
The Truth about the Trial	85	Rubashkin Attorneys File Appeal	203
Rubashkin Lawyer Speaks Out	88	Government Struggling To Put The Genie Back In The Bottle	205
Bringing The Joy of Chanukah to Sioux Falls	91	AG Holder Ignoring Appeals from Congress	207
Something is Rotten In The Justice Culture	92	Judge's Denunciation of Postville Prosecutions	209
Confident Simcha	95	Scandal Upon Scandal	211
Perfidy and Justice	97	Government Undermines Justice Blocks Amicus Curiae	212
J'Accuse	100	Government Removes Opposition to Amicus Curiae	214
Trial Transcript Reveals Web of Lies	103	Government Contests Rubashkin Appeal	215
His Story is Ours	107	Magen Tzedek: The Sham Behind The Shield	219
Life? How Can They?	109	The Stain That Won't Wash	222
The Fight Against a Life Sentence	110	Doubts About Federal Judge Haunt Case	225
Lid Blown off Rubashkin Case	112	"Appearance Of Partiality" Sufficient To Wipe Out Trial	227
Tefillah Rallies Across the Country	115	Bail Motion Denied; Appeal Still Under Consideration	231
Behind the Scenes at Waterloo	117	Making the Appeal Count	233
88 <sup>th</sup> Annual Agudah Dinner Highlights The Rubashkin Saga	120	When The Media Circus Came To Town	235

Anti-Immigration Bill Could Drive Farmers Out of Business	237	New Legal Front Opened	310
Postville: Iowa's Dirty Secret	240	Shavuos Thought from Shalom Mordechai	312
Rubashkin Appeal Denied	243	Breathtaking Abuse of Power	313
Numbers Climbing On White House Petition	246	Chilling Chapter In The Rubashkin Saga	316
Rubashkin Brief Challenges 8 <sup>th</sup> Circuit Denial of Appeal	248	Rubashkin Teleconference Rallies Thousands	319
Taking A Lesson From The Rubashkin Petition	250	Fresh Evidence Of Prosecutorial Misconduct	322
Rubashkin Petition For Full Court Hearing Denied	252	Excerpts from a Letter	324
Whom Are They Protecting?	254	Rubashkins: Buckling Isn't An Option	326
UFCW Corruption Case And Sholom Rubashkin	258	Pre-Pesach Thoughts	328
Fast and Furious: Holder In The Crosshairs	262	Dramatic FOIA Disclosures Fuel New Rubashkin Brief	330
Lighting Up The Night	265	Treating <i>Nisyonos</i> Like <i>Chukim</i>	333
Women Add Powerful Voice For Rubashkin	267	Yom Tov Thoughts to his Family	334
Judge's Appointment Re-opens Postville Wounds	270	A Visit With Sholom Mordechai Rubashkin	336
The Revolving Wheel Of Fate	273	Purim Thoughts	338
Sanzer Rov Visits Sholom Mordechai Rubashkin	275	Pesach Thoughts	340
Spector of Postville Haunts Judicial Nominee	277	Returning To My True Calling	342
<i>Machshova Mo'eles</i> : Thoughts Can Help Liberate	279	The Power of a <i>Yiddishe Neshomah</i>	344
Petition Focuses On Misconduct, Gross Sentence-Disparity	280	Rubashkin State Labor Case Expunged	346
Amicus Curiae Urge Supreme Court To Hear Rubashkin Case	282	Expungement Of Rubashkin Case Electrifies Community	348
Achdus in Sefira	285	Rubashkin Bombshell Motion Unveils 'Smoking Gun'	349
How The System Failed Sholom Rubashkin	287	No Piece Left Behind	353
Thirsting For Kedusha	289	Justice Officials; Legal Luminaries Petition Government	355
AG Eric Holder Voted In Contempt	291	Rubashkin Support Grows As Government Fights On	359
Rubashkin Legal Team Braces For 'Important' Deadline	294	Amnesty-Immigration Scandal	362
Gov't Brief Distorts The Record	295	Lessons For The Rubashkin Case	363
Reading Eichah and Kinnos in Cell Number 217	297	Government admits Misconduct	364
Rubashkin Brief Hammers Home the Injustice	298	The Case That Haunts	366
Look Only To Hashem	299	A Shofar In Solitude	368
Rubashkin Supporters Urge Supreme Court To Hear Case	300	The All-Embracing "Yes!"	371
Documentary Takes Deep Look At Prosecutorial Excess	302	New Brief Petitions 8 <sup>th</sup> Circuit Court Of Appeals	372
Some Cases Refuse To Die	304	Motion To Recuse Exposes Conflicts Of Interest	375
Rubashkin Attorney Speaks Out About New FOIA Lawsuit	307	Free At Last	378



# Group Campaigns Against Kosher Meat

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BY Y. ELCHONON

The militant vegetarian group People for the Ethical Treatment of Animals, better known by its acronym, PETA, has embarked on a new public relations campaign attacking AgriProcessors Inc., the Postville, Iowa-based one of the world's largest kosher meat processors, and the source for kosher meat products widely sold under the Rubashkin and Aaron's Best labels. PETA accuses the company of violating both civil humane slaughter laws and Halacha.

PETA began by sending the meat processor a letter a year and a half ago with unspecific complaints about the company's operating procedures. The company's lawyer, Nathan Lewin, responded by offering to discuss and, if necessary, fix any problem the group had. But Lewin told Binyamin L. Jolkovsky, of JewishWorldReview.com, that PETA never responded.

Last week, Lewin, was contacted by the New York Times seeking comment on an undercover videotape the paper received from PETA, which it claimed documented abuses by the kosher meat manufacturer. Lewin viewed the tape at the New York Times' Manhattan offices, along with Rabbi Chaim Kohn, Chief Dayan of Khal Adath Yeshurun, which is one of the kashruth supervision agencies that provides the Hashgocha on the meat plant. It was not clear when or if the Times plans to publish a story based on the PETA accusations and tape.

Lewin told Jolkovsky that the videotape, which was supposedly shot at the meat packing house in August and September of this year, contains graphic and bloody pictures of the kosher slaughter process, in an attempt to shock the viewer, but no violations of either civil law or the rules of shechita.

Lewin, who is acknowledged to be the foremost legal experts in church-state issues, contends that "all PETA wants to do is inflame the public against kosher slaughter." The group, he added, "just doesn't understand shechita — what's permitted under Jewish, and consequently, American Law."

Lewin also suggested that PETA could itself be subject to legal action for its unwarranted efforts to harass legitimate kosher meat operations in this country.

PETA is known for its aggressive tactics in promoting its animal-rights agenda. In one of its more tasteless campaigns, it ran advertisements a few years ago with the phrase "Got prostate cancer?" showing Rudolph Giuliani, the then-New York City mayor who had been recently diagnosed with the disease. The ads also included the line: "Drinking milk contributes to prostate cancer."

## AGUDATH ISRAEL RESOLUTION CONDEMNS ATTACK ON SHECHITA

PETA's campaign against a prominent kosher meat manufacturer prompted the passage of a special resolution at the closing session of the Agudath Israel of America's annual convention in Stamford, Con-

necticut, at the behest of Chaim David Zwiebel, its executive vice president of government and public affairs. By unanimous vote, Agudath Israel condemned what it termed a "vicious and unethical attack on Jewish religious practice." The resolution also noted that among the first Nazi attacks against Jews was "peddling photographs of allegedly 'cruel' kosher slaughter," and that PETA "now follows in that vile course." The resolution also declared that the Torah's concept of humane treatment of animals is well ahead of the standards promoted by secular organizations such as PETA.

"Shechitah often comes under attack by elements that are unsavory, and in general PETA is not an organization that commands our great respect," said Rabbi Avi Shafran, a spokesman for Agudath Israel

## PETA FILES A COMPLAINT WITH THE USDA

On Monday, PETA took the next step in its campaign against Agriprocessors, when it filed a complaint with the US Department of Agriculture, alleging that the plant is violating Jewish law by not instantly killing the animals, and is therefore also violating the 1902 federal Humane Methods of Livestock Slaughter Act. The complaint sought suspension of the plant's license and possible criminal proceedings.

Steven Cohen, a spokesman for the USDA, confirmed that the agency had received the PETA letter but said it was waiting to review the video before deciding how to handle the complaint.

Rabbi Menachem Genack, head of the Orthodox Union's OU Kashruth Division, which also provides supervision of kosher meat products from the same plant, said he had discussed the issue with USDA officials, and is confident that government guidelines are being followed to the federal agency's satisfaction.

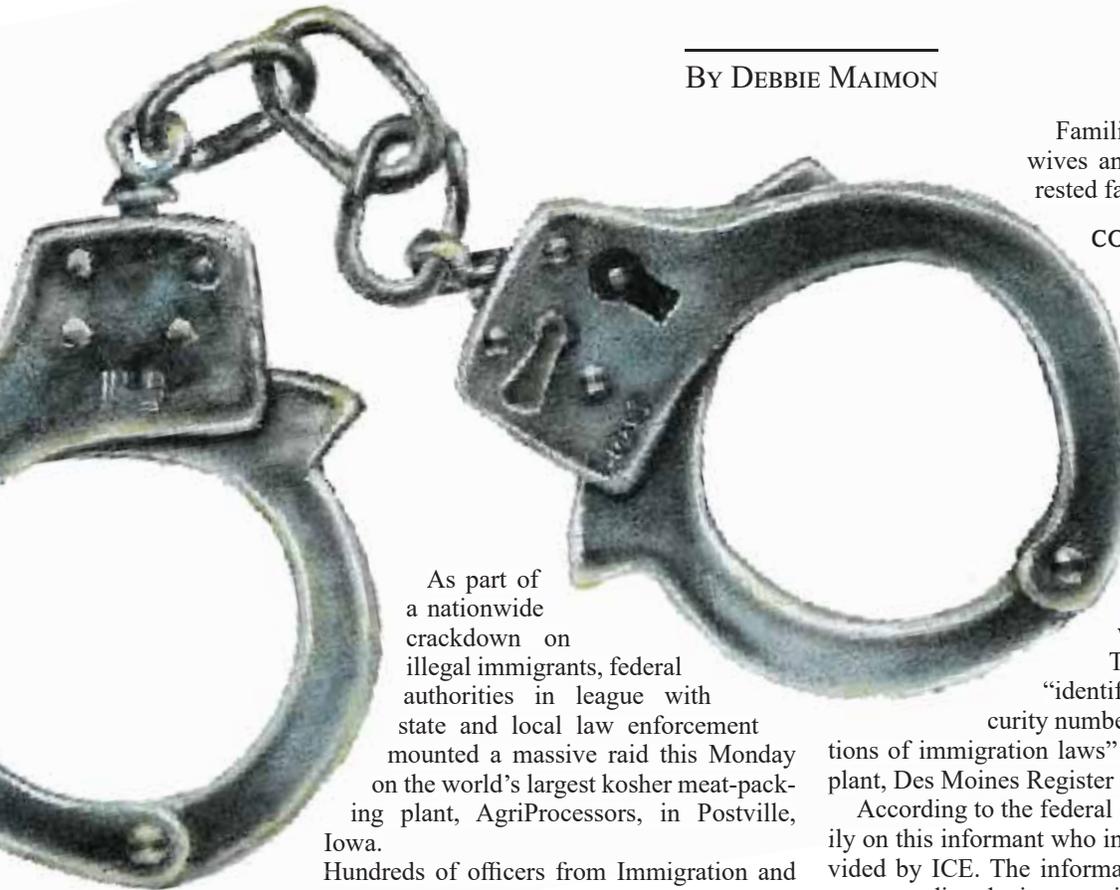
The company also issued a statement saying, "Agriprocessors does not control anything that happens in the kosher ritual processes. We adhere strictly to the instructions given to us by the rabbinic authorities and will continue to do so. As we always have, we will also continue to follow the strict guidelines set out by both federal and Jewish law for the humane treatment of animals during the slaughter process."

Rabbi Genack even tried, unsuccessfully, to explain the OU-approved and supervised shechita practices in use at the plant to Aaron Gross a Jewish student at Harvard University who is a militant vegetarian group, and is PETA's self-appointed expert on kosher requirements. Gross denied that the PETA campaign is motivated by anti-Semitism and claimed that it does not object to shechita "when properly practiced."

Another PETA expert who criticized the OU-approved shechita procedures at the Agriprocessors plant was Temple Grandin, an associate professor of animal science at Colorado State University, with no religious credentials at all.

# Kosher Meat-Packing Plant Raided; Hundreds Arrested

BY DEBBIE MAIMON



As part of a nationwide crackdown on illegal immigrants, federal authorities in league with state and local law enforcement mounted a massive raid this Monday on the world's largest kosher meat-packing plant, AgriProcessors, in Postville, Iowa.

Hundreds of officers from Immigration and Customs Enforcement (ICE), FBI and Homeland Security officers, together with state troopers and local police descended on the 60-acre plant Monday morning.

After cordoning it off on all sides, they conducted searches and interrogated hundreds of workers, arresting almost 400.

The plant employs well over 1,000 people. In addition to shochtim and mashgichim, hundreds of workers from Mexico, Guatemala, Russia and Ukraine as well as many native Iowans, make a livelihood at AgriProcessors.

In the raid, 314 men and 76 women—including any foreign workers who could not immediately produce evidence of their legal status—were arrested for immigration violations.

Many were detained in local jails, while the majority were herded into buses and driven to a makeshift detention center in the town of Waterloo, an hour and a half out of Postville.

In public schools throughout Postville, ICE officials halted classroom proceedings to interrogate the students. “‘Who in this room is legal?’” an officer would ask. “They separated all the kids with a Latino look, and took them to a room for interrogation,” a Postville resident told Yated.

Families were left in limbo, as husbands, wives and children searched worriedly for arrested family members.

## COMPANY COOPERATED WITH FEDS

Regulations at AgriProcessors require all workers to show proof of residence, valid social security numbers, and legal papers permitting them to work in the United States, a spokesman for the company told Yated.

Yet, the federal affidavit, while acknowledging the plant's regulations, said the raid was authorized after information was received that many of AgriProcessors' foreign workers were “illegals.”

The search warrant cited suspicions of “identify theft and fraudulent use of social security numbers, as well as reports of multiple violations of immigration laws” that came from an “informant” at the plant, Des Moines Register of Iowa reported.

According to the federal search warrant, authorities relied heavily on this informant who infiltrated the plant with documents provided by ICE. The informant was hired in January and wore secret recording devices monitored by ICE, the Des Moines Register noted.

The raid at Agri mimicked the dozens of raids carried out in recent months on firms who employ foreign labor, in a nationwide federal effort to curb illegal immigration into the United States, an AP article noted. It was the largest raid of its kind ever carried out in U.S. history.

Company leaders cooperated fully with federal authorities, halting operations and opening up the facilities for a thorough search.

By evening, the police had released dozens of people, either for “humanitarian reasons” or because the detainees were able to produce valid documents. Hundreds remain in detention, under threat of deportation.

## AMAZING GROWTH

Agriprocessors Inc. opened in Postville, Iowa, nearly 20 years ago, under Aaron Rubashkin, bringing with it a promise of jobs and stimulating a revival of the region's economy. Rubashkin and his two sons, R' Shalom and R' Heshy, built up the company over the past two decades, turning it into the world's largest kosher meat-

packing plant.

A small community comprised of shochtim and mashgichim and their families grew up around the meat plant. Today they comprise a warm, close-knit community of a few hundred people, nurtured by a strong religious infrastructure consisting of yeshivahs, shul, mikvah, chevrah kadisha, gemachs and other institutions, under the patronage of the Rubashkin families.

The company processes and packages kosher meat and poultry products that it supplies to grocery stores and meat markets across the United States. It also processes non-kosher meat products.

According to Menachem Lubinsky, the editor of Kosher Today, AgriProcessors provides 60 percent of the kosher retail meat and 40 percent of the kosher poultry nationally, and most retail chains depend on it for supply.

Shutting down production at the plant will have a significant impact on the kosher meat sales, he said. "They are a major supplier to retail establishments all over the world."

### STRUGGLING TO BOUNCE BACK

Shutting down seems to be the farthest thing from company leaders' minds. On Tuesday, the day following the raid, administrators and workers alike struggled to get the plant back in operation.

"Chickens and cows had just been shechted when the police arrived; for safety reasons everything had to come to a halt," a spokesman for the plant said in a telephone interview with Yated.

"You can't just leave meat around. Everyone with any kind of job here at all, including secretaries and office help, is pitching in. Even yeshiva bochurim from the high school are coming over to help between sedorim. Getting things back in operation is a community-wide concern."

As company administrators struggled to get the factory back on its feet, business leaders in the wider community gave AgriProcessors a vote of confidence.

"We feel confident that they will regain their footing and continue serving as the town's largest employer," the Des Moines Register quoted the president of the Postville Chamber of Commerce as saying.

The article stressed the importance the townspeople attach to the continued functioning of the meat plant.

Drahos noted that "the town is in fairly good shape economically... mainly because of the thriving meatpacking plant."

### SHUTDOWN OR RELOCATION WOULD "DEVASTATE THE ECONOMY"

Although Iowa's governor, Kurt Culver, was quoted in the media as urging the prosecution not only of illegal aliens but their "employers" who "help make it happen," critics were quick to point out the huge losses to the economy that a shut-down or relocation would bring about.

From the considerable infusion of funds coming from property taxes to a vast array of industries promoted by AgriProcessors, including construction, engineering, transportation, iron works, excavation, truck manufacturing and repair, [all of which employ Iowans, not foreign labor], the town's economy-and that of neighboring cities-has been thoroughly revitalized.

"Consider the price of one cow-about \$1500," a former employee of the meat plant, S. Gelb, pointed out. "AgriProcessors brings in about 500 cows a week. That's \$750,000 each week being paid to various cattle farms in this region. That doesn't even begin to address the vast amounts of funding that goes into transporting the cows to the plant, and into carrying out all the functions of shechitah, cleaning, salting, packaging and shipping.

"All of this money is pumped back into the economy," the employee noted.

Since only about a half of each cow can be used for kosher beef, the remainder of each animal is packaged and sold to non-Jewish meat markets and meat chains, who depend on AgriProcessors as their main supplier.

The company's leaders are currently engaged in a \$5 million water treatment project that will reduce the salt content of the area's water, affected by the kashering procedures at the meat plant.

These and other projects have created hundreds of jobs for skilled workers and educated Iowa natives and explains why the raid on AgriProcessors sent shivers down the spines of so many in the community.

In Postville and surrounding communities, "there is a lot of fear," Prof. Mark A. Grey, who focuses on immigration at the University of Northern Iowa, told the New York Times.

"[A shutdown of the meat plant] would be absolutely devastating to the local economy," Professor Grey said.



# Immigration Raid Shakes Small Town

AGRIPROCESSORS SAYS IT IS ADDRESSING CHALLENGES

BY DEBBIE MAIMON

Antonio Escobedo ran to get his wife last Monday when he saw a helicopter circling overhead and immigration agents approaching the meatpacking plant where they both work in Postville, Iowa. The couple hid for hours inside the plant before obtaining refuge in the pews and hall at a local church, where hundreds of other Guatemalan and Mexican families gathered, hoping to avoid arrest.

"I like my job. I like my work. I like it here in Iowa," said Escobedo, 38, an illegal immigrant from Yescas, Mexico, who has raised his three children for 11 years in Postville. "Are they mad because I'm working?"

Last Monday's raid on the Agriprocessors plant, in which 389 immigrants were arrested and many held at a cattle exhibit hall, was the Bush administration's largest crackdown on illegal workers at a single site. It has upended the tree-lined community, which calls itself "Hometown to the World." Half of the school system's 600 students were absent Tuesday, including 90 percent of Hispanic children, because their parents were arrested or in hiding.

Current and former officials of the Department of Homeland Security say its raid on the largest employer in northeast Iowa reflects the administration's decision to put pressure on companies with large numbers of illegal immigrant workers, particularly in the meat industry. But its disruptive impact on the nation's largest supplier of kosher beef and on the surrounding community has provoked renewed criticism that the administration is disproportionately targeting workers instead of employers, and that the resulting turmoil is worse than the underlying crimes.

"They don't go after employers. They don't put CEOs in jail," complained the Postville Community Schools superintendent, David Strudthoff, 51, who said the sudden incarceration of more than 10 percent of the town's population of 2,300 "is like a natural disaster - only this one is manmade."

He added, "In the end, it is the greater population that will suffer and the workforce that will be held accountable."

Congressman Bruce Braley (D-Iowa) said enforcement efforts against corporations that commit immigration violations have "plummeted" under the Bush administration. "Until we enforce our immigration laws equally against both employers and employees who break the law, we will continue to have a problem," he said.

Julie L. Myers, assistant homeland security secretary for Immigration and Customs Enforcement (ICE), said that to the contrary, the agency has seldom been so aggressive, including opening criminal investigations of company officials. While cases have netted only a handful of sentences for low-level managers so far, Myers said, such white-collar crime investigations typically take years to develop.

"Can we really execute a search warrant without taking any ac-

tion against [illegal employment] that we know is taking place?" she asked. "Or will just taking business records through a search warrant cause illegal aliens to leave, and then we're not fulfilling that part of the mission, as well?"

Lobbyists and former officials say that in unleashing ICE, the administration is trying to "turn up the pain" to motivate businesses and Congress to support the comprehensive immigration changes sought by President Bush, such as a temporary-worker program and earned legalization. If the existing legal tools are too blunt, they said, Congress should create a fairer system.

But the pressure on employers - whose wages and hiring practices have lured illegal workers to both large cities and small towns - has mostly been indirect and economic: While workplace arrests have risen tenfold since 2002, from 510 to 4,940, only 90 criminal arrests have involved company personnel officials.

So far, no officials at Agriprocessors have been charged. The company, founded by Aaron Rubashkin, has a storybook history whose recent chapters have turned murky. After some of the Rubashkin family moved to Postville from Brooklyn in 1987, the firm became the nation's largest processor of glatt kosher beef. It produces kosher and non-kosher beef, veal, lamb, turkey and chicken products under brands such as Iowa Best Beef, Aaron's Best and Rubashkin's.

According to an affidavit filed by an ICE agent in conjunction with last week's arrests, 76 percent of the 968 employees on the company's payroll over the last three months of 2007 used false or suspect Social Security numbers. The affidavit cited unnamed sources who alleged that some company supervisors employed 15-year-olds, helped cash checks for workers with fake documents, and pressured workers without documents to purchase vehicles and register them in other names.

In addition, the affidavit alleged that company supervisors ignored a report of a methamphetamine drug lab operating in the plant. It also cited a case in which a supervisor blindfolded a Guatemalan worker and allegedly struck him with a meat hook, without serious injury. The *rav hamachshir*, Rav Menachem Meir Weissmandl, has flatly denied these claims.

ICE may be "deporting 390 witnesses" to the labor investigation, Mark Lauritsen, international vice president of the United Food and Commercial Workers union, said, adding, "This administration seems to place a larger value on big, splashy shows in this immigration raid than in vigorously enforcing other labor laws."

In November, Shalom Rubashkin, company vice president and the founder's son, wrote a letter to customers decrying "a slanderous and patently false campaign" by the union, and defending the company's record and its products as "safe and wholesome." After last week's raid, the family released brief statements expressing its

sympathies to workers, commitment to customers and cooperation with authorities.

Agriprocessors said it continues to make meaningful progress in addressing the challenges presented by the worksite enforcement action.

According to Chaim Abrahams, a company representative, Agriprocessors is concentrating its efforts on production.

“We were able to bring the plant back into operation the next day, and even though we’re not running at full capacity, we are able to resume production,” Abrahams said. “We are in the process of replacing workers so we can avoid any interruption of meeting customer needs for high quality products.”

Abrahams also noted that the company was in the process of enhancing its immigration compliance procedures.

“We are working with experts in immigration compliance to help us bolster our compliance efforts to employ only properly documented employees,” he said. “We have signed up for a government electronic verification program, and are working with our consultants on additional compliance measures that will enhance our hiring process.” Agriprocessors also has launched an independent investigation into the circumstances which led to the worksite enforcement action, and is cooperating fully with the government.

“We extend our heartfelt sympathies to the families whose lives

were disrupted and wish them the best,” Abrahams said.

The blitz, which occurred after a 16-month investigation, began with helicopters, buses and vans encircling the western edge of town at 10 a.m. Witnesses said hundreds of agents surrounded the plant in 10 minutes, began interviewing workers and seized company records.

By early afternoon, illegal immigrants began arriving by bus at the National Cattle Congress grounds in Waterloo, Iowa, about 75 miles from Postville. ICE held 313 male suspects at an exhibit hall and 76 female suspects in local jails for administrative violations of immigration law.

Those arrested include 290 Guatemalans, 93 Mexicans, 2 Israelis and 4 Ukrainians, according to the U.S. attorney’s office for the Northern District of Iowa.

Eighteen were juveniles who have been released or turned over for refugee resettlement, and the prosecutor’s office would not say if there were underage workers at the plant. Of the adults, 306 face criminal charges for aggravated identity theft and other crimes related to the use of false documents. A lawsuit filed on behalf of the workers on Thursday, meanwhile, accused the government of violating their constitutional rights through arbitrary and indefinite detention.

For now, Postville residents - immigrants and native-born - are holding their breath. On Greene Street, where the Hall Roberts’ Son Inc. feed store, Kosher Community Grocery and Restaurant Rinconcito Guatemalteco sit side by side, workers fear a chain of empty apartments, falling home prices and business downturns. The main street, punctuated by a single blinking traffic signal, has been quiet; a Guatemalan restaurant temporarily closed; and the storekeeper next door reported a steady trickle of families quietly booking flights to Central America via Chicago.

“Postville will be a ghost town,” said Lili, a Ukrainian store clerk who spoke on the condition that her last name be withheld.

But Cesar Jochol, 48, a native of Patzun, Guatemala, and owner of a market called Tonita’s Express, questioned whether the raid will be a deterrent. People who can afford to eat meat only once or twice a week in Guatemala, while earning \$4 a day, can earn \$60 a day in Iowa, enough to eat beef or chicken three times a day, he said. “You take away a hundred people. A couple hundred more will come tomorrow; they’ll just go to L.A., New York, New Jersey and Miami,” said Jochol, a 21-year U.S. resident.

Eduardo Santos, 27, who came from Guatemala and lost two of his fingers working at the factory, said the raid was “fair . . . but it’s bad for everybody. There’s no work.” He plans to go home.

“The problem is, who is going to do the work?” said Stephen G. Bloom, a University of Iowa journalism professor who wrote a 2000 book on the clash of cultures in Postville as Agriprocessors’ Lubavitch Jewish leaders gained influence in the mostly Lutheran town. “This is a no-win situation.”

*The Washington Post contributed to this report.*



# Rubashkins: Buckling Isn't An Option

How goes it in Postville, Iowa?

Two weeks have passed since an army of U.S. immigration and FBI agents, backed by local and state police and members of other agencies, stormed AgriProcessors, the kosher meat-packing plant in Postville, Iowa.

389 immigrant workers were hauled away, the bulk of them to a makeshift detention camp at the nearby Waterloo Cattle Congress grounds, an arena used for livestock.

Criminal proceedings were begun immediately. The hearings ended with 297 people entering guilty pleas in four days. The vast majority agreed to plea bargains that stipulated five-month jail sentences followed by immediate deportation.

[Prosecutors made it clear that had the workers chosen to go to trial, they would face charges of identity theft, which carries a much harsher sentence -at least two years behind bars, the New York Times reported.]

## LYNCH MENTALITY

The media glare has since moved from the immigrants' plight to the plant's management and owners, issuing a stream of pious op-eds calling for the investigation and prosecution of the Rubashkin owners for alleged worker abuse.

A particularly strident call to prosecute the company's management has come from Iowa Congressman Bruce Braley.

Both the general public and some Jewish leaders have swallowed media reports uncritically, generating a lynch mentality. The head of a leading Conservative Jewish group, Jerome Epstein, was widely quoted in the press as urging his constituency to give "serious consideration" to boycotting AgriProcessor products to protest the alleged "abuse."

Apparently advised of the legal consequences of presenting allegations as proven fact (libel), Epstein stopped short of issuing an outright condemnation.

Conservative groups have been seeking to carve a role for themselves in the kashrus certification domain by promoting a new kind of endorsement.

Touting their concern for human rights and humane treatment of animals, and insisting that "kashrut is about more than adherence to halacha," they propose to issue a special stamp, "Hechsher Tzedek," issued by a national body of American Conservative rabbis.

The supervisory board of Hechsher Tzedek would rate a company in terms of how it treats its workers and the animals it slaughters. Conservative Jewish leaders have been trying unsuccessfully to market their proposal to their constituency as well as to kosher meat-packing plants.

AgriProcessors has consistently brushed off their bid for legiti-

macy, antagonizing Conservative rabbis who are trying to get their foot in the industry's door, and who are now retaliating.

## OU: WAIT AND SEE

The Orthodox Union [OU] informed the Rubashkins that for now, the OU certification on their meat and poultry would remain in place, but that the organization "was watching developments carefully."

"Rabbi Menachem Genack, the head of OU's kashrus division, said the OU would sever its relationship with a firm if it had "some serious violation of the law," such as a felony conviction," Jerusalem Post and JTA reported.

In an interview with Yated, Rabbi Genack qualified his statement. He said if the company were to be convicted of criminal charges, "a change in AgriProcessors management would probably preclude" the radical step of removing the OU's hechsher.

Rabbi Moshe Elefant, head rabbinic coordinator of the OU's kashrus department, noted the intense pressure being exerted on the OU by various groups under the OU umbrella, to withdraw its supervision from the meat-packing plant.

"The fact that we have publicly announced that we maintain our hechsher in the face of enormous pressure to withdraw it, is the strongest possible evidence of our confidence" in the Rubashkins' integrity, he said over the telephone.

He added that the Rubashkins have done American Jewry an enormous service by "making it their responsibility and their goal that Jews in every part of the country had access to kosher meat and poultry."

"It's in the interest of our entire community to see them prosper," he said.

## ESPRIT DE CORPS

Meanwhile, in Postville, itself, and especially within AgriProcessors, few seemed to be worried about the speculation abounding in the media about a possible federal indictment hanging over the management, or predictions that the plant would close down.

"Buckling is not an option," one of the managers said. "In fact, morale here is very high and production is picking up every day."

Chaim Abrams, who works in sales at the plant, said that the company had been bouyed by the esprit de corps in the town, as volunteers from Postville and beyond rushed to offer their help to fill the worker void.

"Whether Litvish, Chasidish, Belz, Lubavitch, everyone's rallying. We're all together, all on the same team. The achdus is heartwarming."

He noted the announcement made by AgriProcessors owner Aar-

on Rubashkin last Friday, that in view of the company's expansion, new leadership positions had opened up and a search was in progress for a new CEO.

The current head of the company, R' Shalom Rubashkin, will be aiding in that search, he said.

Employees and Postville residents familiar with the plant dismissed as ridiculous many of the allegations making the rounds.

"A meth lab on the premises? Guns? I'm laughing out loud," said Aaron Goldsmith, who owns a hospital bed company in Postville, and whose two sons once worked at the plant.

Between 12-15 officials from the U.S. Department of Agriculture frequent AgriProcessors on a regular basis, and have access to all parts of the plant day or night, he noted.

"Do you think a drug lab or major infractions of the law could possibly be going on under the noses of the USDA?"

In fact, the claims for the presence of a methamphetamine lab, which were emblazoned all over the headlines in the days following the raid, seem to be quietly disappearing. No evidence or statements have appeared in the past few days that it ever existed. And most of the initial headlines referring to it were lifted from major news outlets.

#### POSTVILLE PAINTS DIFFERENT PORTRAIT

As the media continues its feeding frenzy, painting the Rubashkins as self-serving people willing to exploit impoverished workers, a different picture emerged from the spontaneous descriptions of locals in Postville in interviews with Yated.

The vice president of Postville's Freedom Bank Mike Crukeberg commented over the phone that local residents of Postville know the Rubashkins as humanitarian people interested in the welfare of their fellow townspeople.

"We ran a drive to build an addition on to the local Y," he said. "The Rubashkin family gave us a handsome donation. It was the same with the day care center and with other community projects. These are very generous, community-minded people that can always be counted on to help."

"They're very down to earth," he added. "They act like they are nothing special, just another 'Joe.'"

He remembered that when a nearby poultry plant, Iowa Turkey Inc., burned to the ground in 2003, collections were taken up to help the workers who were left without employment. "The Rubashkins contributed chicken, meat and even gave space at their plant to help the company salvage what it could."

Another Postville resident told of how a Guatemalan worker at the plant fell ill and eventually passed away. "The Rubashkins paid for the funeral and helped the family out afterwards."

An employee at AgriProcessors told of a non-Jewish woman who worked there and had a son who died. The husband started to drink heavily and the family was falling apart. The Rubashkins paid for him to enter a drug rehabilitation center. "Thanks to their help, he was eventually able to get back on his feet and pull the family together," the employee said.

A member of the church in Postville told of money that had been received from the Rubashkin family on several occasions to purchase food for immigrant families too poor to put bread on their table.

The plant is under the hashgacha of Rabbi Menachem Aryeh Weissmandel of Monsey, N.Y. "The high standards the company is known for continue to be maintained," he said in an interview over the phone, while at the site. "Nothing has changed in that department."

He said that the plant has resumed up to 50 per cent of its production and the number is rising. "None of our shoachim or mashgichim were affected by the raid," he said.

Meanwhile, critics ponder the broader implications of the federal raid which, as one columnist put it, "was a show of force, but not of wisdom."

"Immigration and Custom Enforcement [ICE] was established in 2003 and has a budget that has grown to over \$5 billion dollars a year," a Wall Street editorialist pointed out. "With its stated mission of protecting America by targeting the people, money and materials that support terrorist and criminal activities, one has to wonder how this massive raid in Iowa has furthered the goals of ICE."

How many millions of dollars were poured into this operation and will continue to be lavished on it as investigation and prosecutions continue, taxpayers want to know.

Does anyone feel safer?



# Agriprocessors Steps Up Production *as Conservatives and Liberal Orthodox Groups* Step Up Attacks

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BY RABBI AVROHOM HOFFENBERG

Agriprocessors continues to hire new workers in an effort to fill shortages of glatt kosher meat and poultry in the marketplace in the aftermath of a federal raid in which scores of illegal immigrants were arrested. Sources say that Agri is nearing full production on its deli and poultry lines and is working around the clock to hire skilled workers for its beef production.

These developments come against the relentless onslaught of animal rights extremists, PETA, the UFCW, and leftist Conservative and Modern Orthodox groups. A petition organized by Uri L'Tzedek, a group affiliated with the Yeshivat Chovevei Torah, is said to include 1,300 Modern Orthodox, Conservative, and Reform rabbis. They even went so far as to use the term boycott when they are fully aware that no group has suffered more from boycotts than Jews. Many of their ancestors were in fact involved in boycotting the Orthodox-run Vaad Hatzoloh when it attempted to send aid to the impoverished Jews in the ghettos during Churban Europe.

The Yated Ne'eman, most recently in an article titled "Yeshivat Chovevei Torah's Continuous Assault on Judaism," in the April 18 edition this year, exposed the left-leaning and anti-Torah behavior of the yeshiva, which has included going against the poskim of the Modern Orthodox establishments, headed by the late Rabbi Joseph B. Soloveitchik. These included participating in interfaith dialogues and organizing joint yemei iyun with Conservative and Reform clergy.

Uri L'Tzedek has raised all of the issues in the allegations against Agriprocessors that were contained in the federal affidavit that led to the raid in Postville, Iowa, more than a month ago. It did not seem to matter to them that a call for a boycott based on allegations was unprecedented. Nor were they fazed by the fact that the boycott might be damaging to a company that supplies a significant portion of the kosher meat in the country and which has been responsible for keeping prices down. There was little concern that hundreds of Jewish families in Postville would be hurt, or that the plant is closely monitored by a large team of USDA inspectors

and rabbis. Even supermarket chains regularly audit the plant and, in fact, asked for their own investigation, again unprecedented.

In their letter to Mr. Aaron Rubashkin, the founder and owner of Agriprocessors, the Uri L'Tzedek group raised issues such as humane slaughter, despite the fact that the last five independent audits gave the plant high marks for its humane slaughter practices. They also referenced the undocumented workers, even when the plant had hired a former U.S. attorney, Jim Martin, to deal with compliance issues during a time when undocumented workers are a huge problem for America. The leftist leaning Orthodox activists challenged Agri about the low pay without a shred of evidence that this was true and also raised concern about some 39 violations that are routine for slaughterhouses, which have been addressed long ago and are under constant supervision by a large team of on-site USDA inspectors. Uri L'Tzedek also cited unsubstantiated rumors about child labor and stories of abuse. In other words, they bought the propaganda of the UFCW and the PETA activists and called for a boycott against a company that is tirelessly working to restore the supply of kosher meats all over America. The call for the boycott is against the Torah that they claim to represent and is shameful, shortsighted, and despicable.

With the growth of the Orthodox community in recent decades, and its desire for tough kashrus standards, the dominant institutions in kashrus were led by the large agencies such as the OU, OK and Chof K, and by Chassidische hechsheirim in the Chassidic communities. In local communities, Conservative rabbis have virtually dropped out of kashrus supervision, which is now almost exclusively in Orthodox hands. Nevertheless, recognizing that kashrus is today a major part of Jewish life, many liberal rabbis, particularly in the Conservative movement, are trying to make a comeback with a new "Hechsher Tzedek." They believe that kashrus is not just that the animals are slaughtered in accordance with Torah and halacha and how food is prepared, but it also must pass the liberal test of social responsibility. One can follow every

*They want to force kosher consumers  
to adhere to social engineering*

## *If the leftist rabbis are given a kashrus role, kashrus in the US will be at risk*

government regulation, with job standards, minimum wage, safety regulations and all the dictates of halacha, and even have 30-40 USDA inspectors in one's plant, but not be acceptable because it is not "socially correct."

They want nothing less than to force the traditional observer of kashrus to adhere to their view of social engineering. Established kashrus organizations, led by the Orthodox Union, have refuted these attempts by groups such as Uri L'Tzedek and Hechsher Tzedek by saying that a social justice agenda has no place in kashrus, especially since Agriprocessors is a USDA plant with a large contingent of federal inspectors who are on site at all times.

Spearheading the Hechsher Tzedek effort is Rabbi Maurice Allen of St. Paul. His prime target has been Agriprocessors, since it's the largest producer of kosher meat in the US. The UCFW has been trying to take over the Agri plant for years. This union has a history of strong arm tactics. Smithfield Foods, one of the largest food companies in the US, sued them with charges of racketeering. In Iowa, the UCFW has met with stiff opposition from both workers and the company. Allen has allied himself with the union to try to break the plant. Allen recently visited Postville, Iowa, to examine the situation. This "rabbi" headquartered himself in the church where he interviewed local workers who had been pre-screened by the union.

If Allen wants to determine values and morality, his own values should come into question. Allen is one of those Conservative rabbis who perform "commitment ceremonies." He himself is a vegetarian, and eats in non-kosher restaurants. Jewish consumers who believe in halacha obviously reject a new kashrus that has no basis in Torah and halacha and is certainly based on libelous information about kashrus. The challenge to the Torah observant community is to reject these attempts at all costs and to address such questions as: Will it allow "rabbis" who flaunt Jewish law, disavow Torah Shebiksav, and eat in treife restaurants set the standards for what kashrus represents? Is it right for religious movements to align themselves with unions whose tactics are questionable and may cause the cost of kosher meat to rise for many economically disadvantaged Jews?

All kosher plants must be in full compliance with all federal and state regulations and government laws by having constant on-site supervision by the USDA. They are also obligated to observe the guidelines of the rabbonim and their kashrus supervision agencies. If we, G-d forbid, give the leftist rabbis any role in kashrus, we are putting kashrus in the US at risk. The stakes for the frum community are very high and the faster we tell the Rabbi Allens and the Uri L'Tzedeks that they should not lecture to the Torah community about Tzedek, the better off we will be.



# Who Do They Think They Are?

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BY RABBI AVROHOM HOFFENBERG

Uri L'Tzedek ("Awaken to Justice") is a self-described social justice group comprised principally of students of Yeshivat Chovevei Torah ("YCT"). (YCT is a left-wing fringe "Open Orthodox" rabbinical seminary in Upper Manhattan which has been the subject of much controversy due to its radical departures from accepted Orthodox standards. Most Orthodox organizations - including the main Modern Orthodox groups - have shunned YCT and do not recognize its semicha.) Although Uri L'Tzedek is a small and little known group, its recent activities speak volumes about the type of justice that Uri L'Tzedek claims to pursue.

The April 2008 federal government raid on the Agriprocessors ("Rubashkin") main facility in Postville, Iowa, which targeted illegal immigrants who were employed by the company, was widely reported by Yated Ne'eman and numerous other publications and media. Hundreds of Agriprocessors workers, nearly all of Guatemalan and Mexican origin, were rounded up and removed from Agriprocessors as a result of charges that these workers were in the United States illegally and obtained employment at Agriprocessors by using false immigration documents. Pursuant to the raid, government attorneys made countless allegations that Agriprocessors was the site of nearly every type of employment and safety infraction imaginable, although many of the allegations were dropped upon having been immediately discredited.

## ORTHODOX COMMUNAL RESPONSE

The general consensus of Orthodox leadership and organizations has been to await the government's full investigation and allow for due process before passing judgment on Agriprocessors.

Meat companies are very frequently targeted by federal and state agencies, as was the case with Pilgrim's Pride (of Butterball poultry fame), the nation's largest (non-kosher) meat packer, which was likewise the subject of a large investigation. Swift Meat Co. was similarly subject to government raids for illegal workers at six of its plants. Furthermore, prominent and good-standing industrial food manufacturers are commonly cited and even fined for technical breach of a plethora of often unknown government regulations, such that one cannot pass judgment on violations of these companies without knowledge of the nature and scope of the transgressions. Being *dan l'kaf zechus* finds no greater fulfillment than in this area, whose challenges and complexities require thorough investigation and due process before one can pass judgment.

Contrary to the precept of being *dan l'kaf zechus*, Uri L'Tzedek has called for a total boycott of Agriprocessors and has joined with non-Orthodox Jewish groups toward this goal. Although there has not been a single indictment or legal proceeding against Agriprocessors' management, Uri L'Tzedek has perverted the meaning

of tzedek by engaging in an all-out effort to harm Agriprocessors to the fullest extent possible. Uri L'Tzedek has not mustered a shred of evidence upon which to base its anti-Rubashkin activities - activities which can cause severe and irreparable harm to over a thousand workers and thousands of Jewish businesses, as well as numerous non-Jewish agricultural entities which depend upon Agriprocessors for livestock transactions, as well as local and state businesses which service the Agriprocessors workforce. Uri L'Tzedek bases its aggressive attack solely on the thus-far unproven allegations in the recent government action. Aside from the allegations having been thus far unproven, they have not even been deliberated upon by the attorneys for Agriprocessors and the government, much less presented in any legal proceedings. Nonetheless, despite a total lack of proof, Uri L'Tzedek has taken serious steps to harm Agriprocessors and the many thousands of others who would be directly affected by Agriprocessors' losses as a result of Uri L'Tzedek's pursuits.

The many *issurei Torah* which pertain to damaging the reputation and finances of another person without requisite proof seem to not matter to the self-righteous Uri L'Tzedek group, whose use of the word tzedek truly begs for explanation.

## THE URI L'TZEDEK ANTI-RUBASHKIN CAMPAIGN

"The following is a list of kosher meat suppliers around the nation that do not use Rubashkins products. It is not complete. Help us complete it. Call your local kosher meat establishments, find out if they are using Rubashkins, then send the names, city...that do not do to Uri L'Tzedek...This list will be updated as you provide us with information..." (from Uri L'Tzedek's website)

In its very public effort to damage Agriprocessors, Uri L'Tzedek claims to have over 1,000 signatures on an anti-Rubashkin petition. Among the signatories are Rabbi Avi Weiss, founder of YCT, Rabbi Shlomo Riskin, YCT Advisory Board member, and Ruth Messinger. By soliciting Ruth Messinger and numerous Reform and Conservative rabbis toward its efforts, Uri L'Tzedek is magnifying the degree of *chillul Hashem*, attempting to air what Uri L'Tzedek considers to be dirty laundry to the non-Orthodox world. The last thing we need is for non-Orthodox Jews to be convinced by one purportedly Orthodox group that another Orthodox entity is in flagrant violation of numerous laws and lacks any ethical standards. (Apparently, while its agenda purports to fight for the honor of workers, *kevod Shomayim* (the honor of Hashem) is not part of the Uri L'Tzedek agenda.)

It must be noted that this publication and the Torah world does not make light of abuses, *chas veShalom*. Were it to be demonstrated that Agriprocessors or any business or person engaged in abu-

sive behavior, Orthodox leaders and organizations would concur that the offenders must be penalized and face the results of their actions. The problem here is that no abuses or ethical violations have been demonstrated, yet Uri L'Tzedek has been more proactive than the most aggressive regulatory body in condemning and attempting to punish Agriprocessors, all without due process and proof.

Agriprocessors has passed its last five humane slaughter audits. Dr. Temple Grandin, the world-renowned veterinary authority, has personally inspected Agriprocessors and given a favorable report of her findings. The government's case has just begun and has not involved any indictments or convictions of Agriprocessors' man-

establishment of Agriprocessors, many of the company's current customers in small towns had no access at all to kosher meat with acceptable kashrus standards. Some of these customers, who had weaker commitments to Torah, ate meat of sub-par kashrus standards before Rubashkin came onto the scene. Additionally, due to its broad reach and competitive pricing, Agriprocessors has been the major factor in controlling kosher meat costs and preventing them from going through the roof.

In light of the above most serious considerations, one would hope and presume that a person or group which intends to damage Agriprocessors would be extremely deliberate and cautious in its actions, the consequences of which would likely severely impact

## *Attacks based on unproven allegations*

agement. The company is voluntarily replacing its CEO and has retained employment attorneys and management consultants to investigate its operating procedures and provide guidance. Nonetheless, unlike all other Orthodox organizations, Uri L'Tzedek has opted to smear Agriprocessors with the most damaging tactics, lacking any evidence.

Uri L'Tzedek does not operate in a vacuum. In major exposes, Yated Ne'eman has demonstrated YCT's lack of fidelity to halacha and its intent to create a liberal-pluralistic new type of "Open Orthodox" Judaism. YCT's approach to halacha and its liberal-pluralistic agenda have fostered the likes of Uri L'Tzedek. Uri L'Tzedek is a natural outgrowth of a culture which places liberalism first and halacha second.

In fact, YCT anti-Rubashkin momentum began a while back. Rabbi Jeff Fox (YCT graduate and faculty member) stated in a 2006 interview: "One issue that Chovevei rabbis are particularly suited to taking on," he said, "is that of Agriprocessors. That's an issue that if Chovevei doesn't take it on, nobody will take it on, because nobody else is going to say the OU is certifying treif." (Canonist.com) Rabbi Fox made these shocking remarks during a larger discussion about YCT's application to the Rabbinical Council of America ("RCA") for recognition of YCT's semicha. Rabbi Fox was envisioning the contributions which YCT graduates would make to the RCA as part of the RCA's interfacing with the OU kashrus agency. Thankfully, the RCA turned down YCT's application.

Followers of the current Agriprocessors issue should note one additional, very important point. Unlike most kosher meat companies with mehadrin standards and wide acceptability, Agriprocessors has been able to provide glatt kosher products to far-flung, small Jewish communities across the nation - all at competitive prices. Rubashkin does its own distribution, thereby keeping prices reasonable and enabling the company to reach smaller markets which independent distributors may not service. It is a known fact that prior to the

the access of small Jewish communities to kosher meat, would drive up prices, and would cause incredible harm to thousands of workers, businesses and agricultural entities. Uri L'Tzedek has failed to exercise a modicum of deliberation or cautiousness in this regard.

All Jews are deemed to have a chezkas kashrus - a presumptive status of goodness and righteousness - unless demonstrated to the contrary. Uri L'Tzedek has indeed demonstrated that it has no claim to a chezkas kashrus, as have its ideological mentors at YCT, who have crossed every red line common to Orthodox Judaism by any definition.

"Tzedek tzedek tirdof: haleich achar beis din yofeh - You shall verily pursue justice - go to an appropriate court or arbitrator" (Sanhedrin 30b).

"Hevu mesunim ba'din - Be deliberate in passing judgment" (Avos 1:1).

Uri L'Tzedek, in its politically-correct liberal zeal, has breached these Torah axioms and cannot be looked to for true tzedek by any Torah Jew.



# Uri L'Tzedek Cancels Rubashkin Boycott

On Tuesday, Uri L'Tzedek cancelled its boycott of Agriprocessors, the largest meat producer in the United States. The New York-based social justice group, which is run by graduates of the "Open Orthodox" Chovevei Torah school in Riverdale, NY, stated that it dropped its boycott because the company is "beginning to take significant steps" to address alleged claims of worker mistreatment at its plant in Postville, Iowa.

Uri L'tzedek launched the action in mid-June.

"In light of these early signs of reform, Uri L'Tzedek is no longer calling for the community to abstain from purchasing Agriprocessors' products," the group said. "Time will show what kind of results these reforms will yield for the workers at Agriprocessors."

In calling off the boycott, the group said it was encouraged by reforms instituted by a former federal prosecutor hired recently as the company's compliance officer.

The move by Uri L'tzedek represents the first bit of good news in a while for Agriprocessors, which has been reeling since federal authorities carried out the largest workplace immigration raid in

a major contribution to Jewish religious life in the U.S. by providing high-quality packaged kosher meats now available in supermarkets across the country.

"The Orthodox Jewish community should call the government to account for the damage it is doing by this selective prosecution of Agri."

Under the Bush administration, federal authorities have escalated their crackdown on illegal workers.

According to the Houston Chronicle, 1,755 individuals were detained in May alone by U.S. Immigration and Customs Enforcement, including 389 Agriprocessors employees. Slightly more than 3,700 illegal immigrants have been arrested in dozens of sweeps since last October, according to the federal government.

In a rare example of company owners facing charges related to illegal workers, federal authorities last week charged two owners and three supervisors at a rag-exporting company in Houston with conspiracy to harbor illegal immigrants, inducing them to come into the country and engage in illegal hiring practices.

## *The first bit of good news*

American history in Postville on May 12.

More than one-third of the company's workforce was detained in the raid, including 18 juveniles. Some 300 employees have pleaded guilty to various forms of identity fraud and are facing deportation.

The raid also severely impaired the company's production capacity, sparking fears of a kosher meat shortage in the United States.

To date, no charges have been brought against Agriprocessors' owner, or any other members of the company's upper management.

But Nathan Lewin, a prominent attorney representing the company, is accusing the U.S. government of "selective prosecution" in its targeting of the company.

"The government should be asked why it picked on Agri, a relatively small meat-packing plant, to make its point about illegal immigrants working at such plants," Lewin wrote in a statement to JTA. "This is a great injustice in light of the fact that Agri has made

Those arrests follow the June 25 roundup of 166 illegal workers at the company, Action Rags USA.

The Houston case bears other striking resemblances to what unfolded in Postville: Both featured months-long undercover investigations involving government informants posing as illegal workers in an effort to gain employment.

Like Agriprocessors, Action Rags is facing claims that it employed underage workers and that working conditions were substandard. Representatives of the Houston company have denied all wrongdoing.

Agriprocessors also has denied the charges leveled against the firm while struggling to repair its public image. The company has hired the high-profile public relations firm SWPR, and last week ran advertisements in major Jewish newspapers.

*JTA contributed to this article.*

# Rhyme and Reason

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BY RABBI PINCHOS LIPSCHUTZ

This week's *parsha* begins with the words "*Vezos chukas haTorah.*" *Rashi* quotes the words of *Chazal* who explain the use of the word *chukas* in describing the laws of *parah adumah*. He says that the term *chok* represents a Divine law, the reasons for which we were not made privy to. The nations of the world scoff at us, asking why we observe these strange laws and customs. Instead of engaging in debates with them, offering up explanations and rationales, we are to state simply that we follow these laws because G-d commanded us to do so. End of conversation.

But some of us tend not to be content with this approach. We seek to understand the deeper wisdom behind the *mitzvos* and the reasons for the *gezeiros derabonon*. We believe that by attaching a reason to a *mitzvah*, we will enhance its observance. If we can explain the word of G-d in contemporary terms, we can bring more people into the tent of Torah and expand the popularity of its observance. Offering explanations for the *mitzvos* will not only make us more effective in *kiruv*, we think, but it will strengthen our own observance.

One can't deny that there may be some validity to this approach at times. Yet, when we fail to take *Chazal's* advice seriously, we pay the price. We open the door to a form of Judaism "a la carte" - where people choose to observe the *mitzvos* that "resonate" and suit their taste, while neglecting those that appeal less to their reasoning or emotions.

As an example, let's take the *mitzvah* of *shechitah*. The reason we eat only animals whose necks were slit with a swift cut of a *shochet's* sharpened blade is not because that is the humane method of killing animals. The reason we eat meat only from animals whose innards were checked and found to be without blemish is not because those animals are healthier.

Why, then, do we scrupulously adhere to the smallest details of ritual slaughter? For the sole reason that we are required to follow the word of G-d as commanded in the Torah, as delineated in the *Gemara*, and as codified by the *Shulchan Aruch*. A *mashgiach* must attest that the *shochet* cut the majority of the two *simanim*, the *konah* and the *veshet*. A hair's breadth - *kechut hasa'arah* - makes the dif-

ference between kosher and non-kosher, between something fit for consumption and *neveilah*.

*Rashi* states in *Maseches Sanhedrin* [90] that one who believes in *techiyas hameisim* because he came to that conclusion on his own and not because he believes the *drashos* of *Chazal* is a *kofer*, an apostate. We follow the commandments, *chukim* and *mishpatim* because we believe with our innermost fiber that G-d created us for that purpose. Once we inject our own human reasoning into the equation, we are no longer following the will of G-d.

Once we get into the business of interpreting the will of G-d for the masses, we lose our footing. We lose perspective. We lose appreciation for the *mitzvos* as we bring them down to our superficial, fallible level.

And there is another way we lose. Witness the ongoing campaign against the Rubashkins by those who consider themselves more liberal and advanced than we are. Since they believe that the laws of *shechitah* were created to provide a humane form of animal slaughter, and the laws of *kashrus* were designed to provide us with healthy and clean meat, it follows that if the slaughterhouse does not conform to their concept of clean and humane, the meat is unfit for consumption.

When a company such as Rubashkin supplies 60% of kosher meat in this country, that is not a situation to trifle with. No longer are there kosher slaughterhouses dotting the country; they are few and far between. To jeopardize their production is to cause a shortage of kosher meat and guaranteed price hikes.

Jews were in this country for many decades before systems of competent and reliable *kashrus* were set up. For years, the kosher industry was chaotic, controlled by mafia-style gangsters. *Rabbonim* who came over from the old country and attempted to establish proper standards were run out of town, humiliated and maligned.

It was only after the Second World War that Holocaust survivors such as the Satmar Rebbe, the Tzeilemer Rov and Rabbi Alexander S. Rosenberg stood up to the charlatans and succeeded in finally bringing genuinely kosher food to the masses of Jews living here. Rabbi

*We don't appreciate the kindness G-d has showered upon us*

*Without the kosher multi-nationals  
at the top of the food chain,  
the heimishe companies could not exist*

Rosenberg, in particular, as head of the OU, brought to fruition the dream of providing kosher food to Jews across this country wherever they lived, in large cities and small towns. The *kashrus* organization he developed enabled people to go into any supermarket and purchase kosher food.

We, who live in neighborhoods overflowing with religious Jews like ourselves, are deluded into thinking that there are millions of us out there. We fail to realize how small our numbers are in relation to the population of the United States. We don't appreciate the kindness that G-d has showered upon us, brought about through the brilliance of people such as Rabbi Rosenberg, in having such a wide array of kosher products freely available. When you think about it, it is a miracle that international food companies such as Coca-Cola and Proctor and Gamble permit *rabbonim* to snoop around in their facilities, and actually pay them to do so, all in order to sell an additional small amount of their product.

Yes, there are many *heimishe* companies, but without the large multi-nationals at the top of the food chain, they could never exist. They could never supply enough product and produce all the necessary ingredients on their own; there simply are not enough resources and capital to provide the infrastructure.

This paper has been writing periodically about Yeshivat Chovevei Torah and warning of the dangers it presents. Some were not convinced and sent in letters to the editor asking why we are bothering with them. What does the *Yated* care about what Chovevei does? How does it affect you?

The answer is as follows. In addition to the principle of *kol Yisroel areivim zeh bazeh*, every city they penetrate and every beachhead we permit them to create represents a step backwards for the cause of Torah in this country.

To illustrate the point: Chovevei students have now created common cause with members of the Conservative clergy and secular Jewish organizations seeking to curtail the distribution of Rubashkin's kosher meat based on unproven pretensions and pretences.

The Conservatives aren't stopping there. The same group which, since its founding, has wreaked havoc upon Jewish communities, misleading uninformed Jews into believing that they were comporting with Judaic law and tradition as it drove them away from authentic observance, now seeks to bring *kashrus* under its jurisdiction. The same group that introduced *chillul Shabbos* as *shemiras shabbos* and estranged tens of thousands of fellow Jews from the *mitzvos* now has the temerity to dictate to us the laws of *kashrus*.

The Conservative Rabbinical Assembly and United Synagogue breached the most basic bounds of decency by issuing a statement urging its constituents to seek kosher alternatives to Rubashkin products.

The May 22nd statement read, in part: "The allegations about the terrible treatment of workers employed by Rubashkin's have shocked

and appalled members of the Conservative Movement as well as all people of conscience. As Kashrut seeks to diminish animal suffering and offer a humane method of slaughter, it is bitterly ironic that a plant producing kosher meat be guilty of inflicting any kind of human suffering."

And they are not stopping there. They are setting up an organization by the name of "Hekhsher Tzedek" to operate as a rabbinic kosher supervising agency. According to one of their statements, "Hekhsher Tzedek would bring certified kosher food into compliance with the Torah's tradition of ethical laws and the Jewish community's commitment to social justice. Hekhsher Tzedek will seek endorsement from all producers of kosher food and will have its symbol serve as an indicator of a product's acceptability. Only food already certified as kosher would be eligible to receive a Hekhsher Tzedek. We hope that this initiative will serve as an ethical model throughout the entire food industry."

As did *mosrim* of old, they are engaging in a massive propaganda campaign through a compliant Jewish and secular media, bashing Orthodoxy and its "archaic" standards. How ironic. The people who uphold the Torah and follow in the footsteps of their ancestors, who brought monotheism and a system of civil laws, jurisprudence and decency to a pagan and depraved world, are being lectured to by charlatans who have destroyed for their followers every vestige of the very religion they claim to promote.

These same leaders who have robbed their followers of every remnant of *kedushas Yisroel* by substituting Torah law with fictitious "*halachot*" and other innovations seek to undermine the system of *kashrus* which took so long to establish. In so doing, they will willingly destroy our ability to purchase kosher meat and poultry in every corner of this vast country.

So swept up are they in their role as great humanitarians that in the name of benefiting immigrant workers and animals, they are willing to do a terrible disservice to the Jewish people in this country - robbing many of the blessings made available by decades of *mesiras nefesh* on the part of dedicated *people*.

By parading the unproven allegations of PETA and other aberrant groups through the press that "kosher is not really clean," that Orthodoxy does not guarantee civil rights, who knows how many people these "humanitarians" will cause to turn away in revulsion when they see a kosher symbol on a product?

How many stores will they be able to convince not to carry kosher meat? How many companies will they be able to hoodwink into accepting their rabbinic supervision? How many people will begin to honor the endorsement of their rabbis? How many will begin questioning our system of *kashrus* while swallowing the pop-propaganda of these arrogant groups?

Let us wake up and put a stop to this misguided and dangerous crusade before it is too late.

# Lynch by Media

## A TALE OF TWO CITIES

BY RABBI PINCHOS LIPSCHUTZ

As I waited patiently for my flight which kept on being delayed, my attention switched to the TV screen broadcasting to the spaced-out people at the airport gate. I thought I heard someone say the name Postville, so I looked up. It was CNN. Representative Louis Gutierrez (D-IL) was railing against the owners of the Agriprocessors plant in Postville, Iowa. He was calling for authorities to bring them to justice in the wake of the recent raid by the U.S. Department of Immigration and Customs Enforcement [ICE].

In that raid, almost four hundred people were arrested on suspicion of being illegal aliens. Hundreds were summarily formally charged and incarcerated, prior to their slated deportation.

The congressman, for good measure, also lashed out at the federal government for its “dehumanizing” treatment of illegal aliens.

The interview captured the lynch mob mentality that has been gathering momentum against the Rubashkins in the press, led by the *New York Times*. The *Times* has run a spate of one-sided articles painting the meat-plants’ owners as unscrupulous people intent on criminally exploiting immigrants for their own personal profit.

A prominent front-page article in their Sunday, July 27 edition, and another one the following day on page 11 tried to recast a recent demonstration in Postville protesting the government’s mistreatment of the illegals as a demonstration against the Rubashkins.

The *Times* article played up the complaints of a few aggrieved former Agriprocessors employees, some of whom had lied about their age and their status to secure jobs in the plant. The newspaper’s transparent effort to whip up public outrage against the meat-plant owners has given a tremendous boost to secular Jewish organizations and agencies that have their own ax to grind against the Rubashkins.

In particular, the JTA, the Jewish news agency that supplies dozens of local Jewish newspapers with news tidbits to stick between the ads, has been generating a stream of anti-Agri articles, as they promote the Conservative “*Heksher Tzedek*.”

What is this all about? Why is so much attention being focused on this kosher plant located in Postville, Iowa, in the middle of Nowhere, USA?

To answer these questions and many more, I set out last Wednesday night on an eleven-hour journey to Postville. After writing several articles defending the Rubashkins, owners of the beleaguered plant, I wanted to see for myself what really goes on there. The leadership mission was organized by Rabbi Pesach Lerner of the National Council of Young Israel. I agreed to participate only after being promised that I would not be expected to

write an article about my visit.

I am no stranger to slaughterhouses. My father has been involved in the field of *kashrus* for decades and has taken me with him to visit several facilities. During the years I was learning for *semicha*, I visited a couple of places on my own. Killing is never pretty, even if it’s only cows and chickens under the knife.

The *New York Times*, in its lead editorial this past Friday, August 1, described the Agri plant as “A slaughterhouse in Postville, Iowa, develops an ugly reputation for abusing animals and workers. Reports of dirty, dangerous conditions at the Agriprocessors kosher meatpacking plant accumulate for years... The plant has been called “a kosher ‘Jungle’...The conditions at the Agriprocessors plant cry out for the cautious and deliberate application of justice...”

Is it possible that they are really that wrong? Can it really be true that the *New York Times*, CNN, Representative Gutierrez, the *Des Moines Register*, the Associated Press and everyone else is making it all up?

Having read much about Postville, I sort of expected to find a picture-perfect little town of homes surrounded by beautiful lawns and gardens which could be featured on stunning postcards depicting idyllic life. I was also led to believe that the Agri Jews were ruining this fine picturesque town with their unkempt homes and un-mowed lawns. In addition, the impression is made that their strange and poor habits are on display as they parade around town and drive their old jalopies as if they own the place.

Well, not exactly. Driving through Iowa is indeed a special treat. As far as the eye can see, all one encounters is growing corn. You see a lot further in Iowa than you do in New York, because the land is flat and there are no hills or tall buildings to block your view. You can literally see from one end of the horizon to the other. The simple, pristine beauty is breathtaking. There are miles and miles of nature’s bounty, interrupted only by a farmhouse, silo, barn or tree here and there.

And then you enter Postville, not even a one-stoplight town. Downtown is all of two blocks long. The homes are neat and much closer to each other than you would expect. They are nothing grand; many are old and weathered. Though the Jews live on the same blocks as the indigenous population, you cannot tell which homes are Jewish and which are not. All the lawns are trimmed, and the outsides of the homes are clean. So much for yet another lie which began to spread when the *chassidim* came to town and was perpetuated in print and made the official truth for years thereafter.

Nobody is double-parked. Nobody is seen speeding through the town or seems to be in any rush at all. And the “pushy, money-

grubbing” Jews, as the media paints them, are the nicest people in the world.

Perhaps we can understand the need to vilify Agriprocessors in part by pondering the controversy surrounding Wal-Mart. This chain store has become the all-around scapegoat for media and liberal Democrat bashing. Despite all the decent jobs they provide and all the products they sell at lower prices, which make them affordable for the lower-class families, the media and politicians profess to care so much about, they have been virtually demonized. Politicians and demagogues who seek a cause and a headline have set up Wal-Mart as their convenient whipping boy.

From the day Wal-Mart decided to keep their expertly managed stores union-free, they have been targeted. Vicious rumors are continuously fabricated about the company. The jobs, products and convenience they provide, and the charity they give, are negated. The wealth they create is ignored. The unions lobby against them relentlessly, while a rumor-mongering media and self-promoting politicians throw in their punches wherever possible.

Is what is going on in Postville akin to what happens in Bentonville, Arkansas, home of Wal-Mart, or is there something even more sinister transpiring here?

Did you ever wonder how a blood libel works? When reading stories of blood libels from years gone by, did you ever wonder how people fell for those stories? Did you ever wonder where the people of goodwill were and why they didn't speak up? Did you consider that perhaps the stories were just fairytales that were overblown by writers eager to sell books?

It wasn't that long ago that pogroms were perpetrated against the Jewish population by illiterate peasants egged on by the Church and government authorities.

Today, thankfully, the gentiles don't come after us with sticks, knives and guns; today, blood libels are a thing of the past. However, as I was walking through the Rubashkin plant last week, I could not help but think that today, blood libels and pogroms are still being perpetrated against us. Today, the pastor preaches to illiterate aliens who benefit from a lifestyle they could only dream of back home and encourages them to battle the Jewish boss who is the source of their largesse.

Today, instead of knives and spears, the warmongers' implements of battle are the *New York Times*, CNN, JTA, and every other media outlet looking for a good story and willing to twist the facts wholesale in order to fabricate one.

What can be a better story than illegal aliens employed by Hasidic Jews in a Bible Belt lily white corner of Middle America? Who will rise to the defense of the Jews? Who will cast doubts on the story of “Jungle” savagery perpetrated by the rich, money-obsessed New York Jews everyone knows only care about money? It's a perfect real-life illustration of the rich taking advantage of the poor and downtrodden.

Everyone buys into it - even our own people - as the Hasidic Jews are portrayed as wild-eyed, fanatic, money-grubbers straight out of Shylock, taking advantage of a lower class population to further enrich themselves, and destroying a pristine American town in the process.

We have previously exposed the hypocrisy of Jews who couldn't care less about *kashrus*, having the temerity to lambaste the kosher standards of the finest kosher meat plant in the world. What is perhaps sadder is when people who ought to know better scratch their heads and wonder if perhaps they should also be

boycotting the company and its products. They don't realize that they have been hijacked by fraudulent individuals who have poisoned their minds with the steady drumbeat of their propaganda. They don't realize that they have fallen victim to a cleverly laid trap.

Ever since I toured the plant, it has been gnawing at me: How do I say what I want to say about what I saw without people suspecting that I was paid off?

I can only report the unvarnished facts and hope that people will be influenced to take a closer look at an epic injustice unfolding there.

The story of Agriprocessors and the Rubashkins of Postville is a tale of two cities, two factories, and two owners. Incredibly, the same people the mainstream media wants to lynch are hailed as heroic, charitable, kind-hearted, decent bosses and honest businessmen by those who deal with them on a daily basis.

I had never met any of the Rubashkins prior to my visit to Postville. I found them to be eminently loveable, *geshmakeh*, *heimishe* people you'd want for neighbors and friends. They are full of *chein* and seem to possess good doses of *seichel tov*.

You see the distinct pride they take in the place that their family built up through many years of hard work and much *siyata diShmaya*.

Yossi Rubashkin, together with the *rav hamachshir*, Rav Menachem Meir Weissmandel, both repeatedly went out of their way to point out the many *hiddurim* in the *shechitah*, *bedikah* and salting process at the Agriprocessors plant. There is no cutting of any corners. You see how calmly the *shochtim* and *bodkim* go about their work with patience and precision.



You realize how important it is to keep this operation humming and supplying *Klal Yisroel* with *mehadrin* meat. This is not a potato chip factory, which we can all live without. It contributes the most vital component of a kosher home.

It is a priceless gift to have such a large enterprise supplying American Jews - and Jews the world over - with the finest in kosher meat. We need to recognize the worth, quality, importance and magnitude of this gift, or we may very well lose it, *chas veshalom*.

As you walk through the modern, clean, state-of-the-art facility, all the employees you witness seem happy with their jobs. They smile as they work and mill about during breaks outside and in the clean, air-conditioned lunchroom, which the media alleges doesn't even exist.

Every worker you meet speaks in glowing terms about his employer. They say that they like the hours, are satisfied with the pay, and yes, Mr. New York Times, they are satisfied with the overtime pay they do receive.

Everyone is so nice, friendly and chatty, it seems like a big, happy family. You begin to wonder, what is going on here? How can this be? According to media reports, the workers are supposed to be disgruntled, mistreated malcontents working in a filthy, dirty, primitive plant overseen by cruel overseers, who force them to work long hours performing inhumane tasks.

You meet with Postville's mayor, Robert Penrod, and hear him say, "We are very proud of the Rubashkins... I've always had faith in the Rubashkins... We're looking at everything positive and we have the support of the community... They have helped us and helped the community. This plant is our livelihood. You are our livelihood and will continue to be our livelihood. We need to get this company back to what it was... It's gonna be a tough ballgame, but we *will* get over it."

Gary Catterson, pastor of the local Presbyterian Church and president of Postville's Food Bank, is effusive in his praise of the Rubashkin family and their charitable acts on behalf of all members of the community. He says in jest that when he hears all the stories and wild rumors swirling around about the company, he wonders how anyone survived working there.

He ascribes the root of the anger directed against the company as coming from people who want the town to revert back to the way it was in 1955 - white Anglo-Saxon protestant, and Norwegian and German Lutheran. The obvious target for their anger is Agriprocessors. It is clear that Mr. Catterson's heart goes out to the fine people under attack.

You hear from a variety of high-level managers. They are all clean-cut, intelligent, experienced, well-spoken professionals, who clearly take great pride in their jobs and the standards they have established and maintain at the company. They express their strongest support for the factory and their faith in its system and owners.

You wonder how this calamity befell them. What sin did they commit, besides being successful in a capitalist society, that they deserve to be demonized and dragged through the mud daily in the media across the country and targeted by the US Government for selective prosecution?

Pondering the bizarre unfolding of events, you realize, finally, that there's no mystery here. It's really nothing new. Because this family is successful, because they resisted the unions, because they refused to honor the sham credentials of the *Heksher Tzedek* promoters, the Rubashkins became a natural target.

But on a deeper level, it's not the Rubashkins that the world is in a frenzy about, it's what they represent - the archetypical Jew, the eternal scapegoat. We have become spoiled in this free land of plenty. Unlike our parents and grandparents, we haven't been constantly forced to defend our principles, our practices and our

patriotism.

We live in a country where every man is supposed to be treated equally, regarded as innocent until proven otherwise. Thus, when age-old stereotypes and canards rear their ugly heads, we are surprised and don't know how to react.

But it is all essentially just another chapter in the sad saga of the exile that we commemorate this coming Sunday on *Tisha B'Av*.

Rav Weissmandel reminded me of what his *rebbe*, Rav Berel Soloveitchik *zt"l*, would repeat from his grandfather, the *Bais Halevi*, during his *Chumash shiur*.

If a person senses that someone else hates him because of his looks, he can try to alter his appearance. He can seek to amend what it is about him that arouses the ire of the person he would like to befriend.

However, if that person despises his very existence, then all he does to transform himself will be of no avail. The other fellow will continue to despise him. In fact, the more he does to improve himself and make himself a better person, the more the other fellow will hate him.

And so it is with Eisav and Yaakov. So, too, with our unfortunate brethren who don't believe in the sanctity of Torah and *mitzvos min haShomayim* and lead other Jews astray.

The plant can be operating smoothly with two or more shifts a day, pumping money and resources into what was a dying town, and the people who want to find fault with Jews will still try to find the horns which they know we hide under our funny-looking beanies.

We have to be upright, honest and forthright. We must fulfill the commandment of "*Vehiyisem nekiyim mei'Hashem umi'Yisroel*" [Bamidbar 32: 22]. We must never lower ourselves to the levels of those who mock and torment us. We are an *am kadosh*, and will always be, no matter what they say about us or do to us.

We must go to whatever lengths possible to help each other. "*Ish lirei'eihu yaazoru ule'ochiv yomar chazak.*" When *ehrliche Yidden* are in trouble, we must rally around them and support them so that they can maintain their stamina to be able to withstand the onslaught of the *yordei bor*.

We don't jump to conclusions and accept innuendo, no matter what the source, regardless of whether the subjects are Lubavitchers, Satmar *chassidim*, or Jews from Bnei Brak or Teaneck.

That is the meaning of *achdus*. That is what *Tisha B'Av* is all about. That is why we spend these Three Weeks and Nine Days mourning. During this period, we must confront the fact that the reason the *Bais Hamikdosh* was destroyed, and the reason it has not yet been rebuilt, is because of the *sinas chinom* which still divides us. What can we do to bring back the *Bais Hamikdosh*? We can seek to improve our love for fellow Jews. We must increase our *ahavas Yisroel* - not just profess it, but show it, prove it and live by it.

We need to show our compassion for the poor, the maligned, and the abused, and feel their pain. We need to help people affected by the current economic downturn, along with those who worry where their children are and what they are doing, and others who can use our support.

We would do well to engage in more caring, sharing and thinking about our priorities should be, instead of being caught up with trivialities and superficial matters.

Sometimes, we become so accustomed to acting in a certain way that we think nothing of it and don't realize how our actions appear to others and how inconsiderate we appear to be. Cynicism takes over our thought process and corrupts the way we think about our fellow earthlings. There is no better time than now to replace negativity with a positive outlook and sarcasm with affirmative thought.

# Why?

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BY RABBI PESACH LERNER  
*Executive Vice President,  
National Council of Young Israel*

I have been asked recently why, out of all the national organizations, the regional kashrus groups, and the many active and outspoken rabbis, the National Council of Young Israel took the lead to organize and coordinate last week's national rabbinic mission to the Rubashkin/Agriprocessors meat and poultry plant in Postville, Iowa.

After the facts, post mission, it is easy to look back and take professional satisfaction that the mission was successful. We saw the reality on the ground. We saw what is now being reported and, *iy"H*, we will be successful in getting the truth out, in turning the tide of false criticism, in assisting members of a good family who have invested their lives in supplying kosher meat and chicken to Jews across the United States, in large and small Jewish communities. At the same time, we hope we can increase the level of communication between the many groups in Postville so that all members of the community will live in harmony.

But what went through our minds a month ago as the idea of a mission was born?

The Rubashkin family was being vilified in the Jewish and secular media. Rumors and accusations were flying everywhere. One rumor was built upon another. People's creative but perhaps evil minds were fabricating things that, in an objective and honest world, would be discarded at once and would be thrown out with the day's garbage. But we do not live in such a world. And if the target is a Jew and a Jewish custom, the media is even hungrier.

Soon, rumors become fact, and the unimaginable becomes real. Even the believing and observant Jew unwittingly joins the frenzy, believing the unbelievable.

Are all the accusations untrue? I did not know, but I felt that they could not all be true either.

Menachem Lubinsky, CEO of Lubicom Communications and marketing consultant for Agriprocessors, sent out an email to a select group of Jewish leaders and activists. Apparently, I was on his list. He asked: Where is the Jewish community? How can we all sit back and allow a respected family to be so vilified? Why is no one rising to their defense?

I responded that it's a good question, but none of us have any information; we only know what we read. No one has shared any other version of the story with us. How can we defend that which we do not know? How can we challenge that which we cannot defend? In response, Mr. Lubinsky organized a conference call for Orthodox Jewish leadership and planned to share with us the Rubashkin story, their response, and their view of things.

I knew the conference call was coming; I had suggested it. I be-

gan to research the issues. I read various affidavits and numerous newspaper reports. True, I could not comment on all the accusations, but it was obvious to any thinking person that the reports had crossed the lines of believability; Agriprocessors was being charged with things that were just too outlandish to believe. The papers were having an unjustified field day at the expense not only of the Rubashkin family, but also of the average Orthodox Jew. They were having a grand old time at the expense of our traditions relating to kosher meat and fowl.

I did more homework. I called rabbis and community leaders across the United States and discovered that there were communities that began to experience shortages of kosher meat and chicken. There were communities where the price of kosher meat and chicken was rising rapidly. I heard stories of the rabbis' fear that the kosher meat and chicken shortage would cause the marginal Jew, who eats kosher because it is easy to do so, to give up his kosher eating habits. I heard serious concerns about what the cost of meat will be in September and October, during the weeks of the Yomim Tovim, when the demand for kosher meat and poultry would increase.

And yes, we began to hear rumblings from the liberal Jew, Orthodox and otherwise, who began to challenge our traditions of what is kosher and what is not, who began to call for additional and varied kosher supervision, and who began to challenge the Orthodox Jew - the Torah Jew - in general.

We had this disturbing information in our hand. What would we now do with it? How would we - and how should we - respond?

As Chazal tell us, "*Demus diyukno shel aviv nirah lo.*" The appearance of his father - Yaakov Avinu - appeared to Yosef Hatzadik during his time of *nisayon*.

I thought hard and long. What would my rabbeim in the field of *askanus*, Torah activism, tell us to do? What would Rabbi Naf-tali Neuberger *zt"l* of Yeshivas Ner Yisroel in Baltimore do in this situation? What would Rabbi Moshe Sherer *zt"l* of Agudas Yisroel do if he were alive today? What would my father-in-law, Rabbi Sidney Greenwald *zt"l*, a Torah activist of over 50 years, advise me to do?

What would the board at the National Council of Young Israel say? The board members are good people who give of their time and resources for the greater Jewish community - the Young Israel and non-Young Israel communities. They are individuals who think of others, not of themselves. These are my friends and colleagues, who together allow the National Council of Young Israel to act on behalf of our people. We have taken the lead on behalf

of so many causes in the past that it is the continuing legacy of the National Young Israel movement.

I knew they would all say not to sit this one out. They would all tell us to act on behalf of our traditions, to defend the availability of kosher food, to do what we can to give strength to a European Jew who has fought so hard for so many years for Torah and kashrus. True, we cannot defend what we do not know, but we are obligated to know. It is incumbent upon us to become knowledgeable so we can speak out and so we can defend our traditions and people. We are obligated to discern the truth from the untruth, fact from fiction. Once we do our homework, we can decide how to proceed, how to respond, and what plan of action to take.

The conference call took place. We heard from the senior management at the Agriprocessors plant. We heard from newly hired senior consultants. We heard from individuals more knowledgeable of the situation than we.

But still, we were confused. How could we defend that which we had never seen? How could we challenge without first-hand information? I asked that question and I suggested that a fact-finding mission of organizational and rabbinic leadership visit the plant and community of Postville to see the situation ourselves, and to talk to the people in person. My suggestion was accepted and the work began.

We needed to pick a date, work out the logistics of transportation - there is no airport near Postville, Iowa - and plan a serious

itinerary. We needed to compile an invitation list. We invited over 50 organization and rabbinic leaders, knowing that to arrange such a trip on such short notice, during the summer vacation, would be a challenge. We knew it would be impossible for everyone we did invite to participate. There were so many good people to add to the list; how do we decide? We wanted the Orthodox media to join in this mission, as well. We needed a serious group of rabbis and leaders to see for themselves, and to ask the difficult questions. Then we could and would decide how we would react.

I thank the 25 leaders and rabbis who had the courage to join in this mission. There were flights, connecting flights, and delayed flights - going and coming. There were long van and bus rides. There was little sleep and there was a very intense six-hour visit to the city of Postville. The rabbis, lay leaders and media representatives who came demonstrated true leadership and care for Klal Yisroel.

And we saw - but not what we expected. As the reports indicate, we saw a clean, modern facility. We met satisfied employees. We heard from professionals in the fields of safety, the environment, worker relations and government compliance. We will never know what took place in the plant months ago; we can only testify what we saw and experienced this past Thursday, July 31, 2008, a day that will go down in history as a day Jews cared, as a day that the leadership of our community took action, as a day we can all be proud of.



# The Lies & the Facts

## THE AP STORY ON CHILD WORKERS AT AGRI

Recently, the Associated Press ran a story titled "Former child workers describe perilous environment," alleging that underage workers were mistreated at the Agriprocessors plant in Postville, Iowa. This past week, following the delegation of 25 community leaders to the Rubashkin/Agriprocessors plant, the Orthodox media reported what is really going in the largest kosher meat plant in the country, highlighting the fact that the mainstream media has capitalized on every opportunity to defame the meatpacking plant. Here are segments of the aforementioned AP story, followed by the facts.

### **Former child workers describe perilous environment**

By Henry C. Jackson  
Postville, Iowa (AP)

#### **AP:**

Luisa Lopez says no one asked about her age when she started working at the nation's largest kosher meatpacking plant.

#### **The Facts:**

Every job applicant must fill out an application and provide documents, including Photo ID. Ms. Lopez did the same. Those documents were seized by ICE in the May 12th raid. As Agriprocessors stated in its earlier statement, published "job orders" - notices seeking applicants for open positions - always specify that applicants must be at least 18 years old. It has always been Agri's policy never to hire underage workers. Applicants sometimes falsify their ages in order to gain employment, which Ms. Lopez apparently did. In 2007, Agri fired four women in the sausage department who had falsified their birthdates. Agri had discovered that they were minors by an independent investigation conducted by its HR department, and not by any official notification.

#### **AP:**

She was 17, and within days she was on a fast-moving poultry production line, wielding a long, sharp pair of scissors.

#### **The Facts:**

She was trained and never got hurt. In fact, Agriprocessors has an extremely good insurance rating because of the paucity of claims.

#### **AP:**

"They never told me how to use them," Lopez said in Spanish. "Things moved so fast and I was always worried I would cut myself."

#### **The Facts:**

Every worker is worried that they might cut themselves. It's simply the nature of the job, but the bottom line is that they don't cut themselves. The chickens move at a safe speed that can easily be handled by the line staff.

#### **AP:**

Yesenia Cordero, whose round baby face makes her look even

younger than her 16 years, also said age was never an issue at the Agriprocessors plant, which state officials allege employed dozens of underage workers in an "egregious" violation of labor laws.

"I never think about how young I am," Cordero said. "I never think I shouldn't be here. I just think I need to work."

#### **The Facts:**

Desperate for work, she and whoever aided her in forging documents successfully did so.

#### **AP:**

Former underage workers at the northeast Iowa plant describe a perilous environment where teenagers were asked to perform the tasks of grown men and women, often with little guidance.

#### **The Facts:**

Strong statement about teenagers that were either never there or shouldn't have been there.

#### **AP:**

They said that although their age and lack of skills were common knowledge inside the plant, they were subjected to the same conditions as everyone else and were quickly immersed in an aggressive, fast-paced operation. Under Iowa law, no one under the age of 18 can work on a meatpacking plant floor.

#### **The Facts:**

Agriprocessors published "job orders" - notices seeking applicants for open positions - always specify that applicants must be at least 18 years old. It has been and always will be their policy never to hire underage workers. Applicants sometimes falsify their ages in order to gain employment, which apparently the people in this story have.

#### **AP:**

Cordero said she quickly grew to loathe coming to work inside the dank, cold walls of the plant.

#### **The Facts:**

Cold, dank walls? Is that what she saw? From the various reports out last week, it's not what members of the large delegation saw the previous Thursday. They saw a modern state-of-the-art plant and no dank and cold walls.

#### **AP:**

But she had no choice.

"I was providing for my family," she said. "It was the only way."

#### **The Facts:**

That's why she broke the law, falsified documents and now claims she was a victim. She was a victim of her own deception.

#### **AP:**

She and Lopez were among 389 undocumented workers arrested

May 12 in an immigration raid at the plant that set a record for most arrests in a single-site enforcement effort. Their cases are being processed, but they are among those illegal immigrants who have been released for reasons such as caring for relatives.

**The Facts:**

Company records show that Loisa Lopez was hired on May 19, 2006 and quit August 16, 2007 and could not possibly have been there at the time of the raid. On April 3, 2008, the Labor Commissioner conducted a surprise, on-site inspection of the plant. The team consisted of five inspectors, of whom one was described by the government office as a professional in identifying minors. The team walked throughout the facility, viewing the workforce and even questioning certain employees, and identified no minors working at the plant. To emphasize, the government experts did not find either Lopez who was no longer there or Cordero and Henry Lopez, so they must have done quite a job in concealing their identity and age.

**AP:**

*Cordero's 18-year-old partner, Henry Lopez, remains in custody. She said he was 14 and not even a high school freshman when he first picked up a long, razor-sharp knife and went to work on the slaughter line.*

**The Facts:**

Once again a lie. Henry Lopez never picked up a knife. He worked in Quality Control and was responsible for data collection. He could not have been 14, since he was hired in June 2006 until the raid. He was married and experts from the Iowa Department of Labor did not identify him or even find him.

**AP:**

*Cordero said Henry Lopez learned on the fly how to manage the dangerous blade and make the series of cuts required on the chickens that came whipping by him.*

**The Facts:**

The most dangerous tool that he may have handled was a thermometer and a clipboard. He was in quality control.

**AP:**

*"He was brave," she said. "He did his work. He never was told what to do, but he never hurt himself with the knife." She said he never let on if he was scared.*

**The Facts:**

"He never hurt himself with the knife." Shows that he was working in safe conditions, even if he was underage.

**AP:**

*Agriprocessors has emphatically denied state allegations that it knowingly allowed underage workers into its plant. On Wednesday, Menachem Lubinsky, a spokesman for Agriprocessors, said the company has cooperated with state officials and "protests the issuance of a press release that has patently been motivated by a desire to ride the crest of the wave of current public opinion adverse to Agri(processors)." Company officials have said no further comment is forthcoming.*

**The Facts:**

Agriprocessors never said that it would not continue to respond to lies, mostly put forth by the UFCW and their Church friends.

**AP:**

*Cordero said Henry Lopez hadn't wanted her to work at the plant, but when she became pregnant he agreed that she could work there after the baby was born.*

**The Facts:**

They were old enough to get married and raise kids, but not even a question by the reporter about being married underage. The forged documents must have worked here as well.

**AP:**

*Cordero began in February, working in the plant's quality control department. A typical work week was six days, with long hours - sometimes more than 12 a day, with only intermittent overtime pay.*

**The Facts:**

There is no such policy at Agriprocessors. She worked the long hours because he wanted the overtime pay. There is no documentation to support this claim.

**AP:**

*"We were always tired," she said.*

**The Facts:**

That's what happens when you have to support a wife and kid and you're not even 18.

**AP:**

*Cordero cleaned up messes on the floor and made sure departments had enough ice to cool their products. She did not like the work, but she was content, she said, because she was helping to eke out a living for her burgeoning family.*

**The Facts:**

But she was content.

**AP:**

*She and her partner were working when the plant was raided. They haven't seen each other since but have talked on the phone, she said.*

*Luisa Lopez said she hadn't wanted to work at the plant, but quit school to do so because her family needed the money. She said she never quite grew used to blood and gore she walked past on the floor, or to a verbally abusive boss she had complained about to no avail.*

**The Facts:**

Who was her abusive boss and who did she complain to? There is no record with the plant or a government agency of her complaint.

**AP:**

*Luisa Lopez and Cordero both describe working at the plant as depressing, particularly in the summer. Cordero said she would long for outdoor work, like an agricultural job in Iowa's vast cornfields.*

**The Facts:**

Well, unfortunately, it is an indoor job. People in offices are also not in the fresh air. No one forced them to take the job.

**AP:**

*"When you work many hours, many days in the cold and it is warm outside it is very hard," she said. "You get so sad and tired."*

*In Postville, where the May immigration raid has deeply rattled residents, some said that new revelations and openness about the working conditions inside of Agriprocessors were an unexpected benefit.*

**The Facts:**

The Mayor of Postville and the Pastor of the Episcopalian Church have said clearly how they feel about the allegations.

**AP:**

*"Maybe the closest thing to a good that I've seen out of this has been that it revealed how badly people were treated at Agriprocessors," said the Rev. Lloyd Paul Ouderkirk.*

**The Facts:**

The fact that Rev. Ouderkirk continues to base his information on hearsay and on poor evidence only proves that his agenda is quite contrary to the Mayor's and other religious leaders. Note that the UFCW is patently motivated to destroy such companies as Smithfield, Wal Mart, Bashas and Agriprocessors. Smithfield and Bashas are currently suing the Union.

# What We Saw in Postville

## SECOND OPINION

BY RABBI PINCHOS LIPSCHUTZ

In an August 15 editorial the Forward attempts to apply to the Rubashkin family the talmudic principle of *mu'ad* — the proclivity of an animal to follow previous behavior — claiming that Agriprocessors has a checkered past and therefore cannot be trusted in the future (“Judging Character — And Kashrut”). The editorialist uses the argument to discredit the Orthodox rabbis and community leaders, myself included, who earlier this month inspected the Agriprocessors slaughterhouse in Postville, Iowa, and deemed its operations to be satisfactory.

The Rubashkins do indeed have a history of past behavior, but it is far from the checkered one portrayed by the Forward. Aaron Rubashkin and his wife are famed for treating everyone with dignity. They dispensed food and charity to Jew and gentile for more than four decades. Anyone who grew up in the Boro Park section of Brooklyn surely remembers the Rubashkins’ restaurant, which has fed more non-paying customers than real patrons.

Postville’s mayor and the local Presbyterian minister reported that Aaron Rubashkin is still up to his old tricks: He helps with the local food bank and the families of the workers who have been detained still live in Rubashkin housing, many paying discounted rent. He contributed to the construction of a non-Jewish community center in Postville. As the Presbyterian minister told us, “everyone knows if they have an event in the community you call Agri and they are willing to help.”

But no matter. The past is no indication of the present, and so I and two dozen other rabbis and community leaders went to see for ourselves.

Contrary to media reports, we discovered a clean, modern facility. The factory could not have been prepared or constructed for our visit; it was there before we arrived, and before the media tumult began. We found a state-of-the-art quality control lab with experienced American lab techs. The control lab was four years old.

We found a remarkably large and clean cafeteria with free bottled water available for the employees. Curious, we inquired of the employees how long they have had the bottled water. The response was that it had been made available since they first started working.

We also found happy workers who

worked hard but were paid fairly for their efforts. And they welcomed the overtime.

“Where else can you get an overtime rate of \$15 per hour, starting?” we were told by one of the workers.

In the August 15 editorial, the Forward pejoratively references the “three hours” that we spent touring the Postville plant. “Three hours,” the editorialist writes, “could not uncover the extensive, egregious child labor violations. Three hours wouldn’t turn up the voluminous evidence of abuse gathered by the Forward in sexual harassment, shorted wages, favoritism and bribery in work assignments, inadequate safety training and horrific work accidents.”

Since when are allegations and accusations considered voluminous evidence?

Let’s get some perspective here. The “three hours” was merely the time that a large number of us actually spent in the plant itself. We also met with the department heads for human resources, safety and compliance, as well as with local leaders — even those historically critical of the plant.

We witnessed conditions firsthand. We roamed the plant without restrictions. We randomly pulled employees out of the processing



lines and interviewed them. Some of the rabbis spoke Spanish, something the management could not have expected. We dug, asking probing questions. The people were real; Hispanic, white and black.

Yet according to the Forward, the findings from our visit to the Agriprocessors slaughterhouse ought to be questioned.

Does the Forward believe that those of us who went to Postville simply lied about what we saw? Maybe the thinking is that we can't be trusted because we are Orthodox — never mind, of course, that the Rubashkins are Lubavitch Hasidim, while most of the rabbis who recently inspected Agriprocessors are *mitnagdim*.

We did not see any people working there who appeared to be under-aged. To be sure, we questioned the on-site USDA inspector. "If there were kids working here," the inspector told us, "don't you think we would have noticed? It's ridiculous."

Did Agriprocessors ever employ minors? Federal records say yes.

But can the company's human resources department be faulted for being duped by false identifications? On our visit we discovered that Agriprocessors has instituted the federal E-Verification system in order to insure that false IDs will no longer be accepted for employment.

What, then, has thrust Agriprocessors into the news? Is it not possible that there is a link to the United Food and Commercial Worker's union failed bid in 2005 to unionize the Postville plant? The union, after all, has by its own admission embarked upon a full frontal campaign against Agriprocessors.

Why are there Google ads — paid for by the United Food and Commercial Worker — pointing to negative articles and comments about Agriprocessors whenever the word "Rubashkin" is searched for? Why were there ads placed by the union in Jewish newspapers impugning the kashrut of Agriprocessors? Why have there been computerized phone calls in Yiddish to Hasidic neighborhoods —



initiated by the union — impugning the kashrut of Rubashkin Kosher Meats? What sudden expertise has the United Food and Commercial Worker union gained in the laws of "Shulkhan Arukh," the repository of the Jewish dietary laws?

There are, of course, a number of other companies that have been on the receiving end of the United Food and Commercial Worker's campaign. Smithfield Foods has initiated a lawsuit against them for racketeering, claiming that the union used religious groups to accuse the company of being racist. Basha's Supermarket in Arizona, which resisted the union organizing, has claimed in court they were the subject of "defamation, extortion and trespass." Shouldn't all of this have made the Forward just a bit suspicious of the union and its claims?

In the editorial the Forward impugns our findings, arguing that its body of critical reporting on Agriprocessors is backed up by government investigators. "If the rabbis didn't want to believe us," the editorialist writes, "they could have consulted the public record."

Well, we did. "Source #7," the informant planted at Agriprocessors by the federal Immigration and Customs Enforcement agency, was repeatedly denied employment at the slaughterhouse because the forged papers the agency created for this individual were not accepted. True, there were other sources for the allegations against Agriprocessors — but accusations are not evidence. And never mind the ludicrous assertions of there being a "meth lab" and weapons manufacturing in the plant.

Let us not confuse accusations with facts, nor discard the presumption of innocence until proven guilty. Those of us who made the journey to Postville may have not been to the plant before and cannot vouch for what took place in the past, but on our recent visit there we most certainly saw strong management procedures in place and owners in full cooperation with authorities and in compliance with the law.

*Rabbi Pinchos Lipschutz is editor and publisher of Yated Neeman, the leading national Orthodox Jewish newspaper.*



# In Every Generation

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BY RABBI PINCHOS LIPSCHUTZ

In this week's *parsha*, we learn the positive commandment to constantly remember what Amaleik did to us when we left Mitzrayim. "*Asher karchah baderech*" is commonly explained to mean that Amaleik, by flaunting their contempt for the Jewish people, dispelled the "shock and awe" that suffused the world when details of the miraculous redemption of the Jews reached the surrounding nations.

Amaleik watered down that reaction by brazenly attacking the weary Jews, showing the nations of the world that there was no need to fear people who had so recently been a slave population. For all time, the Torah exhorts us, we are to keep alive the memory of the evil Amaleikim who, out of sheer wickedness, set out to destroy a fledgling nation who had never done them any harm. In so doing, they encouraged other nations to treat the Jews with enmity and belligerence.

Since our earliest encounter with the degenerate Amaleikim, they and their descendants throughout the ages have sought to instigate crisis and disaster for the Jewish people. Whether through actual warmongering or outrageous scandals, they have tried to undermine the Jewish nation and to poison our image in the eyes of the world. In every generation, malicious individuals with the defining streak of cruelty that exemplifies the murderous Amaleik have exacted a tremendous human toll from our people.

Amaleik sometimes manifests a Jekyll and Hyde syndrome whereby he appears to want to co-exist benignly with us, but behind the scenes works devilishly to wreak havoc by portraying us as devious bloodsuckers who take advantage of the weak in our zeal to amass fantastic wealth and rule the world.

Thankfully, in our generation, we have been spared the most venomous and powerful manifestation of Amaleik that, in previous times, decimated the Jewish people. But we have suffered acutely in other ways at the hands of this evil nemesis. We have been humiliated and vilified in the court of public opinion. A cursory reading of the current events in today's newspapers will give ample evidence of the damage done by the Amaleiks of our time.

Consider how the media has taken on the cause of the unions in their battle against the Rubashkins of Agriprocessors in Postville, Iowa.

Anyone who takes the trouble to visit the far-off plant, tour it and interview its employees will find a state-of-the art, modern, safe, clean facility we should all be proud of.

This week, charges were brought against the company for allegedly hiring under-age workers. Let us not be hasty to rush to judgment. Wait until the accused have a chance to defend themselves in a court of law. All the other charges bandied about in the media are mere allegations based on hearsay and don't deserve to be treated

as fact.

That hasn't stopped the leading media in this country from forming a figurative lynch mob and going after Agriprocessors with the obvious intent of destroying the company. They slam it with all kinds of false allegations, as if it were a cattle- and man-killing jungle of the early 1900s.

Blatant lies are passed around as truths often enough that even many of our own people believe them. Amaleik perceives that he can't destroy us, so he slanders us instead, telling the world that we don't know how to treat animals or people. He says that we are mean, vicious and heartless, and he gets all the papers to print this rubbish.

He plants perverse ideas in the minds of hate-driven people who then peddle their wild allegations to mainstream media outlets which, in turn, publish them in their papers as authenticated facts.

Last week, the nation's "newspaper of record" ran a story headlined, "Kosher Plant Accused of Inhumane Slaughter." Who accused them? Read on and find out that it was none other than PETA, the group of misfits who parade around the world ludicrously arguing that man is no different than animal and, therefore, both species are entitled to the same rights.

It is only when you get to the fifth paragraph that you find out that the accusation is bogus. The plant, in fact, was found by the Department of Agriculture (USDA) to be "in full compliance with humane slaughter regulations."

The sensational headline was intended not to inform, but to aid and abet the smear campaign against kosher slaughter.

Decency and integrity would have dictated that the story be dropped. Or, had the editors felt that there was a great need for the public to know of the allegations against an already beleaguered kosher plant, they should have at least formatted the story in a way that would leave no doubt that the USDA gave the plant a clean bill of health *despite* the charges of a radical left-wing vegetarian group.

But if you are doing the work of the enemies of the Jewish people, why worry over a lapse of journalistic integrity?

Amaleik appears in so many different guises. When a Jewish university maintains on its payroll a person who openly lives an immoral lifestyle and the institution's president tells the *New York Post* that he is "proud of my university and all my faculty," is that not an expression of "*asher karchah*"? Such a person is conferring legitimacy on behavior the Torah considers abhorrent.

When its rabbinic faculty sits on the sidelines and does not act vociferously and publicly to project and protect Torah values, are they not reinforcing the moral decline which is eating away at the fabric of the *Am Kadosh*?

Lately, Amaleik has worn another mask - that of a Jewish reporter and a Jewish news service that continuously distribute libelous reports about Agriprocessors, displaying no sensitivity for the truth. Jewish news groups routinely dispatch articles disparaging religious Jews and *halacha*, and no one calls them on it.

Some have questioned why I have taken such a strong stand on behalf of the Rubashkins. I believe that the proper course of action is to defend *ehrlische Yidden* who have been wrongfully accused and maligned. But more than that, it is my perception that the Amaleikim hounding them are targeting *not only* the Rubashkins. They are targeting you and me and our ability to eat kosher meat in this country.

Equal opportunity destroyers, they fear they are running out of material with which to bash the Lubavitcher Rubashkins, and are therefore taking aim at the Satmar Alle Packing Company.

And they don't just write against *shechitah*. They have other pet topics as well. Take *yeshivos*, for example. They never tire of proclaiming that our *yeshivos* are dirty, sloppy and intellectually-lacking, and foster no interest in history, community or architecture.

enough to write that the article appeared in last Thursday's *Jerusalem Post*, but he was making it available to other newspapers.

To commemorate the 354<sup>th</sup> anniversary of the arrival of the first boatload of Jews to America, the author "surveyed several dozen leading American Jewish historians about who they think would qualify as the three most important figures in American Jewish history."

Your answer would likely include Rav Aharon Kotler *zt"l*, the Satmar Rebbe *zt"l*, Rav Shraga Feivel Mendlowitz *zt"l*, or some other men of similar caliber. According to this survey, however, you would be wrong.

The winners are:

*Louis Brandeis*. "He was the first Jew appointed to the Supreme Court, the personification of the American-Jewish synthesis."

*Mordecai Kaplan*. "The key figure in the Americanization of Judaism."

Kaplan's idea [was] that Judaism is an 'evolving religious civilization.' Reform Judaism adopted Kaplan's saying that *halacha* should have 'a vote but not a veto.'"

## *We have to defend ehrliche yidden who have been maligned*

A recent article against the Waterbury Yeshiva in the local Connecticut paper reports: "Leaders of the Hillside Neighborhood Association say the sect has failed to bring enough Jewish families into the neighborhood, has allowed its properties to deteriorate and has failed to maintain the once-grand Benedict-Miller house... Empty buildings owned by the *yeshiva* pepper the neighborhood. Several are falling into disrepair."

According to the article, religious Jews are "a sect," an offshoot branch of Judaism marked by a goofy and unkempt appearance. Yet with all this, they still complain that there aren't enough of us in their midst! Though the paper, the *Republican American*, in its September 7<sup>th</sup> article about the 300-student educational institution, tries to cast the *yeshiva* as a bunch of weirdoes running a decrepit school, it does quote Waterbury's mayor as saying that, "We feel comfortable that the *yeshiva* has held their end of the bargain."

And so it goes in the world of the objective media.

The same unions which turned countless American factory communities into ghost towns now seek to do to *shechitah* what they did to the auto manufacturers and knitting mills that used to dot this country.

On Labor Day, the *New York Times* published a long article on the latest major union battle taking place in New York City. It pertained to no more than 20 workers for a certain company in Brooklyn. Guess which company that was? Agriprocessors. That is the level to which they stoop to vilify religious Jews and our way of life.

Examples abound of the attempts to minimize our accomplishments and cause our neighbors and those less observant to scorn us and to deride our accomplishments in this country.

I received an op-ed called "The Three Most Important American Jews." It piqued my interest. I thought that if it was sent to the *Yated*, perhaps it contained a message for me. The author was kind

*Isaac Mayer Wise*. "Put Reform Judaism on the map in the United States. He was one of the earliest American rabbis to push for family pews in the synagogue, a mixed choir, and counting women in the *minyan*. He wrote a new prayer book entitled *Minhag America*, with the goal of uniting all American congregations."

So there you have it. What is the purpose of such articles if not to enshrine those who severed their connection with Torah-true Judaism in the rush to the melting pot? By implication, the article denigrates the accomplishments of Jews who have remained loyal to their traditions and built communities and infrastructure to maintain authentic Jewish life in the face of so many obstacles and roadblocks.

Mainstream media ignores us as if we don't exist until they find an opportunity to mock us.

But we need not grow despondent. We need to remember the root of it all and why it is happening. We need to recognize the insidious wiles of Amaleik and know that Hashem will rescue us from them if we remain loyal to his commandments.

We need to greet everyone who we meet with kindness and civility. We must display proper patriotic symbols and behave honestly in all our financial interactions. That way, when our neighbors read scandalous charges about us in their local papers and hear ludicrous allegations on the local news, they will know that these charges that tar all Jews with the same brush are far from the truth. They will say, "Well, I have a religious Jewish friend and he's dignified, upstanding, scrupulous and cordial. These accusations can't be true."

This is why the *pesukim* are there in the Torah for all time. For even when we are not able to identify precisely who Amaleik is, we are to be on the lookout for those who follow in his ways, seeking to badmouth and undermine us. We are to remain undaunted and counter their base tactics with dignity and refined conduct befitting *bnei Avrohom*, *Yitzchok* and *Yaakov*.

— Interview with —

# Rabbi Menachem Genack

CHIEF EXECUTIVE OFFICER AND RABBINIC ADMINISTRATOR, OU KOSHER

CONDUCTED BY RABBI YITZCHOK HISIGER

*Q: Agriprocessors, in Postville, Iowa, recently hired a new Chief Executive Officer. What are your thoughts about the appointment and what challenges will the new CEO face as the company moves forward?*

A: The company appointed Mr. Bernard Feldman, a well-known attorney from New York, to serve as the new CEO. I met with him for several hours together with the chairman of the Kashrus Commission before they announced the appointment. We were impressed with him. He has the skills set they need, even though his history has not necessarily been in the meat business. He's been an attorney in New York for many years and his expertise has been in turning companies around. He has done workouts for over 100 companies, taking institutions in distress and putting them back on track.

He will face several challenges, but has indicated that he is going to be independent in terms of making decisions. He is going to look to bring in his own managerial staff, a new CFO and other positions. His immediate challenge is to bring production up, to create a stable workforce, and to be the spokesman of the company in terms of the media and other matters such as labor issues. Based on his background, I think he has the skills that are

*Reports earlier this month stated that the Orthodox Union had said it would consider withdrawing its kashrus certification of Agriprocessors unless new management was hired, after Iowa's attorney general filed criminal charges against Agriprocessors for knowingly employing underage workers.*

A: This story was not just a local story related to one plant. It became a national story. It was on the front page of the New York Times, Barack Obama spoke about it. After the federal raid in May, the OU had two requests of the Rubashkins who own the Agriprocessors plant. One was to put in place a new compliance officer to make sure that the company is running in consonance with all state and federal laws and regulations. They appointed James Martin, a former Senior Federal U.S. Attorney, to serve as Chief Compliance Officer and oversee all of these issues. In addition, they hired a former OSHA (Occupational Safety & Health Administration) representative. In our opinion, these were both very good appointments, on a public relations basis, and, more importantly, in terms of making sure that the plant is indeed in compliance.

The second thing we requested was that they appoint a new CEO, to manage the plant and put in place a management team.

*The government action was unprecedented*

required. He is also going to consider finding a partner to help rebuild the company financially.

Everyone at the company will now be reporting to Mr. Feldman, who will work, together with the compliance officer, to ensure full compliance with the law and hopefully rebuild the level of production both in terms of the supply of kosher meat as well as from a financial standpoint.

Obviously, the quicker all this can be accomplished the better. We've already begun seeing shortages of meat, especially with Yom Tov coming up, so the quicker they can raise the level of production the better.

We are very happy that the company has come to this resolution and we hope Mr. Feldman will be successful in his new role.

*Q: To provide some background into this recent appointment:*

The Rubashkins have been besieged from all sides. Some of the allegations are wrong, many are certainly not valid, but they were being paralyzed by all these things swirling around them and they didn't have the capacity to move the company forward. They desperately needed someone to come in and present a new face to talk to the world, to deal with the public, to put procedures in place, and move forward past these allegations.

Since then, the OU spoke to the owners regularly to retain a new management team. We told them then that if criminal charges, state or federal - and the federal investigation is still in progress - are filed, we have to have a position in terms of kashrus generally, for the well-being of kashrus - not just the OU - that we are in control of the situation and that we can move forward.

Our goal in this was not, by any means, to close down Agri.

Our goal has been to make sure that people have a favorable view of what's happening there and *schechitah* in general. In addition, our goal very much is to help move from the status quo - where the company is now - to a new reality, which can only be helpful to them. Hopefully, Mr. Feldman will do exactly that.

As an aside, there is no question that the government's initial action in terms of the raid in May was completely unprecedented. The government - and this was reported in the New York Times, so it is not a *chiddush* - had never before taken illegal workers themselves and put them in jail; they usually just deported them. What they did this time was put them all in jail for five months. This, in itself, was terrible. They denied these people due process, as many of them didn't understand English well and didn't understand the court procedures. The government put on pressure and raised the ante in an unprecedented way on the owners as well. Two weeks ago, they arrested two HR (Human Resources) employees at Agri as the US Attorney tries to build a case.

I am quite confident that the new CEO, who is mutually agreeable to everybody, can help them through what is obviously a very difficult period, not only for this company, but for the perception of *kashrus* in general. The OU's intention is only to preserve the prestige of *kashrus* and the dignity of the company. Moving forward, we fully believe that this can be accomplished.

Many of the charges written in the papers - especially the more lurid ones - are almost certainly untrue. There is no meth factory in the middle of the plant. We don't believe that there was any rabbi involved in abusing a worker - someone charged that a worker's eyes were duct-taped - as there are no medical records of any of that. Many of these charges are completely untrue.

The fundamental issue is whether Agri was complicit in hiring illegal workers. We should understand that this issue has a national context. They are focusing only on this company, and of course we can't ignore that, but the issue of illegal workers is not an Agri story, it's a national story. The United States currently doesn't have a clear national policy vis-à-vis illegal workers, and there are 13-1/2 million illegal immigrants in the country. Many of these companies - meat companies and others - have illegal workers and some of the companies don't even know about it. Two years ago, the world's second-largest meat processing company, Swift & Company, was raided by the federal government and they closed down six of their plants because of the many illegal workers there. So this is in no way unique to Agri and people are unfortunately viewing it as such. During the Swift raid, the government didn't take any action against the workers, except for deporting them, and took no action against the company management. Agri has been caught in the vortex of a sudden change in federal immigration policy and enforcement.

We have to respond to these problems, however, because for us, at least for the OU, our constituency is not just from families living within *frum* communities. We want to make sure that people have a good perception of *kashrus*. There is a movement, which is a positive but still in an early stage, of non-Orthodox Jews coming back to *kashrus* and the OU has been inundated with emails of the distress that they have with the disarray and the charges in relation to Agri.

*Q: Why did this happen to Agri and not to any other company? Why are they focused on Agri?*

A: I believe there are two reasons. One is because Agri was in the crosshairs after the story with PETA four years ago and also because of the UFCW's attempts to unionize the plant.

What we said in the newspapers is not that we insist that Agri unionize; we have no position on the matter. What we suggested was a dialogue. The company has to determine on its own whether or not it wants to unionize, and what the advantages to doing so might be.

Everything that we've done, in terms of the OU, is meant to mitigate *chillul Hashem*, but in the end to make this a stronger, better company that people can respect and have confidence in.

Our goal is only to make Agri stronger. The Rubashkins, fundamentally, are good people. They are known to be *baalei chessed*. They genuinely care about *kashrus*. They sell to communities where they are the only kosher supplier, and they do this often where there is no profit, and often even at a loss, just to ensure that kosher meat is available in those areas. We want to maintain that and we want to help them.

The actions the OU took prior to the recent appointment, though painful, were absolutely essential. They were really based on a public position taken by the OU for over a five-month period that simply could not be ignored or else people wouldn't take us seriously and because we were concerned about the *chillul Hashem* that's out there.

*Q: There reports were that you are negotiating to bring unions into the plant? Do you feel that unions will rectify the situation?*

A: I think some people have misunderstood our position. To make it clear, we don't think that OU plants necessarily have to be unionized. We don't have a position about that. After all, only one-third of meat plants in the United States are unionized. The ultimate decision lies with the company and its labor force to make this determination.

*Q: What do you feel about the Heksher Tzedek program started by a group of Conservative rabbis aiming to monitor and certify working conditions in kosher food production?*

There has been a lot of discussion about this. We don't agree with the Heksher Tzedek for the following reason which has been our stated position. Parenthetically, we don't want the Orthodox position to be perceived as insensitive to ethical issues, animal welfare, *tzaar baalei chaim*, etc., because all of these issues, which we should be proud of, are rooted in the Torah. The principle of *halon es sechar sochir* was just in the *parshas hashovuah* the week before last. *Tzaar baalei chaim* is a Jewish principle. However, we don't believe that it is the responsibility of the OU or any *kashrus* agency to be the arbiters of those issues, because they are all covered by different federal and state laws and regulations. State and Federal agencies - the USDA, OSHA, FDA, and the EPA, which handles environmental issues - have the authority and expertise to handle these issues. We don't. The Heksher Tzedek notion sets what will ultimately be very arbitrary and amorphous rules about what is considered appropriate standards.

One of their standards is that the companies should pay their workers above median or average wage of that given industry. Does this mean that any company that is paying their employees less than that is unethical? Does that mean that if a company has to pay above the median wage that half the companies of the United States - the half under the average - are automatically unethical? That simply defies logic. We will not put in place such standards.

We supervise plants throughout the globe. We rely on the local - state or federal - authorities to manage these issues. We don't have the ability or the expertise to do it. Our focus is on what we know - the *Shulchan Aruch*, the *halachos* of *kashrus*.

*Q: Is it the responsibility of a kashrus group to worry about a company's legal affairs? Why should you be different than, say, the USDA which also certifies plants but doesn't get involved with other issues?*

A: That is not correct. Actually, the USDA does get involved in other issues. In fact, part of the defense of the Rubashkins is that this plant has 20 USDA inspectors. They are the agents of the federal government.

People ask, how come your *mashgichim* didn't notice these violations? Well, the USDA inspectors didn't notice some of these

things either. So either these things never happened or they aren't so easily perceptible.

If a person is an illegal alien, for example, what they do is come with false documentation and they present it to the company. I am almost certain that this is what happened in terms of the government's claim that there were children under 18 working in the Agri plant. I am certain that the Rubashkins didn't know about it, as these workers come with false documentation, and it is not only their name that is false, but their ages as well. So how would they know what the ages of these employees are?

Nevertheless, we have a responsibility to our community to make sure that people view us - not the OU, but the Orthodox Jewish community - as the caring, responsible people we in fact are. So it is not something that we can simply ignore and say that it is unimportant, when it is a major national issue that we've been struggling with for a very long time. We can't just deal with the world as we'd like it to be. We have to deal with the situation as it is.

Allow me to add that *shechitah* is under attack around the globe, in other areas as well. There are very few slaughterhouses that are available. One of the tremendous assets that we have is Dr. Temple Grandin, Ph.D., Professor of Animal Science at Colorado State University and one of the most accomplished and well-known adults with autism in the world. She is known worldwide for her work on the design of livestock handling facilities. In North America, almost half of the cattle are handled in a center track restrainer system that she designed for meat plants. She was a friend of Agriprocessors and we brought her down to the plant. She came and gave advice to the plant, which quieted down the PETA attack at the time. Later, the company didn't maintain that relationship or maintain her standards and she criticized the plant. That's unfortunate, for she was not only an ally for us in terms of the *shechitah* there, but an ally for us in terms of *shechitah* in general, because she said that she thought that *shechitah*, when properly done, is a humane fashion of slaughter. This is a woman who has the most credibility in this area. It is regarding these kinds of things that we have to make sure that the situation doesn't atrophy and that we are on top of it and maintain these relationships. The new CEO will hopefully be on top of all these issues.

As we stated, our goal is to have the plant running properly and be able to respond to the whirlwind around them.

*Q: In general, are you proud of the state of kashrus today in America? What are you most proud of in the OU?*

A: There are always things that we can do better, but we should understand that the *kashrus* system that has been created in the United States - and obviously the OU has played a major role, but it is not exclusively the OU - is something really remarkable. The idea behind the OU kind of system, and the other supervisions which follow, is that people can keep kosher and get products any place in the United States with no additional cost. The only area where there are additional costs are basically cheeses and meats. You can go to any supermarket and you'll see so many different *hechsheirim* on hundreds of thousands of products, which it makes it much easier to be a Jew in the United States.

Rav Yacov Lipschutz once related to me something that I think is a wonderful quote. He said that Rav Soloveitchik once told him that when you see the OU symbol on a product, it speaks to the vitality of the American Jewish population.

That having been said, it is a very fragile system, and one that we can only have in America.

Lord Immanuel Jacobowitz, former Chief Rabbi of Great Britain, once asked me how to create such a system in Great Britain. I told him that he won't be able to do so for two reasons. First of all, there is an entire overlay of anti-Semitism in Europe. Sec-

## *We take kashrus for granted*

only, there isn't a large enough market there that makes it worthwhile for companies to do it.

The perception that companies have of 'kosher' is critical to their willingness to buy into it. It is very fragile, as I said, because why should every major company have a *hashgacha*? Part of it is very leveraged. They want to sell to pockets of Jewish populations that care about *kashrus*, like New York, Chicago, Florida, parts of California, and so on. But we have to always recognize that it is a little bit of a *mofeis*, a miracle, that this system has grown, and we have to protect it because it can just as easily collapse.

This is also part of the *cheshbon* with the Agri story. We have to be careful for lots of reasons what the perception of Orthodox Jews is.

We grew up with *kashrus* supervision, which is why many take it for granted. The beginning of *kashrus* supervision began back in 1925, when the first OU supervision took place. Rabbi Alexander Rosenberg became the administrator of the OU in 1950, I believe, and he really built it up with Rav Leizer Silver and others to get basic ingredients under supervision, so that they could build a chain further. It just kept on growing.

We are in places where some years ago it would have been unimaginable for OU Kosher to operate: China, Turkey - a Moslem country - and even Tibet! Our Rabbinic Field Representatives roam the world for OU Kosher. Our rabbinic coordinators, here in New York, are in constant contact with them, going over not only business details but *halacha* as well. We have Rav Belsky and Rav Schachter as our *poskim*. We work closely with the Rabbinical Council of America and their Kashrut Commission who oversee the *halachic* standards of the *kashrus* division. We are deeply involved in *kashrus* education on many levels, from very young school children to distinguished *rabbonim* and *rabbeim* who want to strengthen their *kashrus* skills. In August, our ASKOU program provided hands-on *kashrus* training to dozens of rabbis and advanced students. Last week, it gave a live *kasher-ing* demonstration to a very enthusiastic group from the Satmar Yoreh Deah Kollel in Monroe, NY, as part of our ASKOU outreach program. That's an incredible development!"

And it should be understood that the OU is not just *kashrus*, but indeed, OU Kashrus helps fund NCSY, which is, with the exception of Chabad, by far the largest *kiruv* organization in the world; Yachad, which gives a Jewish experience to developmentally disabled Jews from all over the spectrum, from *chareidi* to non-observant; and the Job Board program, which has found employment for hundreds, many of them long-term unemployed. That's just a few of the programs OU Kashrus makes possible.

So there is much going on in the *kashrus* world - and at OU Kosher. We want to be devoting our full attention to our basic mission - to bring the highest level of *kashrus* to the Jewish people all over the world.

*Kesivah vachasimah tova* to all your readers and all of *Klal Yisroel*.

# Equal Protection Under the Law

BY RASHI RAICES

American Jews beware. If you run afoul of the Justice Department, your chances for bail are slim to none. That's the new legal concept created by the office of US Attorney Matt Dummermuth in Northern Iowa. Their policy singles out Jews as a special category to be denied bail due to Israel's Law of Return. The Israeli law provides citizenship to any Jew immigrating to the country. It's much like the asylum clause in US immigration law, designed to offer refuge to Jews fleeing oppressive regimes. It's never been used to give haven to American criminals. The US and Israel have an active extradition treaty. Routinely, accused criminals are sent from one country to another. The judicial systems have been cooperating for years.

We have yet to see if this policy of singling out Jews will only apply in this part of Iowa or if it will serve as new legal precedent across the country. This innovative legal theory was constructed by Peter Deegan, prosecutor for the US attorney's office, in order to prevent bail for Shalom Rubashkin. He is accused of a non-violent financial crime related to the meat plant in Postville, Iowa. The US Attorney argued in front of Federal Magistrate Jon Stuart Scoles that Israel's Law of Return could provide a safe haven to Shalom Rubashkin and therefore bail was denied, as the judge wrote in his ruling.

French can run to France, Mexicans to Mexico. If you have a Russian heritage, there is little fear that you may return to your ancestral homeland. Jews, in the eyes of the US Attorney, are a special category of law when it comes to bail. They are to be treated different than all other citizens of the United States. According to Deegan, Jews pose a flight risk.

It wasn't so long ago that the American legal system singled out Japanese Americans for special treatment under the law. During World War II, the Supreme Court authorized the imprisonment of American citizens based on their Japanese heritage. This ruling has become one of the blackest moments of American jurisprudence.

The issues between the US Attorney and Shalom Rubashkin have been brewing for a long time. This is his second arrest and indictment. If he wanted to run, he would have done it already. Mr. Rubashkin's second arrest took place on a Friday so that the US Attorney could ensure that he would be forced to be in prison on *Shabbos*. He was already wearing an ankle bracelet from the first arrest, and Deegan knew where he was. He could have allowed Mr. Rubashkin to surrender, as is common in such cases. Instead, he chose "shock and awe," rolling into Postville on Friday when he knew he would be able to hold Mr. Rubashkin over the weekend.

The people of Postville know Mr. Rubashkin very well. It's clear to us that he has no intention of evading prosecution. He wants his day in court so that he can defend his reputation. He feels maligned, singled out for prosecution. What other case of illegal workers has prompted such aggressive prosecution?

That's why over thirty of us, myself included, pledged our homes as bail for Shalom Rubashkin. We know him best and we are willing to put our families' security on the line for him. We, his friends and neighbors, know that he is not planning on running anywhere.

It would be difficult for Mr. Rubashkin to go anywhere, as he and his wife surrendered their passports to the court some time ago. Still, the US Attorney claims that Mr. Rubashkin is a flight risk. His evidence? He found a bag in Mr. Rubashkin's bedroom with his children's passports and some cash. The Rubashkins have an autistic child who opens drawers and closets indiscriminately. I know this kid; he gets

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into everything. They placed these documents in a secure place, away from his reach. Does Deegan think that Mr. Rubashkin could have traveled to Israel, the country with the tightest airline security in the world, on the passport of a ten-year-old?

Deegan didn't find a ticket to Israel, nor did any travel agents testify that Mr. Rubashkin ordered or inquired about a ticket. Nor did he discover any evidence that Mr. Rubashkin even made a Google search for tickets.

The fear of fleeing to Israel is a theory that the US Attorney created, a new risk, not based on any legal precedent or evidence from the investigation.

So all American Jews, religious Jews in particular, be careful. If you keep your children's passports tucked away in your bedroom with a few dollars, you will be denied bail.

As a kid, I studied the Constitution and the Bill of Rights. It promised equal protection under the law. How can we be sure of this in America today, and particularly in our great state of Iowa?

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*Rashi Raices is a principal of an elementary school in Postville, Iowa. She has lived in Iowa for over 13 years and Postville is her home. Her email address is gr8aba@yahoo.com.*

# Protests Against Incarceration Without Bail

PROMINENT RABBONIM VISIT REB SHALOM MORDECHAI RUBASHKIN

BY YISROEL LICHTER

The scene was surreal. Reb Shalom Rubashkin standing in jail in bright orange prison sweats with the words “Dubuque County Jail” emblazoned across the back, incongruously wearing a borrowed black hat and *gartel* as he said the words of *chazoras hashatz*. It was the first time that he was *zoche* to *daven* with a *minyan* since his incarceration on November 14. Reb Shalom, who in an unprecedented and troubling ruling was denied bail by the magistrate, *davened* with great feeling, as the words emotionally poured from his mouth. “*Go’el Yisroel - Who redeems Israel. Ki lishuascha kivinu kol hayom - for Your salvation we hope every day...*”

Indeed, the scene may have been surreal, but the circumstances of Reb Shalom Mordechai Rubashkin’s imprisonment are certainly not. They are downright troubling.

On Monday, January 12, a remarkable gathering took place at the Dubuque County Jail. Rabbinic leaders representing a broad range of the cross-section of American Jewry came to the Dubuque Iowa Jail where they met with Shalom for about one and a half hours, after which they held a press conference outside of the jail.

The group of leaders included Rabbi Chaim Dovid Zwiebel, Agudath Israel of America; Rabbi Pesach Lerner, National Council of Young Israel; Rabbi Yaakov Wasser, Rabbinical Council of America; Rabbi Moshe Elefant, Union of Orthodox Jewish Congregations of America; Rabbi Shimon Hecht, National Committee for Furtherance of Jewish Education; and Rabbi Yossi Jacobson, Chabad Lubavitch International. Rabbi Gershon Tannenbaum, Rabbinical Alliance of America/Igud Horabbonim, was slated to attend but was unable to do so at the last moment.

In conversations with the *Yated*, Rabbi Zwiebel, Rabbi Lerner and Rabbi Hecht all expressed the profound feeling of *chizuk* that they felt Reb Shalom had received from the visit. Most amazing was that they all expressed a feeling of *chizuk* that they themselves got from undertaking the trip, speaking with Mr. Rubashkin and *davening* with him. “This was the primary purpose for which we undertook the trip,” said Rabbi Lerner. “To give *chizuk* to Reb Shalom.”

The second purpose of the trip was to express concern over the reason for which the magistrate refused bail for Mr. Rubashkin. Mr. Rubashkin is being forced to sit in prison because he has been deemed a “flight risk” as a result of the Israeli “Law of Return” that grants automatic citizenship to Jews. This represents a precedent that could conceivably be used in the future to deny bail to any Jew.

The third purpose of the trip was to express their collective feeling that Shalom Rubashkin does not represent a flight risk, and declare their trust in Mr. Rubashkin by publicly putting the repu-

tation and credibility of each of their organizations on the line. “Shalom is well aware of how many people have advocated on his behalf, and a betrayal of their confidence would cause irrevocable damage to himself, his family, his community, and the many honorable individuals who have shown their support for him,” said Rabbi Yaakov Wasser.

“We are just seeking fair and equal treatment, from the justice system, for Mr. Rubashkin, no more and no less than anyone who applies for bail. At the same time, we are here to visit Mr. Rubashkin and hopefully give him strength to get through this difficult ordeal. This continued incarceration, while he awaits his day in court, is difficult for him and his family,” said Rabbi Lerner.

The delegation headed out of New York early Monday morning, changed planes in Chicago and finally arrived in snowy, freezing Dubuque, Iowa, where they were joined by some local rabbis. Although each rabbi was originally to be allotted a fifteen-minute slot to visit privately with Reb Shalom, in the end the prison authorities permitted all of the rabbis to visit together and they were thus able to *daven Minchah* together.

“It was clear,” said Rabbi Hecht, “that Reb Shalom derived tremendous *chizuk* from the visit. Nevertheless, Reb Shalom told me and the other *rabbonim* that although he now seems upbeat, there are times when it is extremely difficult. Being separated from his family, his children and especially his autistic child, with whom he has a special relationship, is very hard.”

“In fact, Reb Shalom is not even allowed to meet with his younger children. Even the periodic meetings with his wife are by video conference,” explained Rabbi Hecht. “The only Jews with access to him are clergy. Yes, his religious needs, *seforim* and kosher food are provided for, but Shalom Rubashkin belongs at home with his family until he has his day in court.”

Rabbi Zwiebel related that *davening Minchah* in the jail was something that he was sure none of the *rabbonim* will ever forget. “It was an extremely moving experience; an experience that simply can’t be put into words... seeing Reb Shalom, nobly serving as *chazzan* in orange prison clothing... experiencing the heartfelt *tefillot* of all who were present...”

Indeed, at the press conference following the visit, the rabbis declared “that not only is Shalom Rubashkin not a flight risk, but he wants the opportunity to face his accusers. He wants his day in court to prove his innocence in face of the serious charges leveled against him. The rabbis also argued “that not only would Rubashkin dishonor himself by fleeing, he would dishonor all of the rabbis and organizations who have supported him.”

Since his detention, they said, dozens of Jewish Iowans have offered their homes as collateral for bail, totaling \$2 million, as has a

Brooklyn man whose home is valued at \$4 million. The court has also received nearly 300 letters testifying to Shalom's character. Nevertheless, the government continues to insist that he be confined to prison.

The rabbis explained that the imprisonment is unnecessary, excessive and discriminatory against all Jewish Americans. They were highly critical of the U.S. Attorney's office, which has taken the extraordinary step of classifying Mr. Rubashkin as a flight risk because of his Jewish heritage, arguing that the "Law of Return" would enable him to flee to Israel. During the press conference, Shalom Rubashkin's attorney, Guy Cook, said that "According to the way the Law of Return has been applied to Mr. Rubashkin, Attorney General Michael Mukassey or Secretary of Homeland Security Michael Chertoff would present the same flight risk if indicted for a crime."

Indeed, in a letter to Attorney General Michael Mukkasey, Rabbi Zwiebel wrote: "It is ironic that the very law of return that was designed to save Jews from oppression was now being used by the American government to treat Jews as second class citizens by deeming them as flight risks. The implications of this ruling are painfully ironic. The State of Israel, shortly after its founding, enacted the Law of Return to assure Jews in countries where they are treated as second-class citizens that they had a home in the Jewish State. Now, under the logic of Magistrate ruling - and the federal prosecutors who advanced the argument - the very fact that the Law of Return exists is basis for treating an American Jewish defendant as a second-class citizen, keeping him confined in pretrial detention under circumstances where

non-Jews might well be released pending trial. The implications of this ruling are also breathtakingly staggering. The notion that Israel's Law of Return makes Jewish defendants greater flight risks than their non-Jewish counterparts could result in wholesale denials of bail to Jewish defendants who would otherwise be eligible for release pending trial merely on the basis of their religious identity. Needless to say, this ruling is both deeply offensive and extremely troubling."

The Orthodox Union's President, Steve Savitsky, also penned a letter to the Attorney General expressing his concern over the troubling use of the law of return as reason to deny bail.

On the way home, the delegation ran into a snowstorm that severely delayed them. At one point it looked as if they would have to spend the night in Chicago. Rabbi Hecht related: "I and the other *rabbonim* were not very pleased about the prospect of having to spend a night away from our homes and our families. Then, I thought to myself, maybe Hashem is sending us a message. We were disappointed about having to spend one unexpected night away from our own beloved *mishpochos*. Imagine how Reb Shalom feels - being held, all alone in the Dubuque prison, without bail, for dubious reasons. This is a lesson from Above to all of us, to think about Reb Shalom's predicament, to gain a sense of *imo anochi b'tzarah* - I am with him in his time of difficulty - and do all that we can to obtain his release. We must *daven* and *daven*. We must petition the proper authorities to release Reb Shalom Mordechai Rubashkin from prison and permit him, as an American citizen, to have his day in court to prove his innocence."



*He wants  
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# What a World We Would Have

BY LEAH LEDERMAN

As a member of Postville's Jewish community, I am constantly exposed to the media frenzy created by the ICE raid, which occurred at Agriprocessors in May 2008. The raid, and later attempts to completely destroy Agriprocessors, has currently become one of the media's favorite topics, because several components of these events are highly controversial. As a result, the secular American public has been whipped into a blood-thirsty frenzy over issues such as illegal immigration, Jewish business ethics, unionization and problems with the American economy. These issues are wide-ranging and complex in structure - requiring research and intense concentration to be fully understood.

The majority of the American public is not inclined to spend a great deal of effort when it comes to formulating opinions about current events. This, perhaps, explains why the main fury of the American public has fallen upon the Rubashkin family, in particular Shalom Mordechai Rubashkin, former CEO of Agriprocessors. People who are dissatisfied with their lives very often tend to find a scapegoat upon whom to vent their frustrations. It's much easier to simplify things into good vs. evil than to take the effort to form their own opinion about complicated situations.

The media, always willing to bow to the desires of the consumer, is doing their best to satisfy this demand for a villain by portraying Shalom Mordechai Rubashkin in the most nefarious light possible.

My husband and I have been close friends with Shalom Mordechai for almost 15 years, and the fiendish demonization of his character would be hysterically funny if the consequences resulting from it were not so dire. I, myself, generally try to avoid the stress caused by the sight of these terribly warped versions of events. But every so often a family member brings a copy of an article home, and the next thing you know, I am shaking my head in disgust after reading it for the third time.

If one is to believe what has been claimed by most of the media, Shalom Mordechai Rubashkin is a greedy unscrupulous excuse for a human being who gleefully and cruelly exploited his workers and brazenly flouted all sorts of laws to fulfill his desire for "filthy lucre." It might not be that surprising that mainstream America likes to forget that little concept of "innocent until proven guilty" when convenient. However, for President-elect Barack Obama, who obviously took no effort whatsoever to find out

what the events surrounding the raid on Agriprocessors actually were, to express his condemnation of the company is terrifying. This portrayal of Shalom Mordechai as some sort of modern day Fagin is inconceivable to those of us who really know the man.

Greedy? Is it greedy to single-handedly subsidize nearly every mosad in one's community - including but not limited to two chadorim, a high school, a mesivta, a kollel, a first-class multi-media library, a shul, a spa-like mikvah and a kosher grocery store?

Is it cruel to subsidize families who cannot afford rent or tuition?

Is it selfish to run the grocery at a loss so as to maintain affordable prices and carry thousands of dollars worth of habitual debt owed by various community members?

What about hosting a weekly *melava malka* for over 15 years, and Shabbos and Yom Tov meals with guests consistently in the double digit range?

Perhaps giving discounts on meat to



some Chabad Houses and even delivering tons of meat absolutely free to those hosted by family and close friends could be seen as greedy, but I'm not quite sure how.

Perhaps it is human nature to take assistance for granted when it comes from someone who is not only reliable and generous, but also constantly cheerful, smiling and friendly. I know that, upon various occasions when I've worked to raise money for a local project, many people have asked me why I didn't just ask the Rubashkin family to sponsor it. My explanation that we all bear a responsibility to help subsidize community organizations left people confused at times. It seems so much easier to write large checks when someone else is doing the writing! But I don't wish to make the same mistake as so many journalists do and merely characterize Shalom Mordechai and his family in the context of how much money has been gained and how much spent.

If Shalom Mordechai is truly greedy, it's for Torah and mitzvos. He never looks so truly alive, so comfortable in the role which he knows is really his, as when he's learning Torah, davening or performing acts of ahavas Yisroel and gemillus chassidim. When we returned to live in Postville after a three year absence, he strode away abruptly from a group of business associates to grab my husband in a huge, welcoming bear hug and give him large smacking kisses on both cheeks.

He has an infectious enthusiasm for the taryag mitzvos that transforms any environment in which he is located. It is this love for the Torahdike lifestyle that has created the beautiful community we have enjoyed in Postville far more than mere financial donations could ever do. It's a considerate gift to provide every family in Postville with a bottle of Crown Royal for Purim, but it's Shalom Mordechai's heart which inspires him to dress up like a clown and lead a caravan of cars to every house where they stop and make a l'chaim. It's not unusual for a local gevir to subsidize kiddushim over Shemini Atzeres and Simchas Torah, but it is inspirational to toss huge bags of candy throughout the shul when the Sifrei Torah are brought out. When Shalom Mordechai performs a mitzvah, you can really see in action someone following the commandment in Shemah to serve Hashem with your entire

heart, your entire soul, and all of your might.

There are people who find it easier to focus their chesed on large groups of people and others who find it easier to work on a one-to-one basis. It's easy to assume that for someone who runs a multi-million dollar, global company, it could be quite difficult to find the time to listen and meet the needs of individuals. Yet the same man who hosts a Pesach seder for 75 people until 4:30 in the morning and then helps his wife put away the food can be found a few hours later, at 7:30 a.m., helping a small child walk home when she wakes up to find herself in someone else's home. There are countless people in the Postville community alone, Jewish and gentile, who not only found a listening ear but a loving heart when he helped them find a top-rated physician and sponsored their medical care, or helped them move to Postville, gave them a job and provided them with a home (often within his own home until he found a suitable house for them).

No, the hate-filled mob which feeds upon any negative item dreamed up by the secular media machine does not really know anything about Shalom Mordechai Rubashkin the man. Why would they wish to? If they could see him suddenly stop singing and dancing during hakafos to run to his developmentally delayed teenaged son so as to hug and kiss him with pride, it would lessen their enjoyment of the mass fury. If the press portrayed him reading a story book to young children, it would remind them that these are real people with real lives who are suffering.

But this is golus, and the world is turned upside-down. A human being who spends every spare minute trying to bring light to the world is maligned and imprisoned - the object of entertainment for those who wish to spend all of their time, free or otherwise, denigrating and debasing him. If only they would spend that time emulating him instead - then what a world we would have!

*Leah Lederman is a member of the Postville Jewish community and a freelance writer and editor who has participated in such publications as Spice and Spirit: The Complete Kosher Jewish Cookbook, The Neshei Chabad Newsletter, L'Chaim and Body and Soul: A Handbook for Kosher Living.*



# Do Your Part

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BY CHANA RIVKA FLAUM

We live in a world of turmoil. Every day we hear of tragic stories. I don't remember the last time a day passed without a *Tehillim* text being sent to me. I find that we are so wrapped up in our own worlds that we just shake our heads in disbelief and then continue on with whatever we have to do. Of course I care and wish that everything would be okay, but what does it take for me to get involved and do what I can for my fellow Jews in distress? When I get a *Tehillim* text, do I ignore it? Do I forward it like the sender asked me to or do I stop for a minute and say a *kappitel Tehillim*? It only takes minutes, but the impact that it could make is immeasurable.

When I hear about families affected by terror attacks, do I pull out my checkbook and write a check for whatever amount I can?

I am tormented by the thought of Shalom Mordechai Rubashkin sitting in jail. I am very close to the Rubashkin family. But this is not the sole reason that it takes up so much of my thoughts. It is the injustice of how Shalom Mordechai is being treated, when he hasn't even had his day in court, and the way that our society has reacted and is still reacting to the story.

If you know the Rubashkins, then you know that they are one of the most giving, generous, caring and devoted families around. While Shalom Mordechai sits in jail, not found guilty of anything but being treated like a murderer, his unassuming mother spends these freezing winter days in her restaurant which serves as a soup kitchen to the poor people of the neighborhood.

I don't know about you, but when I face a difficult challenge, I become nervous, angry, jumpy and introverted. I am not serving *latkes* to the poor and I am not worrying about everyone else's needs before my own. I don't think that makes me a bad person. I just think that it makes me human.

Imagine that, *chas veshalom*, you were arrested for something. Whether you were guilty or innocent, would you want everybody and their neighbor talking about it? Would you want your children going to school knowing that everyone is staring and pointing? Would you want your spouse to be left trying to pick up the pieces and hold the family together? Or would you hope that everyone would give you the benefit of the doubt? Would you hope that people would respect your privacy and wish the best for you? Would you hope that someone would be sitting with a *Tehillim*, *davening* to Hashem on your behalf?

We must act and we must act now. If you get a *Tehillim* text, appreciate that you and your family members are healthy enough to open a *Tehillim* and *daven*. If you have the opportunity to help someone else, even if it is a little inconvenient, be happy that you are able to be the one to help rather than the one who needs to ask for help. And if a fellow Jew is imprisoned, do your part, however small, to try to get him freed. Make a difference!

I urge you to help get Shalom Mordechai Rubashkin out of prison and back with his family. How can you get involved?

1. Call our state senators and demand that they get involved in this unprecedented injustice: Senator Chuck Schumer's Washington number is 202.224.6542. Senator Hillary Clinton's Washington number is 202.224.4451.
2. Write a letter to your local newspaper.
3. Say *Tehillim* for Shalom Mordechai Halevi ben Rivka.
4. Donate whatever amount you are able to Klal Yisroel Fund, 53 Olympia Lane, Monsey, New York 10952.

In these challenging and uncertain times, choose to be an individual who *will* make a difference.

*In these  
challenging and  
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a difference.*

# Why are you Guys so Busy with Shalom Rubashkin

BY AVROHOM BIRNBAUM

“Why are you guys so busy with Shalom Rubashkin?” was the question posed to me by an acquaintance last week. Long ago I learned that the term “you guys” refers to any writer who works the paper for which I write, and my erstwhile acquaintance seemingly assumed that I have an editorial red-pen that can veto or approve everything published in the paper.

Disregarding the multiple, mistaken assumptions implicit in his words, I answered in the classical Jewish way: “Why not?”

“Well,” he replied, “Shalom Rubashkin is a guy for whom ‘we’ find it a little hard to sympathize.”

Again disregarding the inherent meaning of the word “we,” I repeated my question: “Why not?”

Exasperated by my failure to “get it,” he said, “You know, he definitely did things that he shouldn’t have done, so why are ‘you guys’ sticking out your necks for him?”

Okay, now that I finally understood the question and its premise, I felt that perhaps I could give an answer. My answer was that although I had nothing to do with the editorial policy that vociferously and unapologetically defended Mr. Rubashkin, I think I understand it.

The Rubashkin issue is not a small, provincial issue, limited to the relatively small Orthodox Jewish community. Although it concerns the meat that we eat, it has exploded into something far beyond which brand name will appear on the tray of meat or chicken we purchase at the butcher.

When an issue such as the Agriprocessors matter turns from provincial to national, with multiple articles expounding on it in the New York Times and much time devoted to it in the national broadcast media, it is important for us, Torah observant Jews, to try to understand why it has been propelled to the forefront of national headlines. Why does a relatively small, kosher slaughterhouse that processes a fraction of a percent of the meat in the country merit such attention?

Out of all the millions of immigration infractions taking place daily in this country, why was Agriprocessors singled out?

Turning to my acquaintance, I said, “It’s important that members of our community understand what is at stake. The issues have nothing to do with Chabad, nothing even to do with Rubashkin or Agri per se. Personally, I think Mr. Rubashkin has become a useful caricature and punching bag in the hands of those who seek no good for our community.

“The issues and concerns that you may have,” I continued, “are not the issues that made this story a national story and a national ‘scandal.’”

“So what is this all about?” He asked.

I replied, “It’s about the Torah’s commandment of *shechitah*. It is about singling out Orthodox Jews. It is about freedom of religion and freedom from government intervention in religious matters in the

United States of America. As long as we complacently think that it is one of ‘them’ being attacked and not one of ‘us,’ we have been lulled into false complacency with potentially grave ramifications for all Jews.”

The blank look on his face made it clear that he hadn’t really understood, so I explained.

“The raid on Agri and the imprisonment of Mr. Rubashkin on federal immigration related charges is really the culmination of a year-long campaign to impugn Agriprocessors. There are people and organizations that have been at the forefront of questioning the humaneness of kosher slaughter as practiced at Agri. They are determined to get a foothold into kosher slaughter, and if not outlaw *shechitah* outright, at least be able to control and regulate the process. Do you hear? They want to tell our *rabbonim* what is humane and what isn’t humane about the *shechitah* that we have been practicing for thousands of years.

“They have found a sympathetic ear at the New York Times and numerous other national media outlets. PETA, the ultra-radical ‘animal rights’ group even illegally planted a worker at Agri and had him illegally film the *shechitah*. This illegal video was then given to the media and subsequently spread around the world to inflame the masses against what they called the ‘cruel and inhumane practice of kosher slaughter’ practiced at Agri.

“The next step in the attempt to shut down the biggest kosher slaughterhouse in the country was to find Agri guilty of immigration related charges and employee abuse charges.”

Let’s make something clear. This writer is taking no position on whether Agri and Shalom Rubashkin are guilty of any of the alleged charges. Certainly, he should be given what is the right of every American citizen - his day in court and the opportunity to prove his innocence. Judgment on the case and its underlying issues should be reserved until after the verdict. That being said, it is fairly clear that in the court of public opinion, with the media serving as judge, jury and executioner, and even in the minds of many in our own community, judgment has already been passed. In the courtrooms of their minds, a guilty verdict on Mr. Rubashkin and Agri has already been issued. What they don’t realize is that they could unwittingly be participating not only in the lynch-mob campaign against Mr. Shalom Rubashkin, but in the lynching of *shechitah* too.

“Living in this most benevolent *golus* since the *churban Beis Hamikdosh*,” I told my acquaintance, “has perhaps made some of us feel so comfortable with what we are and who we are that we fail to register the very powerful forces in this country that view Orthodox Jews, especially very visible, ‘medieval looking’ Jews as different. ‘Human rights,’ ‘animal rights’ and ‘compassion’ for the downtrodden are age-old, tried and true methods utilized by our enemies to mask their real intentions and their real hatred of us and what we stand for. A

textbook example is the crocodile tears shed by the entire international community for the Gazan civilians in the recent Gaza War. This selective compassion is the classical smokescreen behind which Jew-haters hide to mask their true motives - hatred of Jews, and the ultimate eradication of the State of Israel.

“Unfortunately, in the case of Israel, there have been many misguided Jews, possibly even classifiable as evil Jews, who have been siding with the enemy and have shown far more sympathy for Hamas and the Palestinian children of Gaza City than for the Jewish children of Sderot or Ashkelon.

“The campaign against *shechitah* has been no different.

“Although world condemnation of Israel has been against all Jews, we have seen smaller scale efforts to delegitimize the Torah observant Jewish community by using similar messages of compassion, human rights, animal rights, etc. The allegations against Rubashkin have been a textbook example of the selective use and application of high minded platitudes of animal rights, human rights and workers’ rights.

“Anyone who thinks that the *shechitah* issue is only about Agri, not about the practice of *shechitah* itself, anyone who thinks that the fight against Agri was only about its alleged transgressions of its cattle’s ‘animal rights’ and its employees’ human rights, and anyone who thinks that once Agri would be shut down everything will revert to normal, is sorely mistaken.

“As soon as Agri was raided and it became clear that the plant was on the verge of shutdown, the *Forward*, a secular Jewish newspaper at the front of maligning Agri, began its next foray into ‘human rights’ with stories about the next biggest Jewish meatpacker, Alle. Borrowing a page out of the playbook used against Agri, they tried to find disgruntled Alle workers to complain about their treatment, or rather mistreatment, by Alle. They also tried to impugn Alle for not consenting to unionize its workforce. It became clear that victory had been declared against Agri, its destruction was imminent, and the next frontier was Alle, the largest remaining player in the kosher meat industry.”

Another related attack on Orthodox Jews resulting from the Rubashkin affair has been the Federal magistrate’s refusal to release Shalom Rubashkin on bail. Mr. Rubashkin is being forced to sit in

prison because he has been deemed a “flight risk” as a result of the Israeli “Law of Return” that grants automatic citizenship to Jews. This represents a precedent that could conceivably be used in the future to deny bail to any Jew.

So, I told my friend, the issue of *shechitah* notwithstanding, a major cause for concern in this case is the fact that a fellow *frum Yid* has been demonized and treated unjustly. That, I said, should be a concern to every member of *Klal Yisroel*. His continued incarceration - being separated from his family and his children - while he awaits his day in court, is unnecessary, excessive and discriminatory. We should think about Shalom’s predicament, express how troubled we are by it, and feel his pain.

Bernard Madoff, alleged to have duped investors out of \$50 billion, is not deemed a flight risk, but Shalom Rubashkin is? Why the double standard? Could it perhaps have something to do with the fact that Mr. Rubashkin looks visibly Orthodox? Are we witnessing a new discrimination against visibly Torah observant Jews, who seem more suspect than others?

Indeed, in a letter to Attorney General Michael Mukasey, Rabbi Chaim Dovid Zwiebel of Agudath Israel wrote, “It is ironic that the very Law of Return that was designed to save Jews from oppression was now being used by the American government to treat Jews as second class citizens by deeming them as flight risks. The implications of this ruling are painfully ironic. The notion that Israel’s Law of Return makes Jewish defendants greater flight risks than their non-Jewish counterparts could result in wholesale denials of bail to Jewish defendants who would otherwise be eligible for release pending trial merely on the basis of their religious identity. Needless to say, this ruling is both deeply offensive and extremely troubling.”

*Shechitah* has been under attack during various sordid, tragic periods of our history. Jews - and certainly visibly Orthodox Jews - have been under attack during various sordid, tragic periods of our history. The latest attack has begun with Agriprocessors. The question is where and with what it will end?

“And that’s why ‘us guys’ are so busy with Shalom Rubashkin,” I concluded.

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tragic periods of our history.  
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**The question is  
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# Rubashkin Gets Bail

BY AVI YISHAI AND AVI SHIFF

Judge Linda Reade of U.S. District Court of Northern Iowa ruled Tuesday that Shalom Mordechai Rubashkin will be freed on bail this week, overturning the original, heavily criticized decision to deny him that freedom partially based upon his religious background. Advocates for Mr. Rubashkin praised the decision as a victory for equal rights and religious freedom.

"Justice prevailed today," said Guy Cook, Mr. Rubashkin's attorney. "Judge Reade protected this man's constitutional rights. She made those rights come alive."

Mr. Rubashkin will be freed on \$500,000 bail Thursday, and will be required to surrender his birth certificate and family passports. He has pledged, as mandated by the court, not to contact a list of people related to the case and to wear an electronic monitoring bracelet. The judge ruled that more extreme measures, such as armed guards or additional surety, are not necessary.

Over the course of two days, Judge Linda Reade heard substantial testimony that the U.S. attorney had trumped up evidence that Mr. Rubashkin was planning to flee. His lawyer was able to prove that he has strong ties to the community and intends to fight the charges against him in court.

On the first day, Monday, Mrs. Leah Rubashkin, Shalom Mordechai's wife, testified that the U.S. attorney had misconstrued the purpose of cash found at their home, saying it was to pay for family expenses. She described Mr. Rubashkin as a loving family man with 10 children, one of whom, his 15-year old son Moishe, is autistic. The money and other documents were put in a closet to hide them from Moishe, Leah Rubashkin said, who often rifles through drawers and cabinets.

"We are very grateful for the beautiful outpouring of good wishes and prayers from all around the world. It means so much to Shalom and me to know that we have this continuous spiritual strength behind us during these times," said Mrs. Rubashkin after the decision.

The following day heard similar testimony to Mr. Rubashkin's character - from Amy Dickel, a Postville Insurance Agent, Rabbi Chaim Dovid Zwiebel, Executive Director of Agudas Yisroel of America, Joe Shochet, a family friend, and Mr. Joseph Sarachek, a trustee for Agriprocessors who submitted a written affidavit. Arguments were also made that Mr. Rubashkin was being unfairly treated because of his religion.

Many legal scholars have criticized the decision to hold Mr. Rubashkin on the grounds that his Jewish heritage made it more likely he would flee to Israel. By citing the Israeli 'Law of Return' policy, which grants expedited citizenship, the U.S. Attorney would have created a special class for all 5.3 million Jewish Americans in which every Jew would be viewed as a greater flight risk than non-Jews. The Anti-Defamation League had sent a letter to Attorney General Michael

Mukasey asking him to reverse this decision. ADL lawyers said they were unaware of any other case citing the Law of Return as a means to withhold bail.

Mr. Rubashkin, former CEO of the kosher meat packing company Agriprocessors, Inc., had been held without bail since being arrested on November 14. Since his detention, dozens of Jewish Iowa residents have offered their homes as collateral for bail, totaling \$2 million, as has a Brooklyn man whose home is valued at \$4 million. The court had also received nearly 300 letters testifying to Mr. Rubashkin's character. A delegation of prominent Jewish leaders from around the country also visited Mr. Rubashkin in Dubuque County Jail this month, later publicly stating that he had strong ties not only to the local community but to the larger Jewish community in America.

Family members and prominent Jewish community members applauded the decision. They had called upon everyone to daven for Mr. Rubashkin's freedom during the bail hearings on both Monday and Tuesday. The Rubashkin family and members of the community gathered on Monday, Rosh Chodesh Shevat, to daven on behalf of Mr. Rubashkin. They had asked other Yidden around the country to set aside a few moments at home, school or shul to recite Tehillim and learn Torah in the zechus of Shalom Mordechai Halevi ben Rivkah. The community of Postville, Mr. Rubashkin's home, also designated Sunday, Erev Rosh Chodesh Shevat, as a half day voluntary fast day.

The tremendous achdus this case engendered was seen by many observers as an additional zechus through which Reb Shalom Mordechai merited that his tefillos were accepted. Through the many months he spent in jail, his bitachon never wavered. In fact, he related that he took advantage of the time to learn more Torah than usual, deriving much chizuk from his learning in general and in particular from seforim such as the Chovos Halevavos.

The Rubashkins are widely recognized for their many acts of kindness, chesed and maasim tovim. They developed a kosher slaughterhouse which became the trendsetter in the industry for quality and price. Around that company they developed and supported an entire town, including a bais medrash, shul, yeshiva, cheder, mikvah, and everything else that religious Jewish life requires.

Agriprocessors Inc., which closed temporarily after being raided by authorities last year, is moving forward under a court appointed trustee. They are continuing to provide kosher meats to the many Jewish communities all around the country and look forward to prospering in the future.

Now Shalom Mordechai will be able to work from home to prepare his defense to the many charges he is facing. He adamantly maintains his innocence.

# Yisro and Apathy

BY RABBI PINCHOS LIPSCHUTZ

In *Parshas Yisro*, we learn of *Kabbolas HaTorah*. Following the *makkos* in Mitzrayim, *Kriyas Yam Suf* and the *giluyim* the Jewish people had experienced there, *Klal Yisroel* was ready to become the *Am Hashem* and receive the Torah.

It is most interesting that the *parsha* which deals with *Matan Torah* carries the name of Yisro and not something more descriptive of the gift we received on *Har Sinai*. It is also intriguing that the Torah interrupts its account of the Jews' journey in the *Midbar* and the apex of their journey at *Midbar Sinai* to tell the seemingly tangential story of Yisro's arrival.

The *parsha* should have continued where it left off at the end of *Parshas Beshalach*, when the Jews had miraculously crossed the *Yam Suf*, received the *mann* and were rescued by Hashem's intervention in the battle with Amaleik, and the next leg of their journey that took them to *Midbar Sinai* to receive the Torah. Why is the flow of the narrative interrupted with the story of Yisro's arrival?

What lessons are implicit in the narrative of Yisro that justifies its insertion after the description of *Kriyas Yam Suf*, prior to *Matan Torah*?

The *parsha* begins with the words "*Vayishma Yisro - And Yisro heard.*" *Rashi* quotes the *Gemara* in *Maseches Zevachim* which asks what it is that Yisro heard that prompted him to come. The *Gemara* answers that he heard about *Kriyas Yam Suf* and *Milchemes Amaleik*. Upon hearing of those events, he left his home in Midyan and came to meet Moshe Rabbeinu in the *Midbar*.

Obviously, Yisro was not the only one who heard about *Kriyas Yam Suf* and *Milchemes Amaleik*. One would imagine that there were few people who hadn't heard about these two earth-shattering events. Why did these miracles galvanize only Yisro?

Everyone knew about it. Everyone was impressed, even awed. Some might even have been inspired. The entire world might have been *nispa'el*, but it was for a mere moment, not long enough for the miracle to impact the heart. A fleeting impression was all they experienced and they quickly returned to their old habits of thought. They reverted back to being exactly the way they were before they were amazed by the power of Hashem.

The only one who heard about *Kriyas Yam Suf* and *Milchemes Amaleik* and was affected to the core of his being by these events was Yisro. He was the only person who was so overcome that the experience transformed his life.

The *pesukim* recount: "*Vayichad Yisro... - And Yisro rejoiced over all the goodness that Hakadosh Boruch Hu did for the Jews and rescued them from Mitzrayim... And he said, 'Now I know that Hashem is greater than all the gods... And he brought korbanos to Hashem...'*"

No one else came to the *Bnei Yisroel* in the *Midbar* saying, "*Atah yodati kee gadol Hashem.*" Everyone else remained mired in their pa-

gan beliefs.

This is why the Torah interrupts the chapter of the *Bnei Yisroel's* sojourn in the *Midbar* to tell the tale of Yisro's arrival. A prerequisite for *Kabbolas HaTorah* is to let the experience of Hashem's majesty envelop the mind and the senses so, that it forces a person to draw closer to Torah and G-dliness.

Divine acts are intended to teach us the power of Hashem. Torah demands that a "*hisorerus*" last for longer than a day or two. Torah demands that we always seek to learn and grow.

That was the lesson of Yisro and that is why his *parsha* was placed before *Kabbolas HaTorah*. That is why the *parsha* of *Kabbolas HaTorah* is named for Yisro, the convert.

But it is not enough to stand up and take notice. We've got to do more than that.

The Torah recounts that Yisro noticed that Moshe Rabbeinu was teaching *halachos* and judging the Jewish people from morning until night. Yisro advised Moshe that the system was improper. He urged Moshe to set up a well-functioning court system in which other people would adjudicate the simpler cases and the more difficult ones would be brought to him.

Yisro told Moshe that the present system, in which he was busy all day *paskening* all the *shailos*, was too difficult for one person and would end up destroying him. He advised him on how to choose competent judges to whom he would teach the *halachos* so that they would be knowledgeable enough to educate the people.

He urged him to get Divine approval for the new system and thus be able to function optimally.

Yisro was a newcomer to the *Bnei Yisroel's* camp. He wasn't the first person to see what was happening to Moshe Rabbeinu. Everyone saw that Moshe was consumed all day long with *dinei Torah*. Anyone could have figured out that it wasn't a normal situation. Anyone could have figured out a more effective system that would allow Moshe Rabbeinu to spend his time more productively. Anyone could have realized, as Yisro did, that Moshe would become exhausted from the grueling regimen and unceasing pressure.

And that is exactly our point. Everyone saw it. Anyone could have realized where it would lead, but no one did anything about it. It took Yisro to internalize what he saw and to do something constructive about it.

So often, the urge is to turn the other way and make believe we didn't see. People don't want to get involved. People don't want to get dirty. People want everyone to like them. But that is not the way of the Torah; nor is it the way to get a *parsha* in the Torah named for you or for you to achieve immortality.

Yisro saw, Yisro cared, and Yisro spoke up. *Hakadosh Boruch Hu* and Moshe Rabbeinu accepted his proposal.

Yisro spoke up and saved Moshe from becoming physically exhausted. The Torah honored him for this worthy deed by naming the *parsha* for him. This is why the lessons imparted by Yisro's deeds are inserted into the narrative describing the supernatural events leading up to *Matan Torah*.

Yisro taught us that everyone has the potential for greatness to the point of being worthy of having a *parsha* in the Torah named for him. One must care enough to notice what is going on around him, draw the right conclusions, and try to remedy the situation.

Every one of us has the ability to improve the world around us. Each of us can reach out and help people who need a handout of time, money or sympathy. We can all help others get through the day. We can all bring meaning and warmth to the lives of our neighbors, friends and fellow Jews. If only we cared, if only we tried. If only we took Yisro's example to heart.

Yisro taught us that we can all make a difference. In our day, though, we have become apathetic about many causes. Things have been going so well for us for so long that when a problem develops, we imagine that it will be dealt with and made to go away with minimal effort. Thus, many issues go unaddressed.

This newspaper has been at the forefront of advocating an objective treatment of the Rubashkin family.

We wrote extensively about the injustice and the maligning of the Rubashkins, Agriprocessors, and the Orthodox community in general. We wrote against Hekhsher Tzedek, which was founded in response to PETA and ICE allegations, and explained the dangers inherent in such a group. We warned that we must ensure that they not be allowed to gain a foothold, and that we certainly shouldn't be working with them in any way.

Lastly, we established a legal defense fund of behalf of Shalom Mordechai Rubashkin as he awaits trial. Dozens of checks of all amounts are flowing in. This is heartening and it shows that people do care and do want to help. It demonstrates that people are prepared to spend money to support and help this man receive his constitutionally guaranteed rights.

But there are still people who wonder why we do it. Perhaps an article published in the weekend edition of *The Wall Street Journal*, written by the person who more than anyone else caused the downfall of Agri, can provide insight.

Nathaniel Popper of *The Forward* newspaper wrote an explanation of what caused him to go on a tear against the Postville slaughterhouse. Read his words:

"What was it that so riveted our attention? It was never articulated and it took me a while to see it, but this one story had managed to distill some of the most essential questions and issues that are dividing and defining the Jewish community and indeed religious communities of all stripes today.

"These divisions are, at their most basic, about the proper way to interpret religious law and values: Should we read our ancient texts literally or adapt them to a changing world?

"The Agriprocessors plant slaughtered chickens and cows according to a group of laws — known as *kashrut* - that have been refined and codified over centuries in books like the *Shulchan Aruch*. Bearded, Orthodox rabbis had buzzed around the Agriprocessors plant making sure these laws were being followed."

And just in case you didn't yet get his message, he goes on:

"When allegations about the working conditions at the company first came to public attention through my 2006 reporting, these Orthodox rabbis vouched for the company. But a group of progressive, socially engaged, and mostly clean-shaven rabbis decided to visit the plant themselves. After a tour of the plant and town, these rabbis said that while the company seemed to be in compliance with narrow kosher laws, there was less attention being paid to another, less codified set of Jewish rules about the proper way to treat workers.

"These rules do not loom large in everyday Jewish life - there is

little contemporary rabbinic legislation on the proper minimum wage - but they are strikingly consonant with modern concerns about human dignity and equality. The rabbis pushing this agenda might be compared, in secular terms, with Supreme Court justices like Ruth Bader Ginsburg and Stephen Breyer who seek to interpret old legal doctrines through a modern lens. As part of this push, these rabbis, who were representing the Conservative movement, created a new program, known as the Hekhsher Tzedek or Justice Certification, which aims to evaluate the business ethics of kosher producers.

"*The Hekhsher Tzedek generated intense pushback in large segments of the Orthodox community, where there is a belief in strict adherence to the laws set down in the Jewish holy texts - these are the Antonin Scalia's of the Jewish world, to continue the Supreme Court analogy. One influential Orthodox rabbi told me, "I don't keep kosher because of some sense that it is the right thing to do socially - I do it because G-d said so."*

Don't you get it? In Popper's mind, we, who observe Torah and the laws of *kashrus*, are Neanderthals. We don't care about the welfare of animals and we don't care about how people are treated. We are just a bunch of money-grubbing shylocks, looking to squeeze out every penny of profit from pounds of flesh.

We let hair grow on our faces; we aren't clean shaven and professional-looking. We aren't progressive in action or thought, and we refuse to adapt to the modern era. We prefer to remain cultists frozen in a time warp. That's Popper's perception of us, which he chose to share with the readers of the country's most widely circulated newspaper.

This person, who caused so much acrimony and pain to so many Jews, and robbed people across the country of the ability to purchase kosher meat at reasonable prices, isn't sure that we have gotten his message.

He decries the campaign to raise money to help pay for Shalom Mordechai Rubashkin's defense, again cloaking his argument in an us-versus-them rhetoric.

"*This campaign for Sholom Rubashkin,*" writes Popper, "*has faced skepticism from progressive Jews - many of whom had spent months trying to help the immigrants put in jail after the raid. In standing up for the immigrants, the non-Orthodox rabbis have fought for a more explicitly universal vision of mankind, in which a Guatemalan Catholic has the same weight as a Brooklyn Jew."*

The people who battle Rubashkin, *shechitah* and really all of *Shulchan Aruch* also deny that we are the *Am Hanivchor*. They deny the *bracha* of *Atah Bechartanu*. They deny that we are the chosen ones. They are bothered by our success. Just like the *Yevonim*, they seek ways to undermine our way of life and target the things dearest to us, such as *milah* and *shechitah*, in short succession.

Popper takes one last jab at observant Jews in his article:

"It is the very vitriol and divisive nature of the Agriprocessors debates that is one of the most characteristic elements of the increasingly polarized Jewish community of today. Progressive Jews passionate about social justice and Orthodox Jews unswerving in Talmudic law have interacted less and less in recent years, and disagreed more and more..."

To be clear, the battle against Agri wasn't just against Agri. It was against us Jews who hew to the *Shulchan Aruch* and Talmudic law. It was just another shot at us from those who see themselves as inheritors of the mantle of the *maskilim* of the past centuries who did not rest as they used the media and government to agitate against *ehrlliche Yidden*.

When charges were brought against the company for allegedly hiring underage workers, we asked our readers not to rush to judgment, but to wait until the accused have a chance to defend themselves in a court of law. All the other charges bandied about in the media are mere allegations based on hearsay and don't deserve to be treated as fact.

The leading media in this country formed a figurative lynch mob and went after Agriprocessors with the obvious intent of destroying

# *It is not enough to stand up and take notice.*

## **We've got to do more than that.**

the company. They slammed it with all kinds of false allegations, as if it were a cattle-and-man-killing jungle of the early 1900s.

Amaleik perceives that he can't destroy us, so instead he slanders us and tells the world that we don't know how to treat animals or people. He says that we are mean, vicious and heartless, and he gets the media to print the canards.

He plants perverse ideas in the minds of hate-driven people who then peddle their wild allegations to mainstream media outlets which, in turn, publish them as authenticated facts.

In September of 2008, the nation's "newspaper of record" ran a story headlined, "Kosher Plant Accused of Inhumane Slaughter." Who accused them? It was none other than PETA, the group of misfits who parade around the world, ludicrously arguing that man is no different than animal and, therefore, both species are entitled to the same rights.

It is only when you got to the fifth paragraph that you find out that the accusation is bogus. The plant, in fact, was found by the Department of Agriculture (USDA) to be "in full compliance with humane slaughter regulations."

The sensational headline was intended not to inform, but to aid and abet the smear campaign against kosher slaughter.

Decency and integrity would have dictated that the story be dropped. Or, had the editors felt that there was a great need for the public to know of the allegations against an already beleaguered kosher plant, they should have at least formatted the story in a way that would leave no doubt that the USDA gave the plant a clean bill of health *despite* the charges of a radical left-wing vegetarian group.

But if you are doing the work of the enemies of the Jewish people, why worry over a lapse of journalistic integrity?

Lately, Amaleik has worn another mask - that of Jewish reporters and Jewish news services continuously distributing libelous reports about religious Jews in general and Agriprocessors in particular, displaying no sensitivity for the truth. Jewish news groups routinely dispatch articles disparaging religious Jews and *halacha*, and no one calls them on it.

Some have questioned why we have taken such a strong stand on behalf of the Rubashkins. We believe that the proper course of action is to defend *ehrlliche Yidden* who have been wrongfully accused and maligned. But more than that, it was our perception that the Amaleikim hounding them are targeting *not only* the Rubashkins. They are targeting you and me and our ability to eat kosher meat and observe *mitzvos* in this country.

The same unions which turned countless American factory communities into ghost towns now seek to do to *shechitah* what they did to the auto manufacturers and knitting mills that used to dot this country.

Examples abound of the attempts to minimize our accomplishments and cause our neighbors and those less observant to scorn us and to deride our accomplishments in this country.

The *New York Times*, in its lead editorial on August 1, 2008, described the Agri plant as follows:

*"A slaughterhouse in Postville, Iowa, develops an ugly reputation for abusing animals and workers. Reports of dirty, dangerous conditions at the Agriprocessors kosher meatpacking plant accumulate for years... The plant has been called 'a kosher 'Jungle'... The conditions*

*at the Agriprocessors plant cry out for the cautious and deliberate application of justice..."*

It wasn't that long ago that pogroms were perpetrated against the Jewish population by illiterate peasants egged on by the Church and government authorities.

Today, thankfully, they don't come after us with sticks, knives and guns; blood libels are a thing of the past. Today, instead of knives and spears, the warmongers' implements of battle are *The New York Times*, *The Wall Street Journal*, CNN, JTA, and other compliant media outlets.

What can be a better story than illegal aliens employed by Hasidic Jews in a lily white corner of Middle America? Who will rise to the defense of the Jews? Who will cast doubts on the story of "Jungle" savagery perpetrated by the rich, money-obsessed New York Jews? It's a perfect real-life illustration of the rich taking advantage of the poor and downtrodden.

I had never met any of the Rubashkins prior to my visit to Postville last year. I found them to be eminently loveable, *geshmakeh*, *heimishe* people you'd want for neighbors and friends. They are full of *chein* and seem to possess good doses of *seichel tov*. I have since come to know and treasure them as dear friends.

I saw the distinct pride they take in the place that their family built up through many years of hard work and much *siyata diShmaya*.

It was a priceless gift to have such a large enterprise supplying American Jews - and Jews the world over - with the finest in kosher meat. We didn't appreciate the worth, quality, importance and magnitude of this gift, so we lost it.

The Torah relates how Yisro went to Moshe, "to the desert." Obviously, if he went to Moshe, he went to the desert, for that was where Moshe and the Jews were to be found. *Rashi* explains that the Torah is actually saying this in praise of Yisro. Yisro was sitting "*bekvodo shel olam*." He was coming from an environment where he enjoyed prestige and notoriety as a leading light among the cognoscenti of that age. Despite this, he was prepared to venture out into the barren desolation of the desert, in order to seek out the truth of the Torah.

In order to appreciate the beauty and timeless truth of the Torah, one must be prepared to abandon what might appear to be enlightenment based on the prevailing values of society. Journalists and other self-styled intellectuals whose self respect is dependent on viewing themselves as progressive, socially engaged, clean shaven examples of enlightened Jews unshackled by ancient traditions, cannot perceive the *deracheha darchei noam* inherent in Torah and *mitzvos*. Rather, their need to be seen as exemplary citizens in the eyes of the world at large compels them to paint *ehrlliche Yidden* as backward, insensitive, unsophisticated barbarians incapable of their own refined sensibilities.

We must have the courage to stand up to those who seek to undermine us and our distinct way of life. We have to recognize our enemies for who they are and not give them or their arguments any credence. We have to be prepared to fight for our rights to properly observe *halacha* as we have been doing for thousands of years. We have to defend each other without embarrassment.

We have to take Yisro's message to heart and not be afraid to withstand the ridicule of the Midyanites who surround us.

# Shalom Mordechai Responds to Media Attack on Shechitah

EXCLUSIVE TO YATED NE'EMAN

**Q: What is your reaction to the recent article by Nathaniel Popper of The Forward in The Wall Street Journal?**

Shalom Mordechai: By means of introduction, allow me to share the following:

The haftorah that we read on the first day of Pesach focuses on Yehoshua bin Nun, the great novi and successor of Moshe Rabbeinu, who becomes the leader of Klal Yisroel following Moshe's petirah. Yehoshua was to bring the Bnei Yisroel to Eretz Yisroel, the Promised Land. The Torah relates the story of how he encounters a malach with a drawn sword. Yehoshua's question to the malach is simple yet profound. "Are you for us or for our enemies?" he asks. Yehoshua needed to know what side he was on.

When there are two sides, it is vitally important to identify a person's loyalties before engaging him. This was the case in a physical confrontation of war. How much more so does this apply when the war is a psychological one.

The lesson we learn about on the first day of the Yom Tov celebrating our freedom is not to take our freedom for granted. There are friends and there are enemies. It's important, says the Torah, that when encountering a stranger who can be potentially an ally and friend or enemy and foe, one must first ask a critical question: "Are you for us or for our enemies?"

Last week, Mr. Nathaniel Popper, a Jewish reporter, actually answered that question for us. He identified himself to the Torah-true community by mocking us. He blatantly degraded religious Jews and rabbonim. He explained that if you are bearded – perhaps for further clarity he should have added to the description a hooked long nose with a voracious appetite for money – and you believe that G-d really means what He says in the Torah, then you are automatically narrow-minded. It pays to read Mr. Popper's words. They will - though they shouldn't at this point – surprise you.

Every Jew, religious or not, can see the deep-rooted disdain this reporter has for Torah-based Judaism.

To bring out our point a bit more clearly, let's take a simple test. What if it was not Nathaniel Popper who wrote the article in The Forward, but rather Louis Farrakhan? Imagine that Farrakhan described religious Jews as "bearded Orthodox rabbis buzzing about the plant" and wrote about our "narrow kosher laws" in sharp contrast to "the clean shaven progressive rabbis." There would be condemnations from all sectors. He would never get away with making such statement!

But Popper may have done all of us a favor by removing any doubt about what the recent anti-shechitah, anti-Agri campaigns were all about. Mr. Popper's vitriol has made it all abundantly clear.

Mr. Popper, in his recent article, clarified for all the underlying agenda behind the attack this past year on what was the jewel of kosher meat and poultry production, Agriprocessors, and its proprietors, the

Rubashkin family — a family committed to kashrus and quality, with a deep-rooted respect to Torah, mitzvos and rabbonim. It was actually a place the rabbonim called home.

**Q: You've said that this tumult surrounding Agriprocessors, in truth, began some 5 years ago with the action of PETA.**

Shalom Mordechai: Correct. Back in 2004, PETA released a video of the shechitah at Agri. The video was taken illegally, and was PETA's response to Agriprocessors' refusal to agree to its demands to allow the organization's representatives access to the shechitah plant and incorporate PETA's suggested modifications regarding the shechitah process.

There was no way that Agriprocessors, which had given over full control of production to the supervising rabbis, could overrule that arrangement by acceding to PETA's demands.

I knew full well the damage that PETA had caused to kosher shechitah in other countries, and what they were trying to achieve in England and now in the United States.

What is important to note is that although the public was made aware of what the shechitah process looked like at Agri, no video of any other kosher shechitah operation was ever shown for comparison. If that had been done, it would have proved that the shechitah at Agri was indeed what shechitah is supposed to be, and how it's been done for centuries.

The fact is that the slaughtering process is not exactly ideal viewing for the general public. The cutting of an animal's neck, the blood, and the loss of life are all things that can cause anyone to turn away or react negatively. Most people are simply not aware of the nature of shechitah or any other type of slaughter, and even if they are, seeing it in person or on a video can be disturbing.

After the PETA video was released, there was great turmoil in certain segments of the Jewish community over what it showed and how it was explained by PETA. In fact, PETA's claims in the narrative were either overstated or complete fabrications. They sent letters to lawmakers demanding government intervention. This was a serious threat, because we have seen what other governments have done to inhibit the kashrus of the shechitah process.

In order to provide an explanation of what shechitah is, why it is absolutely humane, and why the government should ignore the lies and outlandish demands of these troublemakers, I wrote a rather long letter to the public. I invited people to send questions to my email address. I invited the renowned veterinarian, Rabbi Dr. I. M. Levinger, to come and see for himself what goes on at Agri. I invited the Iowa Secretary of Agriculture, Patty Jean Judge, to come and see for herself what the truth is. The USDA was engaged and all questions and inquiries were fully answered. So satisfied was the USDA that no violations were cited.

Dr. Temple Grandin, Ph.D., Professor of Animal Science at Colorado State University is known worldwide for her work on the design of livestock handling facilities. (She is one of the most accomplished and well-known adults with autism in the world.) In North America, almost half of the cattle are handled in a center track restrainer system that she designed for meat plants. She came down to the Agri plant and gave a very positive report. She gave advice to the plant, which quieted down the PETA attack at the time. She is a specialist who has the most credibility in this area.

As mentioned, Dr. Levinger gave a glowing report and the Agriculture Secretary gave a great report as well. The USDA did not charge Agri with any violations and no new laws restricting shechitah were introduced.

Looking back, it was at that point that I became the target of our enemies. I felt no compunction about standing up for our holy Torah and its mitzvos and defending it without apologies. Someone had to stand up for the holy mitzvah of shechitah. I said at the time that this is the way G-d wants us to take the life of an animal if we choose to eat meat. I went on to prove scientifically that shechitah is and continues to be the most humane fashion of killing an animal.

That was 2004 into 2005. The attacker was PETA, and their tactics and motives were recognizable to all.

**Q: What happened after that?**

Shalom Mordechai: In 2006, Mr. Popper - the same Mr. Popper who wrote the recent piece in *The Wall Street Journal* - wrote an article about what he saw and heard during his visit to Postville, Iowa, and Agri. In the title of his article, he referred to Agri as a “kosher jungle.” When his story was printed in a newspaper that is known for its anti-Torah views, it sent the Jewish community into an uproar. “Look at this,” people said. “Now Agri is being blamed for not treating their workers humanely.” To be honest, to this day it is hard to believe that people took this article at face value without considering the fact that it appeared in a publication well-known for its anti-frum bias.

A few days later, two Jews, Rabbi Zeilingold, morah d’as-rah of Aduv Israel, and Dr. Carbonero came to Agri to see for themselves if what Popper wrote had any validity. They toured the plant, interviewed many workers, and visited Postville before reporting their findings, which were completely contrary to what Mr. Popper had claimed he observed. The two then wrote a full report exposing Mr. Popper’s story as a fabrication. They also said that he had omitted basic findings to come up with his “kosher jungle theory.”

At that point, Rabbi Bomzer of the OU conducted his own investigation. He validated the findings of Rabbi Zeilingold and Dr. Carbonero and completely refuted Mr. Popper’s report. For whatever reason, however, Mr. Popper’s discredited version of the situation at Agri took on a life of its own, with many people still taking it at face value and giving it full credence. Mr. Popper’s lie had stuck.

Please note that anyone and everyone had the opportunity to come to Postville and have a look for themselves. We had nothing to hide and a lot to proudly show. If anything, we were eager for people to come and see how preposterous Mr. Popper’s claims were. But once something is out there in print, no matter how untrue it is, it is an uphill battle to convince the public otherwise. And the anti-Agri people, like PETA, and others, were working overtime to keep the lies alive and to promote their agenda at every available opportunity. That agenda has now been clearly spelled out by Mr. Popper himself.

Boruch Hashem, Agri continued its growth and its service to Jewish communities in all parts of the country. But there were those who were still plotting our demise.

**Q: Before you go further, can you provide some background into your family and the founding of Agri?**

Shalom Mordechai: Sure. I actually believe that some of the history will help put things in perspective as we discuss the most recent attacks on Agri.

My parents are Jews from Russia. They lived through the Commu-

nist gehennom and saw firsthand what the Communists did to destroy Jewish life in Russia. My parents observed the destruction of Jewish communities that once dotted the land.

Russia used to have a tremendous Jewish population. With the rise of the Communist party, new laws were enacted in Russia and the former Soviet Union. The new constitution actually guaranteed religious freedom, but that was to be undone. By whom? Surprisingly, or maybe not surprisingly, it was undone by the Yevseksiya, or the Jewish party. They were the ones who did the most damage to the bearded Jew who chose to take G-d for His word. The progressive Jews of old had their agenda and their view of what Judaism should become. So they approached the Communist police and actually collaborated with them. They arrested all the rabbonim and mohalim they could find on trumped up charges such as counterrevolutionary activities that made no real sense, and they physically destroyed the Jewish communities that took centuries to build.

That history offers many parallels to the current situation and the path that Mr. Popper and others like him have chosen to follow. They are the new Yevseksiya. What they could not accomplish by themselves is now being pursued by enlisting the might of the United States government. They have used what is supposed to be an unbiased American court system to attack and destroy the very company that has worked so hard to allow everyone to enjoy kosher food freely in America, a company that showed how every Jewish community could have a reliable kosher meat and poultry supply. To them, destroying such a company is the appropriate goal and definition of a progressive movement.

Like the Communists of old, these “defenders of the worker” use brute strength and vicious lies to achieve their goal. They have their own view of what kosher is.

To them, it is a kulturkampf. They view themselves as the clean-shaven, progressive thinkers in a battle to wrest control of the kosher meat market from the backward, bearded, hooked-nosed rabbis. They claim that kosher does not mean what the rabbis dedicated to the Torah law say it means. They claim that kosher means whatever the progressives decide it should mean. They say that the plant you once had, which upheld the laws as interpreted by the bearded rabbis, is going to be taken away from you. They are saying to us that, even in this free country of America, we have found a way to attack your religious institutions, just as our enemies, the Yevseksiya and Haskalah did in the Russia of old. Here they use sophisticated legal terms, but the results are the same —confiscation.

As the lies kept piling up and some people began to believe them, a movement, now known as Heksher Tzedek, began to take shape. These “moral police” wished to ensure that workers were being treated properly, in light of the fabricated reports about Agri that falsely claimed otherwise.

As an aside, note that the Agri plant has 20 USDA onsite inspectors. They are agents of the federal government. If those reports were true, the USDA inspectors didn’t notice what was going on at Agri and its treatment of workers. But these reports were not true, and these things never happened.

So to be clear, the goal of these individuals is to halt shechitah. It is not about Agri or any single plant. It is about denying our right to live as frum Jews and observe our halacha. People like Mr. Popper have utilized the media - including the secular Jewish media - and their insatiable desire for scandals, especially those involving frum Jews, to advance their agenda, even if it involves spreading falsities. It is important that we recognize what this ongoing campaign against Agri is truly all about.

One must first ask a critical question: “Are you for us or for our enemies?”

It is only then that we will be able to protect ourselves and our treasured mesorah.

The time to get active is now, while we still have a voice.

# 9,311 Counts of “Child Labor” Violations: A Modern Day Blood Libel?

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BY YISROEL LICHTER

It seems that prosecutors are doing a lot of rushing to judgment these days. Not an innocent rush to judgment, but a libelous, diabolical rush to judgment that shamelessly and irrevocably ruins the reputations of innocent people, causing them and their families irreparable damage, heartache and emotional trauma.

A number of recent news stories have proven the increased aggressiveness of many prosecutors and the near lynch mob atmosphere they seek to create regarding their defendant.

## PROSECUTORS’ DISMISSAL OF IDENTITY THEFT CHARGES AGAINST RUBASHKIN HAILED AS VICTORY AND GOVERNMENT ADMISSION OF “OVERREACHING”

On Monday, prosecutors dropped the identity theft charges - the centerpiece of its immigration violation allegations - against Reb Shalom Mordechai Rubashkin of Agriprocessors (Agri). The government cited the fact that a recent Supreme Court ruling determined that prosecutors who file identity-theft charges must prove that the defendant knew that the identity used belonged to another person. Knowing that their case was doomed and in response to a motion filed last week by Rubashkin’s lawyer, the prosecutors asked a federal judge to dismiss seven counts of aiding and abetting aggravated identity theft.

Defense lawyer Guy Cook hailed the request as a victory for his client and a government admission of “overreaching in this case.”

## SIMILAR GOVERNMENTAL OVERREACHING IN STEVENS AND AIPAC CASES

The Rubashkin case has not been the only recent incident of egregious prosecutorial overreaching. Last month, prosecutors dropped all alleged charges against 85-year-old former Alaska Governor Ted Stevens. Everyone remembers how the corruption indictment against Stevens caused him to lose his bid for reelection in the Senate, thereby ending a 40-year Senate career. The fact that charges have now been dropped, of course, will never reinstate his Senate seat.

According to a report in the *Anchorage Daily News*, “The Justice Department moved to dismiss former Sen. Ted Stevens’ indictment on Wednesday, effectively voiding his Oct. 27 conviction on seven counts of filing false statements on his Senate financial disclosure forms.

“The decision by U.S. Attorney General Eric Holder comes after a new prosecution team discovered a previously undocumented interview on April 15, 2008, with the star witness in the case that sharply contradicted the most dramatic testimony in the four-week trial. The information had never been turned over to the

defense, the Justice Department said in its motion.

“I always knew that there would be a day when the cloud that surrounded me would be removed,” Stevens said in a written statement. “That day has finally come. It is unfortunate that an election was affected by proceedings now recognized as unfair. It was my great honor to serve the state of Alaska in the United States Senate for 40 years.”

In a written statement, Stevens’ attorneys decried the “corrupt” conduct of attorneys and the FBI in the case. “It was a bad judgment to have done so in the first place,” said Brendan Sullivan, the defense counsel for Senator Stevens. “He’s a war hero. He served in the Senate for 40 years, and he was the target of prosecutors who wanted to enhance their own reputation.”

Two weeks ago, in another high profile case, Federal prosecutors abandoned an espionage-law case against two former AIPAC lobbyists, Steve Rosen and Keith Weissman.

The Atlantic Monthly’s Jeffery Goldberg put it succinctly when commenting on the government’s decision to abandon the case: “It’s about time. It was an idiotic case to begin with; the men were being prosecuted (under an ancient, seldom-used law) for *receiving* classified information passed orally - not even on paper - from a government stooge, and then passing it on to a reporter and to an official from the Israeli embassy. Rosen and Weissman did what a thousand reporters in Washington do every day - hear about information that’s technically classified. The only difference is that these two worked for a demonized lobby.

“It’s a sad day for the Walts and Mearsheimers of the world, who believe that AIPAC is a treasonous organization, and it’s a sad day for AIPAC too, because it abandoned the two men to the fates when it should have stood by them.”

With regard to the Rubashkin, the “Overreaching” of the prosecution in the identity theft case seems to just be the tip of iceberg.

## 9,311 COUNTS OF CHILD LABOR FROM 25-30 ALLEGED MINOR EMPLOYEES?

On the State level, prosecutors for the Iowa Department of Labor (IDOL) have also been guilty of egregiously overreaching in the child labor violations case, according to a motion submitted by Rubashkin’s lawyers last week. On September 9, 2008, a Complaint and Affidavit was filed in Allamakee County accusing Shalom Rubashkin and others with 9,311 counts of claimed “child labor” violations in Chapter 92 of the Code of Iowa.

Rubashkin Attorney Monty Brown, who filed the motion, told the *Yated* in a telephone interview that the government alleges that there were between 25 and 30 child laborers working at Agri.

When the *Yated* asked how an alleged 25-30 laborers could

produce a complaint containing 9,311 counts of child labor violations, he explained that the government counted every day that each alleged child worked there and multiple alleged violations each day. The motion clearly charges that the government was using a “shock and awe” tactic that was certain to illicit maximum outrage.

Those who were closely following the Rubashkin saga from the outset will no doubt remember that it was that indictment of 9,311 counts of child labor violations that caused a tremendous uproar in the press and in cyberspace, and, according to many, set into motion the ultimate bankruptcy of the company.

The current motion, however, charges that the government, in its zeal to extract the ultimate price from Rubashkin, broke its own child labor laws, endangered the very children it has sworn to protect, and was guilty of outrageous government conduct, all, of course, to try targeting Rubashkin in the most derogatory fashion.

The allegations put forth in the motion clearly depict that a prosecutorial blood libel has been perpetrated against Rubashkin. In many ways, it makes the prosecutors in the above mentioned Ted Stevens and AIPAC cases look meek...

#### **AGRI PROVES THAT IT PREVIOUSLY FIRED UNDERAGE EMPLOYEES WHO LIED ABOUT THEIR AGE... BUT IDOL WITHHELD THE FACTS**

Let us return to April 2, 2008, when the IDOL, claiming that they had information that Agri was in violation of child labor laws, was given permission by Shalom Rubashkin to search Agri for minors, without a warrant. Employees were interviewed, but at the end of the process Rubashkin was not informed whether IDOL believed that one or more employees were minors.

In e-mail correspondence with the IDOL on April 28, Rubashkin’s lawyers said that to the best of Agri’s knowledge, there were no child laborers, and they asked if IDOL had any information suggesting that there were child laborers at the plant. In the e-mail, the lawyers wrote, “We all agreed that neither the State of Iowa, nor Agriprocessors, wants minors working in Agriprocessor’s facility. We asked for the names of those employees believed to be under the age of 18, so Agriprocessors could take appropriate action to terminate their employment. You stated that you did not want to provide those names.”

In addition, Agri has documents of numerous occasions where Agri actually fired employees because Agri determined that they had lied about their age and were under 18 years of age.

In effect, the motion says that, “It is provable that IDOL knew specific names or alias names in early April. When asked by Agriprocessors to disclose the suspected minors to assist Agriprocessors in complying with Chapter 92, IDOL refused.

“Instead, IDOL continued with their investigation and presumed planning of their own ‘raid.’ Meanwhile, human beings known or reasonably known by IDOL to be minors were permitted by the State to continue employ with Agriprocessors. The IDOL intentionally let alleged minors go to work at Agriprocessors, which is a prohibited place of employment for persons under age 18.

“IDOL intentionally and knowingly let minors go to work at the location that Iowa Labor Commissioner David Neil later claimed, in immigration proceedings on behalf of one minor, subjected them to ‘blackmail,’ ‘extortion,’ ‘false imprisonment,’ ‘felonious assault,’ ‘hostage,’ ‘involuntary servitude,’ ‘conspiracy,’ ‘obstruction of justice,’ ‘peonage,’ ‘slave trade,’ ‘torture,’ ‘trafficking,’ and ‘unlawful criminal restraint.’

‘The IDOL’s investigatory conduct in this case constitutes outrageous governmental misconduct that violates Defendant Shalom Rubashkin’s due process rights. The people of this State entrust the IDOL to protect our children.

“It is outrageous to continue to let suspected children earn \$7.50 per hour in a packing plant while an investigation plods on. Particularly, when the likely reason includes a plan to develop a large workforce complaint so the State can assess more fines - money, from Agriprocessors.

“The IDOL willfully concealed from Agriprocessors and Defendant Shalom Rubashkin important facts which were detrimentally relied upon by the Defendants. This willful concealment placed Agriprocessors in a legal ‘Catch-22’ as Agriprocessors did not have the legal right to guess at ages or fire employees en masse on mere suspicion. The Iowa Civil Rights Act in Chapter 216 prohibits discrimination on the basis of ‘age’. Title VII of the Civil Rights Act prohibits ‘age’ discrimination. Title VI of the Civil Rights Act prohibits discrimination on the basis of race and national origin. Agriprocessors and Shalom Rubashkin had a right to rely upon the lack of reported findings from the search on April 2, 2008 at the plant.”

There you have it. The motion says that the IDOL was so determined to get its 9,311-count indictment that they refused to let Agri try to comply with the law. Their clear intention was to be able to nail Agri with a ‘shock and awe’ indictment that would in effect destroy the company.

This is exactly what happened.

That is the ‘outrageous governmental misconduct’ that Rubashkin lawyers are accusing the government of engaging in. “The conduct is so shocking that due process values necessitate dismissal of the charges as a matter of fundamental fairness.”

#### **WHO IS DAVID G. NEIL?**

One more interesting point that bears scrutiny, which one person close to the case called a “blood libel” against Rubashkin and Agri, is the conduct of the Labor Commissioner of the State of Iowa, David G. Neil. Neil claimed in immigration proceedings against one minor that at Agriprocessors, the minor was subject to “blackmail, extortion, false imprisonment, felonious assault, hostage, involuntary servitude, obstruction of justice, peonage, slave trade, torture, trafficking, unlawful criminal restraint...” Aside from the fact that according to him, if Agri was doing all of the above, Mr. Neil himself committed the gravest travesty by letting the minors whom he knew were working there to continue working there, these highly exaggerated allegations raise questions of an ulterior motive on Neil’s part.

Before assuming the post of Labor Commissioner of Iowa, David Neil was president of the Iowa United Auto Workers Community Action Council, between 1983 and 1985, and a member of the UAW since 1960.

The *Yated* asked Rubashkin attorney Monty Brown if the fact that Agri was not a unionized company and had resisted becoming part of a union could have had any effect on the proceedings that were initiated by the Iowa Labor Commission headed by Mr. Neil, the former union boss, Mr. Brown responded that the motion was not against any particular person but rather about the facts of the case.

Nevertheless, it seems that the question must be asked. In light of the IDOL’s extreme way of prosecuting the case, and in light of the fact that they knowingly put the lives of minors in jeopardy in order to present a ‘shock and awe’ complaint against Agri and Mr. Rubashkin, did Neil’s more than a decade as president of a union and more than 40 years of holding senior union positions influence the way the Department of Labor, under his leadership, prosecuted the case?

It is not a comfortable question to ask, but in light of the many questions surrounding the prosecution of the Rubashkin ‘child labor’ case thus far, it is a question that any person pursuing true justice cannot afford not to ask.

# Real Ahavas Yisroel

BY RABBI PINCHOS LIPCHUTZ

My column last week about the *Yerushalmi* demonstrations elicited varied responses. It was painful to realize how many people think so little of our *chareidi* brethren that they believe whatever they read which denigrates religious people. It is painful to be attacked for writing a sensible article laying out the facts and defending people for trying to exercise commonly held freedoms of expression and assembly.

The entire Israeli media was engaged in a conspiracy once again to paint the religious community as a bunch of backward infidels who are an embarrassment to their religion. It is no wonder that the anti-religious groups readily gobble it up, but it hurt to note that their reports were oft-repeated by religious people and believed by almost everyone.

Since that article was published, another spate of demonstrations broke out over the arrest of a loving *Yerushalmi* mother for allegedly starving her child. Without any examination or proof, the health system, police and media diagnosed her as being mentally ill and suffering from an ailment which forced her to starve her sick child. In the fifth month of pregnancy, she was dragged away, chained hand and foot, sent to the jail in Ramle, which is reserved for the most dangerous of criminals. She was held under inhumane conditions, sleeping on a concrete bed in a cell she shared with an Arab woman accused of murder.

Is that the way a civilized country treats anyone? A separate article in this week's paper highlights the inconsistencies with the case and presents the other side of the story as documented by people in Yerushalayim who, for quite some time, have been involved with the medical issues facing this family. There are witnesses who can testify that the child lay in the hospital for months with a standing order not to feed him anything other than what he received from his feeding tubes. It was only after the mother was dragged off that they began force-feeding the child in a bid for him to gain weight.

Of all the people, the mayor of Yerushalayim, elected because the religious community could not organize around a candidate, found the perfect way to respond to the riots. He called off all garbage collection and municipal services to the areas which the *shababnikim* damaged. So, not only do the parents suffer by having such children, not only does the community suffer by having fires burning under their noses, but the benevolent mayor decrees that there will be no more garbage pickup. Thankfully, his tactic was overturned by the courts.

Mayor Nir Barkat also targeted Americans as scapegoats, blaming them for the violence, with no evidence. Of course, the people inclined to mock *yeshivos* and *yeshiva bochurim* cheered him on, without bothering to ascertain how many *bochurim*, if any, were involved in anti-social behavior they could not have learned at home or school.

Typical of the reaction to all this was an article posted by Rabbi Asher Lopatin on a secular Jewish media site, as well as a religious

one. The Chicago rabbi, who stood with those who castigated the Rubashkins and their Agriprocessors Corporation which supplied much of the United States with affordable kosher meat, is now advising the members of Yerushalayim's *yishuv* on how to handle their affairs.

Back then, he said that "there seems to be a pattern of Jews, and especially Orthodox Jews, not knowing how to relate to gentiles. We have a history of really trying to survive as Jews and having to protect ourselves constantly, but now we are in a different reality. If you want to stay in the Brooklyn ghetto, maybe that's okay. But if you want to go out into the rest of world and get involved in real business, you can't just have the same paradigm we had in Europe or the Middle East."

When he stood beside liberal union groups seeking to unionize a Chicago hotel owned by religious people, he said, "I remember the ads defending Agriprocessors - talking about how it's this modern, clean factory. People were just deluding themselves. That's the impression I have here, as well."

Anyone who visited Agri had to be impressed by the high level of cleanliness evidenced in the USDA inspected plant. That was never in doubt. Yet this rabbi was able say anything with impunity, for he was talking about a plant owned and operated by old-style religious Jews. Who would go after him for playing up the centuries-old canard that religious Jews are dirty and slimy? He can freely posture for the media and the liberals who write him up in glowing terms.

Though he is Orthodox, he does seem to have an agenda against the black-hatted Jews. It is to be expected that the secular media would play him up. What hurts even more is when the Orthodox media quotes him and publishes his missives, such as his recent one against *Yerushalmi Yidden*.

He writes, "Rather than rioting against what seems to be saving of a child's life - *piku'ach nefesh* - didn't you question for a moment what is going on? What are the names of *chareidi* organizations that protect children - and spouses - from abuse? The *chareidi* community in America has such organizations which serve the entire Jewish community - have you set up yours? I haven't seen them involved or consulted. No, instead of blaming Hadassah hospital, the doctors and the media of a conspiracy, maybe you should begin a process of coming clean and accepting that domestic abuse occurs in all types of communities - from the most religious to the most secular, Jewish and non-Jewish. And that sometimes the police and the authorities have to be brought in to protect children and spouses. That would be the appropriate response, one that would be a *kiddush Hashem*, which would win the respect of Jews and non-Jews for Torah and for Judaism."

Rabbi Lopatin continues:

"My brothers and sisters in the *chareidi* community: G-d's name

is not sanctified by you showing how much political muscle you have to close parking lots, to maintain the ‘status quo,’ or to show that you can do whatever you like to your kids without the authorities intervening: that’s not the way to sanctify G-d’s name, or even your name. The way to *kiddush Hashem* is for all of us to place G-d and G-d’s kindness above our own agendas, and to show that we are willing to sacrifice even our own serenity on *Shabbat*, our own control over our families, in order to protect the weak and make G-d’s name something beautiful and desirable, not something which people cannot run away from fast enough.”

Without bothering to find out what the facts are, much as was the case in his campaign against Rubashkin, Lopatin bought the media story, lock stock and barrel. And why not? After all, it is those same backward, insular people who have no concept of law, order and hygiene.

He didn’t speak to anyone who was at the so-called riot, because if he had, he would have found out that thousands of religious Jews congregating to protest the treatment of one of their own does not constitute a riot. He didn’t speak to any spokesmen for the Toldos Aharon *chassidim*. Had he, he would have heard their categorical denouncement of any violence. He would have found out that the protests were peaceful. He would have discovered that troublemakers, known as *shababnikim*, were responsible for the burning of trash bins and creating other mayhem after the masses of protesters had gone home.

Shame on him and shame on those like him who accept as fact whatever they read in condemnation of religious Jews, and anyone else for that matter. Shame on him and those like him who post such drivel and contribute to the increasing hatred of religious people and our causes. Shame on people who seek to divide the Jewish people, rather than bring us together. Shame on people who are ready to denigrate and dispense self-righteous advice to Jews who hew to an ancient and hallowed way of life.

Walk down Rechov Meah Shearim and observe the Reb Arelach, as the Toldos Aharon *chasidim* are affectionately referred to, as they go about their daily lives. They are the most unpretentious and humble of people. All they ask for is to be left alone so they can serve Hashem. They don’t seek material pleasure and always seem to be so happy. Their children are picturesque epitomes of simple beauty and *chein*. They obey all laws and exhibit no anti-social behavior. To accuse them of being rioting baby killers is nothing short of a modern-day blood libel and lynching.

I invite Lopatin and the rabbi who wrote in The Jerusalem Post to join me for a visit to Meah Shearim. Let’s go visit the stores and places of business of the Reb Aralach – yes they do work – and see how they conduct themselves. Let’s visit their homes and see how they live. Let’s follow them to the *Beis Medrash* and observe them *davening* and learning. We’ll go to the *rebbe* and you can ask him all your questions. We’ll visit Ben Zion Oiring and watch a one-man *chesed* operation in action. We’ll talk to Uri Zohar and hear what he has to say. We will pay a visit to Rav Dovid Soloveitchik and you can ask him why he publicly referred to the sorry story as a blood libel. We can just stand at Kikar Shabbos and watch how these loving lovely people go about their daily affairs. If, G-d forbid there should be a need for another *hafganah* we can attend and watch how Yerushalmi *yidden* peacefully express their pain and how they are treated by the police. And we can stay till the bitter end and watch how the rif-raf comes and destroys the place.

And then we can review together what we have seen and determine whether a re-evaluation is in order.

As we enter the month of *Av*, it would behoove us to seek to bring Jews together and create a *kiddush Hashem* wherever and whenever possible. Though the response to my column last week on the *Shabbos* demonstrations hasn’t been what we expected, neither has the outpouring of support we have been receiving for our campaigns on behalf of two *chassidishe Yidden*, Shalom Mordechai Rubashkin of Postville, Iowa, and Ben Tzion Oiring of Yerushalayim *ihv hakodesh*. Good Jews were touched when reading about their financial situations and wrote out checks for people they don’t know. That is real *ahavas Yisroel* of the type that is *mekareiv* the *geulah*. *Ahavas Yisroel* doesn’t mean writing articles in the Jewish Journal, Jerusalem Post, or on various websites and blogs slamming *frum yidden*. *Ahavas Yisroel* means to give a Torah Jew the benefit of the doubt and to examine the story before rushing to judgment and engaging in the castigation of good people who are under attack.

May we merit welcoming Eliyahu *Hanovi* in enough time to declare *Tisha B’Av* a *Yom Tov*.

*Anyone who visited Agri had to be impressed  
by the high level of cleanliness evidenced  
in the USDA inspected plant.*

*That was never in doubt.*

*Yet this rabbi was able say anything  
with impunity,  
for he was talking about a plant owned  
and operated by old-style religious Jews.*



# The FBI Unmasked

## HINTS OF DREYFUS

BY DEBBIE MAIMON

Allegations of anti-Semitism surfaced recently about a 2004 FBI sting that entrapped two Jewish members of AIPAC (American Israel Public Affairs Committee) in espionage-related charges.

The allegations raised fresh concerns about the FBI's true motives in the case which, to the government's embarrassment, collapsed after four years of pre-trial maneuvers due to lack of evidence.

Because the FBI operation invoked an archaic law to indict the men, attempting to criminalize activities that are acceptable and routine for lobbyists, the Bureau's actions invite suspicion that its real aim in the bizarre sting was to curb the influential pro-Israel lobby, AIPAC.

By falsely discrediting some of its most prominent members, many now think the FBI was really seeking to weaken and discredit the entire organization.

The allegations of anti-Semitism were made by former Pentagon analyst Larry Franklin, an expert on Iranian affairs. Franklin, who is not Jewish, served as a key player in an FBI operation that targeted AIPAC members Steve Rosen and Keith Weissman.

Last week, Franklin broke a silence of many years, telling the *Washington Times* that anti-Semitism tainted the entire affair and may have been an "incitement in the investigation."

### DANGLING THE LIVES OF JEWS AS BAIT

As an FBI "cooperating witness," Franklin was wired with FBI recording devices during staged meetings with Rosen and Weissman that were aimed at trapping them with irresistible bait: he told them that Israelis in Iraq were being targeted for assassination by Iran, and begged them to help.

Rosen and Weissman fell into the trap. Hoping to save lives, the men hurried with the classified information to an Israeli embassy official and to the *Washington Post*. They also tried to alert the National Security Council. Not long afterward, the two were arrested and indicted for conspiracy.

The arrests astounded the political and journalism community in Washington. In singling out the two AIPAC staffers and prosecuting them for information-sharing that is routine between lobbyists, government officials and reporters, the FBI clearly seemed to be trying to strike a blow at AIPAC.

The men were fired from their jobs, and endured four years of exhausting litigation leading up to their trial. Then, following a relentless pre-trial battle, involving dozens of hearings, depositions, rulings and appeals, the Justice Department came to the conclusion that despite all its efforts, it was not going to win a guilty verdict. With just 30 days to go before the trial began, the government dropped the charges.

By then, the ten-year investigation and prosecution case, costing the federal government millions of dollars, had destroyed the reputations and livelihoods of two innocent men. As the reaction to Larry Franklin's

testimony suggests, the affair has also prompted suspicion of religious bias and an abuse of power in the top echelons of the FBI.

### "FRANKLIN WAS SENT TO TEMPT JEWS"

Franklin's *claims of an anti-Semitic agenda driving the FBI's campaign against AIPAC were backed by Rosen in the Jerusalem Post*. "Within the counterintelligence bureaucracy of the United States government, there is a virulent ideology about Israel and Jews," he said. "These guys believe there's a Jewish cabal, a Jewish conspiracy."

Rosen said that some insiders feel that the FBI's real target was not Franklin, but his superiors, Deputy Defense Secretary Paul Wolfowitz and Undersecretary of Defense for Policy Douglas Feith, outspoken advocates for Israel.

Several Jews held prominent positions in the defense department at the time. Many, like Wolfowitz and Feith, were associated with the "neoconservative" faction in the Bush administration that supported close U.S. ties with Israel. Stereotypes about Jewish power mushroomed in the aftermath of the Iraq invasion, giving rise to conspiracy theories about excessive Jewish influence over President Bush and U.S. foreign policy.

These theories infected the State Department, a branch of government that has traditionally been pro-Arab and has manifested hostility to Israel. Some point to the near-obsession on the part of numerous State Department officials with the notion that American Jews hold "dual loyalties."

"The anti-Zionist concept [pervading parts of this department]," writes the *Washington Post*, "holds that Israeli objectives run contrary to U.S. national interests; that many American Jews, including those in senior policymaking positions, suffer from divided loyalties; and that pro-Israel political influence holds sway over U.S. government decisions."

Franklin was apparently sent out by his FBI handlers to tempt Jews, the article notes. "He tried Adam Ciralsky at CBS News, who had once sued the CIA for anti-Semitism, and Richard Perle, who was on his way to vacation in France, as well as Pentagon employees who had done nothing more than work with Franklin. All turned down the offer of classified information."

He then went to work on the AIPAC lobbyists, using tastier bait - the prospect of saving Jewish lives - and here he succeeded.

### Using 'Dead Laws' To Prosecute

The Justice Department prosecutors decided to indict Rosen and Weissman under the Espionage Act, a law which has never previously been invoked. As Harvard Law Professor Alan Dershowitz notes, it is not even clear if the statute, so long ignored, actually remains law! In his words, "It is a well-established norm in the U.S. that when a law is not enforced for many years, it ceases to be considered law."

The reach of this law, which dates from the World War I era, has never been clear. By its terms, it would seem to require every U.S. citizen to protect the government's secrets - a principle completely at odds with the American system of full disclosure and public debate.

The decision to prosecute Franklin, Rosen and Weissman under the articles of the Espionage Act, says Dershowitz, was "selective prosecution" at its worst. "If every administration official who did what Franklin did were prosecuted as he has been, there would be more government officials in prison than at the State Department, the Defense Department or the White House," he argued.

### DOUBLE-CROSSED

Franklin ended up being double-crossed by the FBI, who had him arrested for spying for Israel. He ended up admitting in a plea bargain to breaking the law by passing classified information to outside parties, and was sentenced to 12 years in prison. To win a reduced sentence, he agreed to cooperate in the FBI operation against Rosen and Weissman.

Rosen charged that Franklin was railroaded into pleading guilty and playing along with the FBI by threats to harm his family by cutting off his pension. In an interview with the *Jerusalem Post*, he said federal prosecutors used the same type of tactics against him.

"The [FBI] wanted to destroy me," he said. "They forced AIPAC to fire me. They forced AIPAC to cut off my attorneys' fees," he said. "They tried to isolate me, to put me in a situation of desperation where I would have to plead guilty to something I did not do. This happens all the time."

"After years and millions of dollars spent investigating the nefarious 'Israel Lobby,' the case produced no stolen secrets, no money changing hands, no covert meetings, no high-level, dual-loyal officials, no harm to the national interest and no spies. Pardon me, but where's the corned beef?" wrote the *Washington Post*.

Notwithstanding the collapse of the case and the indications of an abuse of power behind the entire affair, Rosen warned that other officials in Jewish organizations may become targets for similar charges. "They still believe there are Jewish spies under every bed," he said.

### RUNNING FOR COVER

The response of the Jewish community to the prosecution of the two AIPAC lobbyists, specifically in the case of AIPAC itself, was to run for cover.

AIPAC did not immediately dismiss the two men, but initially used the charges against them as a fundraising opportunity, raising a record \$45 million.<sup>9</sup> But soon, under government pressure, intimidated AIPAC leaders fired the two lobbyists, cut off their legal fees at times and distanced themselves, and their allies on the Hill, from even verbal support.

AIPAC also made it difficult for others within the Jewish community to employ Rosen and Weissman. Thus, for more than five years from indictment to the dropping of charges, their lives were on hold, their resources depleted and financial survival imperiled. They were sidelined and virtually silenced. Only belatedly did some Jewish officials speak out in their defense.

AMCHA was the only Jewish group that filed an *amicus*, or friend-of-the-court, brief in the case. The 2007 submission, in response to a government request that the trial be closed to the public, compared the case to the Dreyfus affair, and insisted that the men were entitled to an open trial.

AIPAC and the American Jewish community as a whole were not the only ones who abandoning two of their own, whose only crime was caring enough about Jewish lives to overstep the bounds of convention. The government of Israel refused to cooperate with the defense in any way.

A good part of the government's case revolved around charges that Rosen and Weissman shared classified information with Israeli government officials. Being able to prove that Israeli officials already had learned of the information directly from their own contacts with U.S.

officials, or that they themselves had been the original source of the information, was critical to the defense.

Yet, according to attorneys for Rosen and Weissman, request after request to the Israeli Embassy in Washington and to officials in Israel were denied. They would not agree to an interview, even in Israel; they would not agree to an exchange of information, even through attorneys. They refused to help in any way.

### PARALLELS WITH THE RUBASHKIN CASE

If an inside view of the AIPAC affair lifts the veil on an anti-Semitic mindset driving some quarters of the State and Justice Departments, it also throws a spotlight on a number of disturbing parallels in the government's case against Shalom Rubashkin.

As in the AIPAC affair, prosecutors in the Rubashkin case have invoked an arcane law to prosecute the defendant, ignoring the fact that this law is not only outmoded, but vague, undefined and never before applied.

The law in question is the 1921 Packers and Stockyards Act that requires meatpackers to make "prompt" payment to livestock owners, or suffer a penalty of six months imprisonment along with a massive fine.

Included in the 169-count indictment against Shalom Rubashkin of Agriprocessors are 19 counts of failing to keep this 88-year-old law's ambiguous, outdated provisions.

Although the Packers and Stockyards Act calls for the prosecution of all employees at the meatpacking plant who were directly or indirectly responsible for the delayed payments, prosecutors invoked the law against Rubashkin exclusively.

An indictment singling out one individual for actions for which everyone else gets a pass is discriminatory and should be dismissed, Rubashkin's attorneys argued.

The lawyers have petitioned the judge in the case to dismiss the charges, calling the Packers and Stockyards Act "defective" and the draconian penalty of six months imprisonment "cruel and unusual punishment."

Supreme Court: "Identity Theft Charges Misapplied"

In light of a U.S. Supreme Court ruling "that one of the most widespread charges against plant employees, aggravated identity theft, was wrongfully applied," some have begun to question the accuracy and honesty of the charges against Rubashkin.

This Supreme Court ruling was cited in newly released book that examines how Postville, Iowa, home of Agriprocessors, has all but collapsed in the wake of last year's massive raid by immigration authorities. The book, "Postville, USA," questions the legality of the raid and the methods used to extract plea bargains from hundreds of illegal aliens.

Authors Mark Grey and Michelle Devlin paint an incriminating picture of the government's immigration arm, which conducted the raid, as well as the federal court that cooperated with it. "They railroaded nearly 300 illegal aliens into plea bargains which the authors believe were obtained under false pretenses," *JTA* wrote.

Although Rubashkin's trial is not scheduled to begin until September, in the courtroom of public opinion, many have already convicted him. The media onslaught, taking its cue from the government's relentless pre-trial maneuvers, has influenced a good portion of the American Jewish community.

Perhaps American Jews, instead of marching in lock-step with the steady drumbeat of media assault, should heed some of the lessons of the AIPAC affair that pertain to American Jewry and its tendency to leave a soldier alone on the battlefield.

"Whether it realizes it or not, American Jewry today hovers near a precipice," writes Caroline Glick in *Jerusalem Post*. "It can force its way back onto stable ground, or it can fall. The basic question it faces is whether Jews in America have found a permanent, stable home in America where they are free to be Jewish, or whether they will begin to act as though they are guests in their own country."

# What If?

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BY RABBI PINCHOS LIPSCHUTZ

The driver who took us from Postville back to the Minneapolis airport for the flight home summed it all up. As we were approaching our destination after a three-hour drive through the darkened cornfields in the wee hours of the morning, Jonathan Saphira turned around and said to me, “I must tell you something. Last year, when you came to visit after ‘the raid’ and I drove you from the Minneapolis airport to Postville, it was a life-altering experience for me.”

I was worried that I had done something wrong. I listened with rapt attention as our driver, a resident of Rochester, Minnesota, and a translator who worked with Hispanic Agri workers before the raid, continued.

“You see, I don’t know if you remember, but you were in the car with another rabbi. I had thought that I knew everything about Agriprocessors and the Rubashkins and that I didn’t have to pay attention to the media reports. But then I heard how that rabbi was speaking and how you were arguing with him in vain, and I realized for the first time the power of the media and how their unsubstantiated allegations took root and gained acceptance. Even religious Jews and people like that rabbi fell for what they were writing and that added to the pressure. I am sure that if religious Jews had fought back, the government never would have been able to proceed based on the anonymous, unfounded allegations I knew were wrong, and we wouldn’t be where we are today.”

Jonathan couldn’t have expressed it better. So many of our problems are self-inflicted. We hear a good story, we jump to quick conclusions without bothering to ascertain the truth, and in the process we destroy people, families, careers, and much else.

It’s not a secret to *Yated* readers that we are haunted by what happened to Agriprocessors and to Shalom Mordechai Rubashkin. I have read the malicious book about the Postville experience and the reports of the disgusting manner in which the workers there were treated. I read the articles painting the company managers as modern-day shylocks trading in human misery and making their living off of the virtual enslavement of a servant class of workers. They were rolling in money like typical evil capitalists, the articles claimed, enjoying the fruits of the labor of the illiterate, the unskilled, and the proletariat, whom they ruled over.

The facts as I saw them with my own eyes on my visit to the plant last year were so obviously contrary to the media portrayals that I didn’t have to be a conspiracy theorist to sense that something deep and sinister was at work.

The plant was ultra-modern, ultra-clean, ultra-efficient, and so far removed from the jungles of Chicago and Upton Sinclair that it was inconceivable how any objective person could confuse the two. The workers, both home-grown Americans and those from Spanish-speaking countries to our south, smiled as they went about

their work and, when we spoke to them, had only positive things to say about their jobs, their bosses, and their salaries.

But as the only media outlet to constantly take up the cause of reporting what was really transpiring in that plant and in the town of Postville, our efforts, regrettably, were not enough to turn the tide and convince the masses of the truth.

People who should have known better didn’t. People who are enjoined not to accept *lashon hara* and *hotzo’as sheim rah* did. People who should have given their brethren the benefit of the doubt didn’t. People who should have perceived that the real target was *shechitah*, and should have raised a hue and a cry, didn’t. Thus, the lynch mobs were able to vilify and destroy the reputation of a family renowned for its charity and care of the less-fortunate.

A dream of the highest standards of *kashrus* coupled with the highest quality of USDA inspected meat was allowed to turn into a nightmare, and few who could have made a difference can say, “*Yodeinu lo shofchu es hadom hazeh.*”

We didn’t care. It was just another news tidbit for us to talk about. It was fodder for conversation, and we didn’t fathom the human toll and cost it would take.

When I saw how wide the gap was between the facts and the reports, I adopted the cause. I had never met Shalom Mordechai Rubashkin. We became close over the year of his travails by speaking on the phone and through emails and text messages, and then he decided that it was time we met.

My wife and I spent this past *Shabbos* in Postville, Iowa. We took off to the *Shabbos* of *Chizuk* for Shalom Mordechai with great trepidation, not knowing what to expect, but it turned out that we had nothing to fear, and we learned quite a lot over the day and a half that we were there.

Imagine living in a place three hours from anywhere where you can buy a house on a decent piece of property for \$25,000. Imagine living in a town where there is no crime and everyone keeps their doors unlocked day and night. There are no hills, the earth is as flat as can be, and when you look around, all you see are fields of green for miles around you. You are enveloped by a calming silence and fresh fragrant air wherever you go. Very rarely does a car come by, and when it does, it is moving at about 15 mph.

The tiny sliver of a town has a *shul*, a *yeshiva*, a *cheder*, a *mikvah*, and a kosher, fully-stocked grocery store. Everybody *davens* in the same *shul* which, if you didn’t know better, could be confused for a *chassidische shteibel* in Boro Park or Yerushalayim. As you walk out of *davening*, you hear the people speaking to each other in a dialect composed of Yiddish, English and Hebrew in a way that you can’t tell who is from here and who is from Israel. They all sound alike and get along so well with each other.

*We should realize that not only is one factory and one family under attack,  
but all of us and our families have become fair game for those  
who have been battling our existence ever since the days of Mendelsohn, Graetz,  
Achad Ha'am, Solomon Schechter and all the rest.*

As strange as it sounds, some people live here and commute to their jobs in other states, coming home for *Shabbos*. One *shochet* I spoke to is a Klausenberger *chossid* from Yerushalayim. From his mother's side, he hails from the Vilna Gaon. His great-great-great-grandmother arrived in Eretz Yisroel with the first organized *aliyah* shortly after the passing of the Gaon. He went to Postville to *shecht* for Agri and now commutes to the *shechitah* in Kansas. He loves it in Postville. What is there not to like? He says this is the best place to bring up children, so far from the vagaries of city life and incipit influences.

In addition to spending a *Shabbos* in the company of people we had just met but who felt like family, on Friday night there was a *shalom zachor*, and on *Motzoei Shabbos* there was a festive *melava malka*. We experienced real, living *Yiddishkeit* in the cornfields of Iowa. It was such a lovely experience to spend *Shabbos* with so many nice, normal, friendly people.

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This week's *parsha* opens with the *posuk*, "*Atem nitzovim hayom kulchem - You are standing today, all of you...*" The Medrash Tanchumah states that we can only be *Nitzavim* and merit the light of Hashem when we are united *b'agudah achas*. Additionally, the Medrash says, the Jewish people will not be redeemed until they are united together *b'aguda achas*." If we want to merit the *geulah*; if we are to succeed in *golus*, we have to be all together. We have to see past the hype, past the headlines, past our own *daled amos*, and we have to give people with reputations as *ehrlische Yidden* the benefit of the doubt.

When an unholy alliance is comprised of conservative rabbis, the liberal media and unions who have contributed to the losses of millions of American jobs, we ought to know that they are up to no good and we should be prepared to engage them and defend our way of life before they destroy it.

When people who don't believe in the divinity of the Torah, nor observe the laws of *kashrus* and *Shabbos*, discover new *mitzvos*, such as declaring that when employees are improperly treated the products they produce become unfit for Jewish consumption, alarm bells ought to go off. We should realize that not only is one factory and one family under attack, but all of us and our families have become fair game for those who have been battling our existence

ever since the days of Mendelsohn, Graetz, Achad Ha'am, Solomon Schechter and all the rest.

They raise allegations and reinforce them with age-old stereotypes, neither proving nor substantiating their charges, and then they convict the religious Jew of living an antiquated way of life which leads to anti-social behavior.

We are vilified daily in the media and painted as extremist, backward weirdos who must be combated and put into our rightful places. We ignore it and let it fester. While a religious Jew used to be treated with a measure of respect, today we are barely tolerated and are looked at with contempt wherever we go. The lie gains traction if it isn't batted down and has the potential of eventually becoming universally accepted as the truth.

Not only gentiles and secular Jews, but even we, the Torah observant community, begin viewing our co-religionists with added degrees of suspicion and cynicism. After all, the media has proven that *frum* Jews are dishonest schemers who can't be trusted, we are



repeatedly told. Not only that, but these Orthodox Jews are also dirty, unkempt, vile Neanderthals whom one should do his very best to avoid. They say we are anti-social, refer to cops as Nazis, walk around with hatchets with which to kill hapless Arabs we find in our midst, defend baby killers, and our rabbis moonlight as money-launderers.

An acknowledged *baal chesed*, *baal tzedaka*, decent, honorable person is about to stand trial for his life. Who would have believed that the beautiful experiment in kosher production and establishment of an entire town around it, would end this way? Who could have dreamed that the person who devised the most modern system of kosher *shechitah*, processing and distribution would be preparing to stand trial, being accused of running a decrepit operation, without the money to defend himself?

When you see that ad which we run here in the *Yated* every week for the *Pidyon Shvuyim* Fund, think to yourself that this is not just an effort to help one person. It is an undertaking to defend our right to practice our religion responsibly without people casting stones at us and depicting us as frauds, as has been the pattern throughout our history in exile.

We will keep this story alive until it reaches its conclusion and will continue to report the truth so that perhaps, one day, when people look back at this sorry episode and wonder what really happened, there will be a record for those who really care about the truth.

As we have done in the past, we will continue to try our very best to defend *ehrlische Yidden*, without respect to their affiliation, dress, or mother country. No *frum* Jew should ever again be considered fair game.

When religious Jews are selected for prosecution for engaging in standard industry practice, we must stand beside them and fight the biased racial and religious profiling.

Just last week, American Apparel Company worked out a deal with the government and laid off 1,500 immigrant workers whom the government determined to be working illegally. The factory wasn't subject to a raid and the workers and managers weren't led away to jail in shackles. A gentlemanly, professional agreement was negotiated and everyone got on with their lives. Why was the Agri experience so different? Why weren't they taken up on their offer to fire anyone who the government felt shouldn't be working in the plant?

Also last week, former Israeli Prime Minister Ehud Olmert was indicted for robbing charities as well as the Israeli taxpayer. There was no hand-wringing from the same people who have castigated our education system and entire way of life because of some unproven allegations splashed around in the press. The news was reported and that was it. No one dared call the Zionist system into question. No one spoke of Olmert's heritage as a prince of the Likud party and a scion of a storied Zionist party. No one called on the state to learn lessons and adopt a moral code for all to follow. The people who are quick to tar all religious Jews at the slightest hint of scandal were not heard from when the embarrassment of the indictment of the head of the Jewish state spread across the globe.

Just imagine what would have happened if Olmert had been loyal to his Jewish religion and been a *yid* with a beard and *payos*. Imagine the commotion. Imagine the demagoguery and oratory that would have been let loose on religious Jewry. We wouldn't have had where to hide. But since this corrupt decrepit leader is a consumer of *treif* and walks around with a bare head, he and his ilk get a free pass.

Yet we accept that double standard and take it for granted. Many times, we don't even realize it is taking place.

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The *shul* in Postville is named Achdus Yisroel and that is ex-

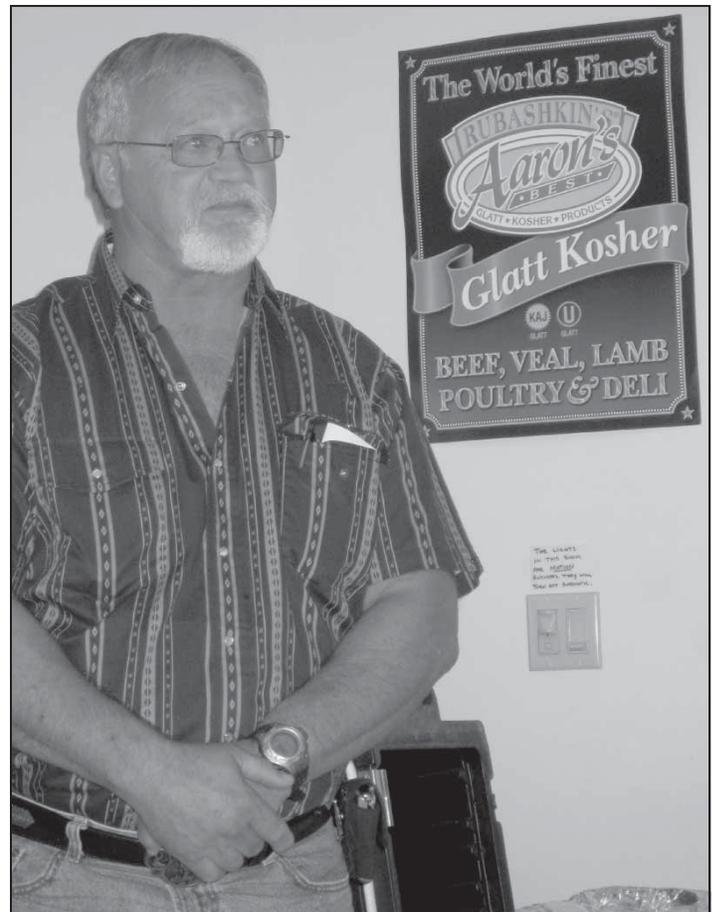
actly what it is. It is a place that draws all types of Jews, who speak a collection of languages and hail from various parts of the globe. They all get along. A spirit of calmness pervades the *shul* where everyone knows everyone else, each person feels at home, and all attendees get along magnificently.

I couldn't help but think of the *Chazal* which states that when Jews are *b'achdus* and together, they can stand up to any enemy, except those who we ourselves empower. But the thought that this idyllic little town of Torah in the middle of nowhere in Postville, Iowa, may be headed for Ghostville hung over the place. Despite all the smiles and the cheerfulness, and the pervasive *simcha* and *bitachon* apparent there, nobody knows what the next year will bring. This is because it is not only our external, eternal enemies who have been empowered to destroy this place of transplanted *kedushah* by themselves, but the fact that they have been aided and abetted by wolves in sheep's clothing disguised as do-gooders concerned with the ethical treatment of animals and the people who process them.

As we approach the *Yom Hadin* and seek *zechuyos* for ourselves, let us *daven* for the success of the good *Yidden* of Postville and all the others in economic distress across the country, and resolve to improve in the *middah* of *kol Yisroel areivim zeh bazeh* in every aspect of our communal and Jewish lives.

*Ish lereyeihu ya'azoru ule'achiv yomar chazak*. When what divides us is external and minor, we have to ignore those differences and be able to support each other and come together as one nation for our eternal benefit.

Let it not be said of us in the coming year that we remained apathetic and didn't rise up when the occasion demanded it. Let it not be said that we didn't fight for the truth and help it emerge from the dark clouds of *golus* and treachery.



# Rubashkin Trial Underway

PRAYERS CONTINUE FOR SHALOM MORDECHAI BEN RIVKA

BY DEBBIE MAIMON & AVI YISHAI

The first of two trials of Reb Shalom Mordechai Rubashkin, former manager of Postville's kosher meat plant, began Tuesday at 9 a.m. A group of Jews traveled from New York to Sioux Falls, South Dakota, to show support.

The group chartered a bus in order to accommodate those who want to demonstrate support for a man who for countless years gave selflessly to the greater *frum* community and whose *chesed* activities were always carried out without fanfare and with few people being aware of them. Members of the group told us that Reb Shalom Mordechai is "extremely calm and confident, and filled with tremendous *bitachon*."

"It is truly amazing," Getzel Rubashkin, a son of Reb Shalom Mordechai, said. "My father continues to instill *chizuk* in all of us, when logic would suggest that the opposite should be true. He is a true *boteach baHashem*."

Eliezer Pinson was one of those who made the long trip to the South Dakota courthouse. "Everyone who knows him, knows him as a great man," said Eliezer. "People look up to him. He has always made time for everyone."

Shalom Mordechai's legal team will work to prove his innocence in the face of the charges which have been leveled against him.

"This case has presented an opportunity to many *Yidden* to help Shalom Mordechai in a physical way and demonstrate support to the world, which will be carefully watching this trial," said one of the members of the group that traveled to South Dakota.

Reb Shalom Mordechai will face 163 charges in two trials which could effectively send him to prison for the rest of his life - a shocking reality in a case of the Federal government railroading a man in unparalleled and unprecedented fashion.

Reb Shalom Mordechai has prepared for the trial "intensely, but also with the peace of mind of a man who knows he will be, G-d willing, fully exonerated," Getzel Rubashkin said.

The trial comes more than a year after federal agents raided AgriProcessors and arrested 389 illegal immigrants during an infamous raid of the slaughterhouse. Reb Shalom Mordechai, who has pleaded not guilty, has steadfastly maintained his innocence and hopes to be able to prove that in the trial.

Agriprocessors filed for Chapter 11 bankruptcy protection in November 2008. The plant was sold to SHF Industries, a new Iowa company headed by Montreal businessman Hershey Friedman.

Defense lawyer Guy Cook of Des Moines has said that his client denies all of the charges.

The judge has placed a gag order on the legal team, preventing them for speaking outside of the courtroom.

The fraud and immigration trials were slated to take place in Cedar Rapids in the state of Iowa, where the plant is located, but U.S. District Judge Linda Reade moved the trial to Sioux Falls because she

determined that pretrial publicity so tainted the jury pool that the trial had to be moved out of state.

Some of the charges against Reb Shalom Mordechai are unusual for a federal criminal case, legal scholars have said. Prosecutors allege that Reb Shalom Mordechai violated a 2002 order by the U.S. secretary of agriculture to pay cattle providers within 24 hours of a sale. The charge stems from a 1921 law, the U.S. Packers and Stockyards Act. The law requires "prompt payment" to protect livestock producers, but has never been used before in a criminal case.

"This is the first time in my life that I've heard of that," said Chris Kelley, a University of Arkansas law school professor.

Prosecutors also have revised their charges against Reb Shalom Mordechai seven times, which defense lawyers and legal experts say is unprecedented.

"Anyone who 'knows' my father from media reports does not know him at all," Getzel Rubashkin told the *Des Moines Register*. "The character portrayed was created out of whole cloth, as anyone who knows my father immediately recognizes. ... My father is a kind man, dedicated to helping others, be it in the sphere of family, community (both Jewish and non-Jewish) or beyond."

## ANATOMY OF A CASE

Jury selection began Tuesday and we can only pray that a fair trial and constitutional rights remain the benchmarks of justice in courts of law in this country. However, in a case already scarred with inequity, one can't be faulted for being deeply worried about justice's chances in this case.

The recent federal audit of clothing company American Apparel, which led to the discovery of almost 2,000 illegal immigrants on the company payroll, highlighted some of these inequities. It raised troubling questions about the government's 2008 immigration raid on AgriProcessors and the current prosecution of Reb Shalom Mordechai.

The two cases bear a number of similarities. A significant percentage of the workforce in both companies consisted of immigrants who were discovered to be in the country illegally. Many of them were using fake social security numbers, as well as fraudulent identification documents. The investigation in both cases was carried out by ICE (Immigration Customs Enforcement), a branch of the Department of Homeland Security, in conjunction with the FBI.

Here is where the similarities end.

In the case of AgriProcessors, ICE's sensational raid corralled nearly 400 illegal immigrants, most of whom were jailed and subsequently deported. The government's weighty indictment against the meat-packing plant and its owners led to the company's collapse and bankruptcy.

## SHOCK AND AWE?

In view of the spectacular operation against AgriProcessors, with hundreds of ICE and FBI officers, backed up by helicopters, descending on the plant and handcuffing and shackling hundreds of employees, one might have expected a similar show of “shock and awe” in the American Apparel case.

Yet nothing of the sort happened. The government limited itself to an audit, carried out quietly and respectfully. American Apparel’s management was notified of the results, namely, that 1,800 hundred employees were undocumented immigrants, ineligible for employment in the United States. Despite media predictions of arrests, deportations or indictments, no federal action against the immigrants or their employers took place.

Even dire warnings that the company would be hit with massive penalties turned out to be false.

The *Associated Press* reported that Peter Schey, an attorney working with American Apparel on the audit, “said the results showed no wrongdoing by the clothing manufacturer. He said the government initially said it intended to impose a fine, but withdrew after correspondence with the company.”

That correspondence included the company’s assurance that it had no knowledge of fraudulent documentation in connection with any of their employees. Company spokesmen also noted that there was no way to ascertain whether the identification presented by workers in their applications was authentic.

American Apparel immediately pledged to terminate the employment of the 1,800 workers deemed “unauthorized” or of “uncertain status.” Those measures seem to have satisfied the government.

## RUSH TO PROSECUTE

The dismissal of so many hundreds of workers was undoubtedly a blow to the clothing company, not to mention its devastating impact on the immigrants themselves. Yet the government’s relative leniency in the case, in contrast to the extreme harshness meted out in Postville, and the rush to prosecute Reb Shalom Mordechai Rubashkin, suggests an excessive zeal driving the prosecution in the latter case.

The 91-count indictment itself seems pumped up. Revised an unprecedented number of times, it contains a host of charges stemming from the Packers and Stockyard Act, an outmoded law that mandates jail time and stiff penalties for company officials who fail to punctually pay cattle breeders for livestock.

The defense team notes in court papers that, as mentioned above, the law has never been invoked or enforced; for all intents and purposes, it is irrelevant. Yet, that hasn’t stopped prosecutors from digging it up to use in the indictment against the defendant.

Other indications of an overzealous prosecution emerged after numerous charges were dropped from the indictment when it became apparent that they wouldn’t stick. In the most striking case, all charges related to identify theft have been dropped, following a Supreme Court ruling that the charges were “misapplied.”

In addition, close to two hundred charges of employing underage workers were recently dropped, after Reb Shalom Mordechai’s attorneys produced evidence that the so-called “minors” were actually eighteen years of age or older.

## WITNESSES WITH A HISTORY OF LYING

The prosecution’s insistence on using witnesses with a history of lying to officials invites scrutiny, as well. These include illegal immigrants who admittedly lied to get into the country and lied again to obtain jobs; their history of lying and doctoring the facts should disqualify them from testifying in court, defense attorneys argued.

Damaging their credibility even further are the circumstances in which many of these individuals were recruited as prosecution witnesses. These circumstances include having powerful incentives, such

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as U visas, dangled before them.

The U visa is a means of obtaining the much-coveted “Green Card.” It is granted to immigrants as a means of encouraging them to cooperate in the investigation or prosecution of a crime, without fear of being deported once their illegal status is discovered. The immigrant must qualify as having been victimized by the crime under investigation.

The prosecution has lined up many witnesses who they say fall into this category. Jailed at the time of the raid, these individuals earned credit toward a U visa by giving testimony about allegedly “unsafe work conditions” and other infractions of the law at AgriProcessors.

Other witnesses for the prosecution, who are anxious to join their deported families but are being held in the country pending the Rubashkin trial, have been led to expect permission to leave the country as a reward for their cooperation.

The Rubashkin defense team has asked the court to bar the testimony of all witnesses whose lives and future hang uncertainly on the amount of cooperation they give the prosecution. “The pressure to tell the prosecution’s version of the truth” is too powerful to resist, the attorneys pointed out.

In addition, fear of the legal consequences of deviating from statements they gave to the grand jury has the effect of virtually “locking in” witness testimony - even under expert cross-examination.

## ICE WON’T DIVULGE DOCUMENTS

Perhaps the most troubling of all the questions surrounding this case is the refusal on the part of ICE authorities to release information regarding the 2008 raid on AgriProcessors, in response to defense attorneys’ repeated requests.

The refusal constitutes non-compliance with the Freedom of Information Act (FOIA).

Reb Shalom Mordechai has sued ICE in an effort to gain access to the documents deemed crucial to his case. The lawsuit notes that he first filed a FOIA request in February. After three follow-up letters in July and August by Reb Shalom Mordechai’s attorney, ICE still hasn’t complied with the request for documents on why the raid was conducted, who or what prompted it, and “any and all information related to it.”

What lies behind the stone-walling on the part of ICE? Is it the result of bureaucratic error or something more sinister?

“Shalom Rubashkin is entitled to a fair trial. That’s his constitutional right,” attorney Cook stressed in court during a pre-trial hearing. But in a case so stained with unfairness and inequity, in which a government agency appears to flout the FOIA with impunity, one can only hope that “a fair trial” and “constitutional rights” have not been rendered empty clichés.

# Rubashkin On Trial

WEEK ONE

BY AVI YISHAI AND STAFF REPORTERS

The following is a brief roundup of the Rubashkin trial which is being held in Sioux Falls, South Dakota. The report is based on information from a reporter for *Matzav.com* covering the trial at the US District Court on S. Phillips Avenue off of West 12<sup>th</sup> Street in Sioux Falls.

The trial is being held in Sioux Falls after the federal judge in Iowa, U.S. District Judge Linda Reade, became convinced that the Iowa jury pool had been tainted by media coverage of the case.

The trial is expected to last four to six weeks. Reb Shalom Mordechai Rubashkin faces 1995 years in jail if found guilty of the charges he is facing. They will be brought in two trials. The first will consist of 91 charges relating to bank fraud. The second trial will focus on 72 immigration-related charges and will begin one week after the first trial ends.

Before being placed under a gag order by the judge, Getzel Rubashkin, Reb Shalom Mordechai's son, spoke about his father's *matzav ruach*.

"My father's *bitachon* is nothing less than remarkable," Getzel said, adding that the continued *chizuk* provided by the response to the *Yated* campaign to help pay the legal bills is so very much appreciated by his father and their family.

The following was related by the *Matzav.com* reporter regarding the first day of the trial last Tuesday:

"In the process of jury selection, the defense knocked off 11 witnesses and the prosecution 7. The final result was a selection of 12 jurors and 4 alternates. The Rubashkin team was satisfied.

"It was a full day affair, from about 9 a.m. until close to 5 p.m. The judge got the first shot at asking questions of the potential jurors. The judge asked questions, then the prosecution asked questions, and then the defense asked questions. Basically, they were trying to find people who would say things that would disqualify them. Then they had the veto phase during which the jurors went out of the room, and the defense got to veto two while the prosecution got to veto two, and then the defense got to veto two again while the prosecution got to veto two, etc.

"Note that these were regular people who got letters in the mail stating that they are up for jury duty. Most of them probably did not know what kind of case they might be called for upon arriving at the court to fulfill their civic duty.

"Judge Linda Reade first asked if anyone has any personal hardships that would excuse them from the case. She then asked if they had read any media coverage leading up to the case. Four people were allowed to go due to personal hardship and one or two due to media exposure. The judge ended up taking at least one person aside after he said that he had read about the case. They didn't want the rest of the jurors to hear about what this person had read, so they pulled him out with the lawyers and the judge and this person went to a side room and

spoke about what he had read.

The *Matzav.com* reporter continued:

"Most noticeable to me was that Attorney Cook was looking for *who* these people are and what they are about. He asked less pointed questions - but questions whose answers he obviously felt would speak volumes about the person. For example, to one potential juror he asked: When you purchase a car, do you make a snap decision or do you deliberate and take your time before buying? Cook was analytical, asking questions to determine the emotional and compassionate levels of the people."

A bus full of *Yidden* from New York travelled to Sioux Falls for the opening of the trial to express public support to Shalom Mordechai and give him *chizuk*. Others also arrived.

"The court was filled with family, press and others," the *Matzav.com* reporter shared. "About three or four dozen people watched the jury selection on a screen in the spillover room in the courthouse.

"We ended at about ten minutes to 5 with the jury selection. The jurors were called back into courtroom and the judge swore them in as a jury. She also instructed them about who they are and aren't permitted to talk to during the duration of the case. The judge said she wouldn't be quarantining or sequestering them, but that all communication has to be guarded and no info about the case may be heard, read or discussed with others. The jurists will spend their days, 9 a.m. to 5 p.m., in court."

Assistant U.S. Attorney C.J. Williams has named about 80 witnesses that prosecutors might call for their case.

Following the long and tiring day last Tuesday, the group of *frum* people went back to their hotel, The Country Inn, where they *davened Minchah* in the conference room and then ate supper. A *minyán* for *Maariv* was held and the group *farbrenge*d together in honor of the *yahrtzeit* of Rav Levi Yitzchok of Berditchov, with Shalom Mordechai, who inspired them with his positivity and *simcha*.

"This man is so unique and inspiring," said the *Matzav.com* reporter. "I cannot put it into words what an *adam choshuv* this is. You have to meet him to see what a special individual Reb Shalom Mordechai Rubashkin is. He is a true *maamin* in the One Above."

The group arose early Tuesday morning, at about 6:30 a.m., for *Shacharis* at 7 a.m. Shalom Mordechai then headed right to the courthouse to be there by about 8 a.m.

"The judge seemed fair and balanced," the *Matzav* reporter said. "She made sure that Shalom Mordechai's wife, Leah, had a seat in the courtroom. She runs a tight courtroom, however. She banned all cell phones in the courtroom. According to the rules of her court, all cell phones are collected, marked with a person's name, and later returned after exit from the courtroom. There are no exceptions and the rule is strictly enforced."

## DAY 2 - WEDNESDAY

Opening statements were given on Wednesday as prosecutors began presenting their case.

Lead Rubashkin attorney Guy Cook is cautiously confident that the truth will emerge about the allegations, and that the jurors will see the half truths and the misrepresentations of the prosecution.

Cook told the court that Shalom Mordechai is an "honest family man" who was in over his head in a complex business. Shalom Mordechai was trained as a rabbi, not a businessman, said Cook, and any alleged "sloppy" business practices that might have occurred - it has yet to be proven by the prosecutors - don't amount to crimes.

In May 2008, federal immigration officers raided the Agri plant in unprecedented and unparalleled fashion and arrested nearly 400 undocumented workers. In October 2008, Shalom Mordechai was arrested and charged with conspiracy to harbor illegal aliens and other crimes.

Assistant U.S. Attorney Charles J. Williams showed photos and slides to the court as he unveiled the government's case. He contended that Shalom Mordechai "repeatedly lied" to his lender about his company's financial health and "reassured the bank that Agriprocessors was in full compliance with the law."

Attorney Cook, in his remarks on Wednesday, told the jury that the prosecution's goal is to shock and awe, and that the other side of the story, the defense, will be heard after the prosecution completes presenting their case.

The *Matzav.com* reporter shared some details of what Cook related to the court:

"Mr. Cook, on Tuesday, shared with the jury a parable to make his point. He said that all the jurors have heard of Santa Claus. As children, they grew up believing in Santa Claus. They would go out as children and see pictures and other items, in malls and elsewhere, depicting Santa Claus. They believed Santa Claus was real - and why shouldn't they? The proof that he exists was wherever they looked. But then, said Cook, when they became adults, they learned the other side of the story - the reality, the truth. There is no such person as Santa Claus - despite all the 'evidence' they heard and saw in their youth.

"Continuing on this theme on Wednesday, Cook told the jury that even though for weeks they will hear things from the prosecution, which will create images and impressions, there will come a time - if they can maintain an open mind - when the rest of the story will be related. Think about the Santa Claus analogy, he said. Not always do you have the facts in front of you, as convincing as the evidence may sound now. The facts often emerge later, and that is what will take place here in the Rubashkin case, he said.

"The story you heard [from the government] is not fully accurate,' Cook said. They 'used charged words...for a purpose: to shock and awe you, to divert you from the truth.'

"Guy shared with the audience the history of Postville and told the jury his contention of the position that Shalom Mordechai occupied at Agri, unlike what the prosecution claims. The company, he said, was founded by Shalom Mordechai's father, Aaron Rubashkin, in rural Postville in the late 1980s. The elder Rubashkin, a kosher butcher who had emigrated from Russia, saw opportunity in restarting a shuttered plant near a plentiful supply of cattle and was massively successful before Shalom Mordechai ever came on board. Then Shalom Mordechai's father asked him to come and join the business, which he did to satisfy his father's request."

"Cook said in court that Shalom Mordechai was 'a kid from Brooklyn,' with no business experience.

"The company had been headed by Donald Hunt, the plant manager, who truly ran the company. When Hunt died in the late 1990s, Hunt's various responsibilities were spread to employees of the company, including Shalom Mordechai.

"There were various people in the organization chart above or on

the same level as Shalom Mordechai, but the government, in their case, posits that Shalom Mordechai was the head and the brains behind anything going on at the company. They are trying to paint a black picture and pinning it on Shalom Mordechai.

"The defense explained that Agri was a very successful business for 20 years, doing \$350 million in sales at its height, spreading kosher meat throughout the U.S. to places that had never had kosher meat. Cook characterized Agriprocessors as a 'true American success story' that contributed to charity and helped boost Postville's economy.

"Cook told the court that Shalom Mordechai and his family are solid citizens - and that this isn't his opinion; it's the opinion of the governor of Iowa and the mayor of Postville who have vouched for Shalom Mordechai's honesty and integrity."

Prosecutors allege that Shalom Mordechai violated a 2002 order by the U.S. secretary of agriculture to pay cattle providers within 24 hours of a sale. The charge stems from a 1921 law, the U.S. Packers and Stockyards Act. The law requires "prompt payment" to protect livestock producers. Two scholars who studied the law said they had never seen it invoked in a criminal case.



“This is the first time in my life that I’ve heard of that,” said Chris Kelley, a University of Arkansas law school professor was quoted as saying in the media.

The *Matzav.com* reporter commented on the defense team’s response to this charge:

“Attorney Cook addressed this charge by stating that the livestock producers, to this day, have a positive opinion of Shalom Mordechai and have said that his ‘word is gold.’

“Agri always paid fair money and the cattle people were happy with the arrangement. The government is trying to enforce a law that has never been evoked and that has not been called into question by the cattle producers.”

The prosecution shared the government’s claim that Shalom Mordechai “engineered a scheme that illegally diverted millions of dollars in customer payments away from First Bank Business Capital Inc., a subsidiary of St. Louis-based First Bank, which had issued him a \$35 million revolving line of credit.”

Attorney Cook explained in court that the bank was aware of the situation and were satisfied with their arrangement with Agri. The company had taken out a \$28 million revolving loan with First Bank Business Capital in 1998. The loan grew to \$35 million, and the company could borrow against it daily. After the immigration raid, Agriprocessors faltered financially, and the bank called the loan. The company later declared bankruptcy.

The *Matzav.com* reporter related: “The bank had been profiting from the interest payments, which they always received. Never was a payment missed. It was clearly a risky loan in the first place, because kosher meat is a volatile and unpredictable business with a limited profit margin. But banks always make risky loans in order to make a profit, and the bank made the loan because they had a lot to gain. To claim that Agri tricked the bank is false, said Cook in court, as the bank was happy with the arrangement, and in fact, if not for the May 2008 raid, would have doubled their money! The bank was more than happy to advance money to Agri because the Rubashkins always made their loan payments..

“Mr. Cook told the court that to this very day, the bank, First Bank Business Capital, on its website, lists Agriprocessors as one of its successes! So, apparently, it is fair to assume, he said, that the bank did not have a problem with their arrangement with Agri.

“The government alleged that Agriprocessors made false statements to the bank by assuring officials that they were in compliance with federal law. Rather, Mr. Williams said, Agri violated the federal Packers and Stockyards Act by failing to promptly pay cattle suppliers and by employing illegal aliens.

“Attorney Cook addressed this in open court and stated that First Bank Business Capital, even after the allegations were raised - and even after the May 2008 raid - continued to lend money to Agri, so to claim noncompliance and to claim that the bank was lied to is simply not true. The bank was aware of the company makeup and how it was being run, but chose to continue lending money for its own benefit. There was no misrepresentation of any kind on the part of Agri.

Prosecutors called to the stand three witnesses who testified that about \$10 million in invoices were not connected to any shipments made from the plant. Angela Smith, a computer consultant, was called to the stand.

Cook cross-examined Smith and she admitted that she had never even met Reb Shalom Mordechai and that the last time she spoke with him was some 7 years ago. It was not a very impressive showing on the part of the prosecution.

Two other people testified as well. Mark Ross and Alan Rice were both part of the trustee group which ran the company after its bankruptcy. The prosecution tried to get these witnesses to state that they had found discrepancies, but during cross examinations, the men displayed a lack of knowledge of many things about the company and the business.

Rice also admitted that some of his info had been given to him by Mitch Meltzer, a former employee of the company who is trying to get a reduced sentence by portraying Shalom Mordechai as being guilty of all sorts of things. Rice thus admitted that the key information was supplied by Mitch, who has much incentive to be inexact in his recollection.

As the trial recessed for the weekend, an observer told us that “the prevailing feeling here is *bitachon*. *Bitachon* that everything will turn out right. Reb Shalom Mordechai, besides for being a remarkable person, is a walking *mussar sefer* in *bitachon*. It is truly unbelievable.”

#### DAY 3 - THURSDAY

On the third day of trial, a former employee at Agriprocessors, Verla O’Shaughnessy, testified that Shalom Mordechai appeared nervous and “very hyper” the morning that he was arrested on immigration charges. O’Shaughnessy was among several customer service employees who testified that day.

During cross examination of several witnesses, however, it emerged that the witnesses who had claimed that Shalom Mordechai displayed nervousness had actually only met him a couple of times before.

“Since they really never met him, and didn’t truly know him or his personality, they were forced to admit that they really didn’t have anything to go by in Assessing his demeanor and in reaching their assertions,” an observer related.

#### DAY 4 - MONDAY

On Monday, several Agriprocessors clients testified. These included several sellers of kosher meat who regularly bought from Agriprocessors. The prosecution focused their efforts on trying to prove that invoices from Agriprocessors were falsified and used to defraud the bank. The goal of the prosecution was to show that the clients were unaware that Agriprocessors had attached their business names to fictitious debts. Some invoices, for example, stated that these companies owed money to Agriprocessors, but supporting documentation showing that a delivery was in fact made, said the prosecution, could not be provided. The prosecution claimed that Agri borrowed money based on these invoices, which showed that certain monies were set to come in to its coffers from these clients.

One of the sellers was the owner of a Crown Heights store. He testified that he has a good relationship with the Rubashkin family, whom he has known for close to 30 years and is related to. He testified that Shalom Mordechai was very gracious to him and extended his credit line with the company when necessary to enable him to receive more meat as needed for his business, even if he wasn’t able to lay out the money at the time. In exchange, he said he loaned money to Agri when asked.

Shalom Mordechai and his family “were very nice to me,” the witness said. “I pushed for a bigger credit line, and they did it for me.”

Defense attorney Guy Cook asked him if he was related to the Rubashkins and he replied: “Yes. And I’m proud of it.”

The owner of the Glatt Western Kosher in Los Angeles testified that Agriprocessors was disorganized and often did not ship all of the meat he had ordered. Observers felt that this testimony was favorable to the defense for it demonstrated that due to the massive growth of the company, orders were sometimes delayed or mistakenly not sent out as planned. The witness testified that he only paid for meat he had received.

“Occasional disorganization is not a crime,” explained the observer, “and with the expansion of the company, orders were sometimes going out faster than the computer system could handle. It was revealed that even when the computer system crashed, the company continued to provide customers with meat, not allowing a disruption in service. Thus, a lack of invoices would not show any sort of fraud of any type as the prosecution averred. It was simply the reality of the way they did business.”

*“Cook told the court that Shalom Mordechai and his family are solid citizens - and that this isn’t his opinion; it’s the opinion of the governor of Iowa and the mayor of Postville who have vouched for Shalom Mordechai’s honesty and integrity.”*

The L.A. witness testified that the plant supplied about 95 percent of his meat before filing for bankruptcy. He said his company caters events throughout Los Angeles, and supplied Agriprocessors meat for various events as well as for renowned chef Wolfgang Puck.

The trusting bond was so strong that when the plant struggled, the man said he sent advance payments totaling roughly \$700,000 - including \$500,000 taken from a mortgage on his home - with no written agreement.

The *Matzav.com* reporter related:

“The prosecution had a bunch of invoices that they claimed doesn’t have supporting documentation but claims that companies owed money. The prosecution was going through the documents with the former Agri clients trying to demonstrate their false nature. In one case, however, a client identified an invoice and said that he recalled it and that it was 100% authentic. This threw a wrench into the prosecution’s argument that it was all fabricated.

“During one of the cross examinations, there was an interesting incident as the witness seemed to be receiving tips from an acquaintance of his who was sitting in the audience. The audience member seemed to be coaching the witness as to what to say. The witness, following the initial questioning by the prosecution, seemed to get flustered while delivering his rehearsed testimony. The witness requested a break, which was granted by Judge Reade, who said she was not happy with the coaching taking place by the audience member.

“In fact, later,” shared the *Matzav.com* reporter, “Attorney Cook worked this into a question to the witness, asking, ‘So is that what your lawyer was signaling to you?’ The prosecution immediately objected to this statement by the defense, which insinuated that the audience member had been providing info for the witness to relate on the stand. But the judge overturned the objection, stating that what the defense had said was simply the truth: the witness was receiving coaching on what to say.”

Other witnesses on Monday represented hide and rendering companies. Rendering is a process that converts waste animal tissue into stable, value-added materials. Rendering refers to any processing of animal by-products, such as fatty tissue or bones, into more useful materials.

Some of the representatives from these companies spoke highly of Reb Shalom Mordechai. Some of them said that they did not deal with Reb Shalom Mordechai, who was not directly involved in sales. The prosecution once again attempted to show that there were financial transactions that require explanations and have not been documented properly.

The defense explained that this is not the case. During testimony of the company reps, it was stated by one witness that their company actually advanced \$100,000 to Agri for hides that would be provided in the future.

“The received credit, so to speak,” said the *Matzav.com* reporter. “The prosecution would like the court to believe that this money was

unaccounted for.”

Also, while prosecutors are trying to pin blame for supposed inaccuracies on Shalom Mordechai, some of these representatives said they never even dealt with Shalom Mordechai, but rather with Toby (Yom Tov) Bensasoon, who worked for Agri.

“Toby had previously pleaded guilty and his testimony is being used by the prosecution against Shalom Mordechai, or at least they are trying to do so,” said the *Matzav.com* reporter.

“It is important to remember that these days and weeks are the prosecution’s time to throw all types of charges and claims - as lacking in truth as they may be - as they can. This is their time. The defense will get its chance down the road. However,” the reporter added, “the prosecution has clearly seen some disappointment over the first few days of court with witnesses either admitting a lack of knowledge about Shalom Mordechai or expressing their respect and good relationship with him.”

On Monday, as the afternoon rolled along and the clock passed 4 p.m., the prosecution was expected to bring to the witness stand representatives of various banks. However, due to travel delays, the witnesses had not arrived. At that point, a less-than-pleased Judge Reade called for the court to adjourn. Thus, court ended at 4:15 p.m., rather than at 5 p.m.

#### A TEST OF CHARACTER

Monday evening, following another grueling day in court, Shalom Mordechai set out to share words of *chizuk* and Torah with Jews who he had found out work in Sioux Falls, selling various and sundry items at the local mall.

At the same time that Shalom Mordechai is facing judgment which could lead to 1995 years in jail, his *bitachon* in the *Ribono Shel Olam* is so fierce that his mind is constantly seeking to foster *kevod Shomayim*. As soon as he heard of an opportunity to be *marchiv* the *gevulos hakedushah*, he jumped at it and spent his evening speaking with them. He is a man who is genuinely devoted to his Creator. Where do you find such people?

So suffused with love of Hashem and trust in His judgment, Shalom Mordechai immediately seized the opportunity to express his brotherly love to these secular Jews, much the same as he serves as a *mashpiah* of sorts to the *bochurim* of Rav Gurkov’s *yeshiva* back in Postville. It was amazing to observe.

Some have wondered about the *Yated’s* continuous campaign on behalf of Shalom Mordechai. Others question why the *Yated* has gone all-out to assist this man and make his case heard. If only all readers of these words could observe Shalom Mordechai’s actions and conduct in person, and observe this individual whose behavior is *lemaalah min hatevah*, it would all become clear.

*All are asked to continue davening for Shalom Mordechai Halevi ben Rivkah.*

# An Exhilarating Shabbos in Sioux Falls

RUBASHKIN COURT CASE CONTINUES FOLLOWING FIRST-EVER SHABBATON IN S. DAKOTA

BY AVI YISHAI

It was a unique exchange between a reporter covering the Rubashkin trial and one of the *frum Yidden* present to provide *chizuk* to Reb Shalom Mordechai Rubashkin.

The prosecutors alleged that Shalom Mordechai violated a 2002 order by the U.S. secretary of agriculture to pay cattle providers within 24 hours of a sale. The charge stems from a 1921 law, the U.S. Packers and Stockyards Act. The law requires "prompt payment" to protect livestock producers.

As reported here last week, scholars who studied the law said they had never seen it invoked in a criminal case. "This is the first time in my life that I've heard of that," Chris Kelley, a University of Arkansas law school professor, was quoted as saying in the media.

Rubashkin Attorney Guy Cook stated that the livestock producers, to this day, have a positive opinion of Shalom Mordechai and have said that his "word is gold." Agri always paid fair money and the cattle people were happy with the arrangement. But the government's prosecutors continued their attempt to apply a law that has never been evoked and that has not been called into question by the cattle producers.

Cook tried to make this point in court, stating that this law hasn't been enforced for as long as anyone can remember. The presiding judge, U.S. District Judge Linda Reade, however, would not allow Cook to make this point to the jury, objecting his contention.

"This is a first," the news reporter commented, stating that he had never seen a judge reject a statement of that sort in a case.

It was a first, indeed, but just one of many firsts surrounding the Federal court case in Sioux Falls, South Dakota. As the trial concluded its second week this past Thursday, another 'first' was about to take place. This 'first' - an infusion of Torah and *Yiddishkeit* in the spiritual desert that is Sioux Falls - was initiated by one man, Reb Shalom Mordechai Rubashkin.

Facing 1995 years in jail if found guilty of the charges he is facing, Reb Shalom Mordechai remains strong, putting his faith in the One Above that the truth will ultimately emerge in several weeks after the prosecution rests its case and his defense team can properly present their side of the story. With his *emunah* and *bitachon* strong, Reb Shalom Mordechai focused his energies on bringing *Yiddishkeit* to Jews in South Dakota who never before experienced the bliss of Torah and the warmth of *Shabbos*.

## "THEY DRANK HIS WORDS OF TORAH"

Rabbi Moshe Feller, head of the northwest region of Chabad-Lubavitch, has known Reb Shalom Mordechai and the Rubashkin family for many years and traveled to Sioux Falls to take part in leading the *Shabbaton* at the local hotel there.

"Shalom Mordechai called me and said, 'Let's make a *Shabbaton*,'" Rabbi Feller told the *Yated* this week. "It turned out to be an unprec-

edented experience."

Rabbi Feller made the four-drive with his son, R' Levi Yitzchok.

"Reb Shalom Mordechai is a *Tehillim* Yid," commented Rabbi Feller. "For years, he's been completing *Tehillim* every day. Deep in the recesses of his *neshamah*, there must be fear of the 91 indictments he is facing, but *chasdei Hashem ki lo samnu*. The *Shofet Kol Haaretz* is in that courtroom," said Rabbi Feller.

Rabbi Feller told the *Yated* that Lubavitch has representatives in every state in the country except for three - South Dakota, North Dakota and Mississippi. It was thus a groundbreaking achievement to be able to hold a *Shabbaton* in Sioux Falls.

"We had Jews coming out of the woodworks. They found out about the *Shabbos* and were drawn. This was the first breath of *Shabbos* for these people," he said.

"From *Erev Shabbos* to *Motzoei Shabbos*, there were *minyanim*. We brought food from the Twin Cities and the Rubashkins cooked food. There was nothing lacking.

"Reb Shalom Mordechai shared *divrei Torah* and *maasos* with the attendees, as I did. These Jews drank up his words of Torah. The singing was inspiring. The atmosphere was pure and *freilach*.

"It certainly buoyed Reb Shalom Mordechai and his family to have such a *Shabbos* taking place at the site of where the *mishpat* (judgment) is taking place. It was an unprecedented experience."

Several *Yidden* who were passing through South Dakota, including a couple from Eretz Yisroel and a Jew from Texas, joined as well.

The meals and *minyanim* were held at the conference room of the hotel where the Rubashkins are staying in Sioux Falls for the duration of the trial.

"*Chavrah chavrah is lei*," said Rabbi Feller. "We look at this experience as the beginning of *mitzvah* activity in Sioux Falls. It was like the *chanukas habayis* of *Yiddishkeit* in the city - the first Torah retreat in that part of the country.

"*Simcha poretz geder* - happiness breaks barriers, as we saw on *Shabbos*. Indeed, we pray and hope that the *geder* facing Reb Shalom Mordechai will be breached and he should merit a *yeshuah*," Rabbi Feller told the *Yated*.

Rabbi Feller was born and raised in Minneapolis. His father, who arrived there before World War I, sold cars in St. Paul and raised a *shomer Shabbos* family.

Rabbi Feller attended the Minneapolis *Talmud Torah* and later went to Yeshiva Torah Vodaas, which he attended for 6 years. He received *semicha* in Lubavitch and, in 1962, together with his wife Mindy, moved back to his place of birth and began sharing the beauty of *Yiddishkeit*. He helped establish a *cheder*, *yeshiva*, and other parts of the *frum* infrastructure in Minnesota, and he shares a warm relationship with the other *rabbonim* and leaders in Minnesota.

"In *Teves*, it'll be 48 years since we arrived here. In all the years, I never experienced what I did this past *Shabbos*," he said.

The Rubashkins, when they first established their slaughterhouse in Postville, resided in St. Paul, because there was no Jewish infrastructure in Iowa. As *shochtim* began to move to Postville, the Rubashkins moved there and began to build the *kehillah*.

"The Twin Cities are 175 miles - about a three-hour drive - from Postville," says Rabbi Feller. "They settled in St. Paul for the *chinuch* of their children, despite the long commute."

Once Postville had a chance to grow, the Rubashkins moved there.

"The Rubashkins built the town. What they created was an *ihr v'eim b'Yisroel*," says Rabbi Feller. "It therefore pains the heart to see, *r'l*, what the government has done to that city. What a beautiful thing Postville was! And now... it is painful to see what has happened."

The prior week, Rabbi Feller took a flight to South Dakota to be in the courtroom at the commencement of the trial to give *chizuk* to Reb Shalom Mordechai and his family.

"It's a *chizuk* when *Yidden* come," he says. "It means so much."

Rabbi S. Binyomin Ginsberg, Dean of Torah Academy of Minneapolis, and Rabbi Yechezkel Greenberg of Cong. Bais Yisroel in Minneapolis also made the trip to Sioux Falls to give *chizuk* to Reb Shalom Mordechai, Rabbi Feller related.

"Reb Shalom Mordechai has been *me'ached* - he's unified - *Klal Yisroel*. His case has brought together *Yidden* who are standing by him and *davening* for him. The *frum* communities are united. May Hashem help that the *achdus* should continue and be a *zechus* for Reb Shalom Mordechai."

Berel Jacobs, one of the *Yidden* from Brooklyn who traveled to South Dakota, shared some of his reflections on the Rubashkin family and the first week of the trial on the COL site:

"Mr. Aaron Rubashkin, a survivor of the horrors of the Second World War and Stalin's Gulags, made his way to America after the war and established a butcher store in Boro Park, Brooklyn. Through his hard work and determination, coupled with his *tzedakah* and community activity, Mr. Rubashkin realized the importance and the need for a full-time *shechitah* to provide *glatt* kosher meat for the New York Metropolitan area and other areas around the world.

He eventually came to the understanding that the best way this can be accomplished is by the establishment of a *frum*, *Chassidische* community in close proximity to the meat-packing plant which would provide a home and community for the *shochtim*, *mashgichim*, families, *yeshivos*, *mikva'os*, etc. All of that would be necessary to make such a plant operate efficiently and properly.

"And so, about 22 years ago, Mr. Aaron Rubashkin and members of his family took over a defunct meat packing plant near Postville and began the historic development, growth and expansion of Agriprocessors which was to become the largest kosher meat producer in America.

"Shalom Mordechai Rubashkin, who was then studying in *yeshiva*, wanted very much to become a *shliach* within the Chabad *shlichus* movement and in fact served for a while in an out-of-town position. He was approached by his father who urged him to join together with several of his brothers to work in the plant in Postville.

"Shalom Mordechai took this upon himself as a form of *shlichus* and moved to Postville where he became involved in the operation of the plant. He held the position of vice president, when the government cracked down on the immigration issues and then, later on, claimed there was a problem with a bank loan. Shalom Mordechai was picked to be their *korban* and faced multiple charges stemming from a few alleged actions that the government claimed did not comply with standard banking rules.

"During the months immediately following the immigration raid, the plant could not operate at full capacity and the Rubashkins put all of their fortune together to try to save the plant, investing millions of dollars of their personal wealth, mortgaging their homes, their properties, and selling whatever liquid assets they had in order to invest that money

to save the company.

"They took large loans from their friends in order to put enough money together to keep the plant running under the difficult circumstances. Then the point came when there was no choice and the company had to file for bankruptcy. The family began working with the lawyers to protect them and to protect the interests of the company.

"Because of the complicated aspects of the case, more than a half a dozen teams of lawyers had to be hired in order to cover every aspect in the proper fashion. This naturally generated huge legal fees for various members of the family and for the corporate entity.

"The issue of the charges became very clouded. There were those who claimed that the government had chosen the Rubashkin plant because of the pressure that they were under from PETA. Others said that there was pressure from unions. There were those who were sure that, subconsciously, there was an anti-Semitic aspect involved in the case.

"Many meat-packing factories in America have been raided by immigration officials. Usually, the undocumented workers were taken away and the plant continued to function. No criminal charges have ever been brought against the operators of those plants, because it was obvious that the undocumented workers had obtained false papers on their own and had presented themselves as properly documented workers in the United States, which was exactly the same case with Agriprocessors.

"As I write these words, I am sitting in the Federal courthouse in Sioux Falls, In fact, I am sitting near the reporter from the *Wall Street Journal* who spent two full days in Sioux Falls following the case.

"The busload of young men who came from New York to show their support for the Rubashkin family settled in a very respectful and honorable fashion. The courtroom that was assigned to Judge Reade by the Federal courthouse only had three benches for spectators, since the main courtrooms of that court had been reserved for other cases that were being held. The judge provided an overflow courtroom for all of these visitors and guests.

"The citizens of Sioux Falls, South Dakota, had a very fine impression of this group of young men who had come in support of the Rubashkin family.

"To recap what has occurred so far in the case, last Tuesday was devoted to choosing the jury. Wednesday morning, the trial began. After opening arguments, the prosecution presented several witnesses who testified that certain documents had been prepared improperly in order to cause the bank to lend more money to Agriprocessors. Of course, that in itself raised a question, since there was no crime involved. The bank felt that there was enough equity and enough security to be able to lend more money to the company so that the company could operate.

"The funds that the company got went primarily to cover the payroll of a thousand workers. That payroll was a weekly one, and the company did not use this money for any purposes other than paying their workers, paying their suppliers and making sure that the operation worked so that the animals would be *shechted* and the meat would be produced and sent on to the market.

"During the two days of testimony that first week, Wednesday and Thursday, every witness that the government brought to the stand helped the government try to make the case that certain documents were allegedly not proper. However, when these witnesses were cross-examined by the defense attorneys, it became clear to me that several of the points were very weak:

"- It was clear that several of the witnesses had 'selective memories.' They could only remember those things which the government wanted them to say which might throw some bad light on the activities of the company.

"- On the other hand, those actions, activities or events which would support the defense of the company, somehow, for some reason, these witnesses could not remember. It was clear from the cross-examination that this selective memory indicated that they were simply not telling the truth.

"- Furthermore, it became clear that the computer system that

*“This is a first,” the news reporter commented, stating that he had never seen a judge reject a statement of that sort in a case.*

*It was a first, indeed, but just one of many firsts surrounding the Federal court case in Sioux Falls, South Dakota.*

Agriprocessors used was terribly faulty. Many times it would crash and remain offline for as long as 48 hours, during which time a lot of information had to be entered manually, based on memory and numbers that were submitted by the different people who worked in different parts of the plant, and not on actual counts, etc. Thus, even those documents which the government claimed were created and did not represent actual sales clearly could have been created improperly by the computer and improperly dated and improperly marked, since the computer was actually making up dates when it printed out various documents. This was proved several times during the testimony by certain documents which the defense selected from the pile of documents that the government presented.

“- Another point became very clear. Various witnesses made strong statements that Reb Shalom Mordechai is a good man, that he always cared about the people working in the plant, and that the Rubashkin family was known for their generosity and their *tzedakah*. In their operations in New York, at their restaurant, they did not charge poor people. The court was told of times when Reb Shalom Mordechai would call up clothing businesses and ask them to provide clothes for poor families and that he would pay for it. The members of the Rubashkin family, in addition to running the business, also made sure that their business provided them with the opportunity to do unbelievable acts of *tzedakah*.

“By the time the testimony ended on that first Thursday, it became evident that while the government thought that they had a “slam dunk” case and would be able to provide clear evidence to the jury that certain things had been done improperly, it was clear that:

“- There was a big question as to whether any crime had ever occurred.

“- It was possible that this was simply a case of inefficient operations in the internal offices of the Rubashkin plant.

“- There were still a lot of questions that had to be answered before anyone could come to any opinion as to what the intentions of the plant operators really were.

“- The bank had been very happy with all of these facts.

“Thus, clearly, the Rubashkin family’s promise was as good as gold, the Rubashkins’ credit was as good as gold, and the bank was very happy to do business with them. After all, the bank stood to make hundreds of thousands of dollars on these loans and they were actually taking about \$100,000 a month on their loan. The bank was very close to doubling its investment with Agriprocessors.

“On the other hand, the defense attorneys indicated that in 2008, the bank had lost \$275 million in bad loans and in the first 6 months of 2009 the bank lost another \$175 million in bad loans. None of those cases have ever come to any kind of criminal case. Certainly, the Rubashkins were being singled out here, for no good reason, in a case of a loan which had gone bad, just as dozens of other loans had gone bad with the bank. There was no reason for Agriprocessors and the Rubashkin family to be singled out for prosecution.

“So taking everything together by the end of the first week, the prosecution had presented a very unclear picture of what it was that they claimed the Rubashkins had done wrong. Every one of their witnesses

had been discredited, and the onus was still upon the government to bring any proof of wrongdoing on the part of Agriprocessors and the Rubashkin family.”

#### THE TRIAL

Following the *mei'ein Olam Habah* experience this past *Shabbos*, Monday brought the reality of *Olam Hazeih* back into focus, as the court case resumed.

The following are some highlights from the last week and a half of the case:

#### BANK CONTINUED TO LEND

As mentioned above in Berel Jacobs reflections, the St. Louis bank that was allegedly defrauded by Agriprocessors actually continued to lend money to the meat plant even after Federal agents arrested one-third of its workers. First Bank Business Capital sent Agri four loan payments totaling \$3.45 million after the May 2008 immigration raid, according to documents and testimony.

The testimony during week two of the trial touched on a central question for a South Dakota jury: Did anyone lie to First Bank, with fake sales records that cost the bank millions when the plant defaulted? Or did bank executives overlook sloppy business practices and illegal workers at the plant because of the millions of dollars collected from loan interest payments?

Gary Pratte, a First Bank vice president, said borrowers such as Agriprocessors were routinely monitored by bank employees. When pressed by Attorney Cook, he said he had not reviewed the loan himself.

“I have thousands of calls to make each day, and I can’t read every loan document,” he said.

The payments were part of a \$35 million credit line extended to Agriprocessors.

“What we’re trying to do here is part of a defense that whatever occurred at Agriprocessors was not a crime,” Cook told Judge Reade during arguments when the jury was out of the room.

Cook said the evidence “goes directly to the bank’s blind indifference, that it was willing to take risks because (the loan) was highly lucrative. They were making a lot of money off of this loan, and they were not concerned with a lot of the details.”

#### BENSASSON TAKES THE STAND

Yom Tov “Toby” Bensasson, the former financial officer and head of Agri’s accounting department, claimed in court that Reb Shalom Mordechai oversaw a plot to route profits into his company instead of the bank where money was supposed to go.

Bensasson testified that Reb Shalom Mordechai believed that federal agents had bugged the meat plant and his phones.

Attorney Cook on Thursday asked Bensasson about the plea deal he struck with federal prosecutors in exchange for his cooperation. Bensasson pleaded guilty to one fraud conspiracy charge in August, and admitted this week that he falsified company records to defraud First Bank.

“Good morning,” Cook said. “Sir, do you want to go to prison?”

"Nobody wants to go to prison," Bensasson said.

"You nevertheless have convicted yourself" of the conspiracy charge, Cook said.

"Yes."

"And you face a fine of as much as a quarter-million dollars, and restitution?"

"Yes."

"You pleaded guilty, convicting yourself?"

"Yes, sir."

Bensasson testified at one point that Reb Shalom Mordechai cashed in his own life insurance policy to keep the plant operational.

Bensasson said he agreed with Cook's description of Reb Shalom Mordechai as a "well-intentioned man."

Later, federal prosecutors raised the subject again.

"Mr. Cook asked you your opinion about whether he was a well-intentioned man," said Assistant U.S. Attorney Peter Deegan Jr. "Do you have any opinion about whether he was a law-abiding man?"

Cook objected. Judge Reade agreed. Bensasson never answered.

Prosecutors claimed that Reb Shalom Mordechai directed a plant employee to write fake sales invoices, which he then presented to First Bank to obtain loan advances that went beyond what the slaughterhouse could handle, but defense lawyers made clear that while business and record-keeping at Agriprocessors may have been sloppy, absolutely nothing criminal was done in the record-keeping of the company.

Defense lawyers showed jurors an e-mail between the bank's senior credit officer, Phil Lykens and Bensasson. Lykens wrote Bensasson in the e-mail that he would try to raise the plant's loan, and then added: "By the way, tell Shalom that I cooked two of his steaks last night and they were wonderful."

Assistant U.S. Attorney Peter Deegan later questioned Pratte about steaks he had received.

"Were they any good?" Deegan asked.

Pratte shrugged. "We ate one, and my wife threw the other one away."

#### **BENSASSON: THE RUBASHKINS ARE TOO GOOD**

Government witnesses recalled Reb Shalom Mordechai as a generous man.

In court, witnesses testified that Reb Shalom Mordechai lent employees money and helped workers' relatives find jobs. Another remembered when Reb Shalom Mordechai threw a company party, invited even the lowest assembly-line workers and water-skied on the Mississippi River.

At one point, Bensasson testified about his earlier statements to a federal grand jury.

"You told the grand jury that one mistake Shalom made was, he was too good," Cook said.

"That's the thing about the Rubashkins," Bensasson replied. "They don't realize that, when you're too good, you get stepped on."

His response served a book-end to an exchange which took place in the first week of the trial. Darlis Hendry, a customer service representative who worked at the plant since 1999, testified that Reb Shalom Mordechai requested her help writing sales invoices for meat products she said he told her he was selling on the side. She also stated that she saw Reb Shalom Mordechai give a white envelope to her friend and boss, Judy. Her contention was that Reb Shalom Mordechai was providing Judy with the information to create false invoices.

Upon cross-examination, Attorney Cook asked Darlis if she was aware that Judy's son had been killed shortly before this exchange.

She replied no.

Judy's son had been driving a vehicle that smashed into a hay-wagon and all five occupants of the car were killed. Judy was suffering and was facing possible legal action from the families of the other teens, since her son was driving the car. To top it all off, Judy could not afford to pay for her child's funeral. In her moment of pain, Judy found a savior

in Reb Shalom Mordechai, who gave her money for the funeral and later on paid for the headstone as well. That had been the surreptitious exchange Darlis had witnessed.

When asked if she recalled any of this, Darlis told the court that she did not.

"Her selective memory was glaring," said one court observer." She seemed to only recall certain exchanges. Anything that explained the positive nature of Mr. Rubashkin's actions seemed to be nowhere in her memory. Somehow she could not remember any information surrounding the death of her friend's son."

Attorney Cook also related that Reb Shalom Mordechai assisted Judy after Darlis herself asked him if he could provide financial assistance for Judy who was suffering from a severe illness that ultimately took her life. Shalom Mordechai responded by helping financially and in other ways. Darlis didn't remember that either, until Attorney Cook refreshed her memory. The exchange in court concluded with Darlis remarking that Shalom Mordechai was a nice person and would have done the same for her.

#### **MITCH MELTZER**

Mr. Mitchell Meltzer was a chief financial officer at Agri when he was fired in March 2009. He testified that he and four other employees received at least some of their salaries in cash to avoid taxes.

Meltzer said he also shifted expenses around to conceal purchases from the bank and created false invoices he and former financial officer Toby Bensasson called "tootsies."

Defense Attorney F. Montgomery Brown hammered away at Meltzer, painting him as a dishonest man who stole money from the company and lied on his résumé.

When Meltzer said he cashed a few checks as a favor to Reb Shalom Mordechai, Brown pounced.

"You kept the money," he said.

"Absolutely not," Meltzer responded.

"You fleeced the company, didn't you?" Brown said.

Brown quizzed him on why his personal internet page indicated he was Agriprocessors chief financial officer for more than 12-1/2 years, even though he only held the title for less than a year, from November 2008 to March 2009.

Brown followed up by suggesting he had a reputation for exaggeration in the community, and prosecutors offered the last of many objections during the line of questioning.

"Let's not argue during questioning; let's move on," Judge Reade said.

Mr. Meltzer has thus far admitted to lying to the bank, to the grand jury testimony and to the FBI agent who interviewed him. Even regarding his employment status, he first stated that he was not CFO of Agri, but responded, after being questioned about his personal internet page which states otherwise, that he was indeed CFO for 5 months. Mr. Meltzer explained the statement on his internet page with the justification that he was looking for a job and needed it for his résumé. Attorney Cook remarked that this may be the case, and it may be commonplace for people to falsify information to get a job, but he is still a liar.

Government lawyers presented their first witness for charges that Agri violated a 2002 federal order to pay cattle providers within 24 hours of a sale. As mentioned above, prosecutors used a 1921 law, the U.S. Packers and Stockyards Act, for the charges and it is the first time in U.S. history that criminal charges have been sought under the law. Adam Fast, a senior auditor in Des Moines for the U.S. Department of Agriculture, claimed that Reb Shalom Mordechai certified an annual report in 2002, the same year Agriprocessors allegedly failed to pay for livestock in a timely manner. On cross-examination, however, Attorney Cook said that Reb Shalom Mordechai's name did not appear anywhere in the complaint and, in a consent agreement resolving the case, Agriprocessors did not admit to any of the allegations, but merely recognized the government's right to give such an order.

# Yemei Hadin

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BY RABBI S. BINYOMIN GINSBERG  
DEAN, TORAH ACADEMY, MINNEAPOLIS, MINNESOTA

The purpose of my articles is always to share some insight and hopefully offer some direction in the way we raise our children. While I intend to do that here as well, I must first share some details about an experience I recently had as the background for the lessons to be learned.

Anyone reading the *Yated* over the past few months knows about the challenges facing the Rubashkin family, and specifically the current Federal trial of Reb Shalom Mordechai Rubashkin. While there is much to be said about the reasons for the horrible misapplication of justice and all the reasons why it is difficult to understand why Shalom Mordechai must experience these tests from Hashem, I want to stay away from that topic. Instead, I would like to focus

on some thoughts that went through my mind as I sat in Courtroom II in the Federal courthouse in Sioux Falls, South Dakota.

South Dakota borders the state of Minnesota, where I live. I recently made the four-hour drive (in each direction) to attend the trial. I didn't go as a witness, nor because I am a family member of the defendant, nor because South Dakota was one of the few states I had not yet visited. I didn't go because I wanted to witness a miscarriage of justice and I didn't go because I had nothing better to do.

Instead, I went because Shalom Mordechai, being a fellow *Yid*, is my relative. I went because I wanted to create a *kiddush Hashem*. I went because I wanted to show my support for another *Yid* in *tzaar*. I went because I wanted to see the face of someone who was described to me, by reliable sources, as a true *maamin*. I went because I felt that I owe him a tremendous amount of *hakoras hatov* for always supporting our school generously, and I went to show the judge and the jurors that we are a supportive people.

On a recent Wednesday morning, a friend and I left for the long journey. We thought that we knew why we were going, but we weren't sure. It felt like the right thing to do. While I came to give Shalom Mordechai some *chizuk*, I left with much more than I came with. I remember Shalom Mordechai from my days growing up in New York and I have had some limited contact with him over the past ten years as a recipient of his generosity. He supported our school because that is what he did and it represents who he is.

I arrived at the courthouse at 12:15 p.m. and Shalom Mordechai was standing outside, getting some fresh air as the court took a break for lunch. I can't describe the *simcha* that he displayed when he saw us and the general calm that he felt. I heard reports of his unreal *emunah* and *bitachon* in the *Ribono Shel Olam*, but to see it in real life was very different.

I want to share with you my private thoughts as I was standing outside of the courthouse at that very moment. I was think-



ing about how proud Hashem must be of His children, as two relative strangers took a four-hour drive just to give another of His children some *chizuk*. Isn't that what our mission in life is all about - to give Hashem *nachas ruach*?

As someone who works with children, my thoughts immediately turned to the way parents raise children. Do we take the time and show our children what it means to us - their parents - when we see love being shown from one sibling to another?

Moving on, we entered the courtroom. I had never seen proceedings in a criminal trial before and perhaps it is something that we should all experience earlier in our lives. There were several things that struck me in a most powerful way and I would like to share them with you.

Certain lessons that I was taught throughout my childhood and reviewed on many occasions later on during my adult life really hit home as I was sitting in that courtroom.

There were two tables. At one of them were seated Shalom Mordechai and his team of lawyers and at the other one was the team of prosecutors. Next to the prosecutors were several library carts, similar to those used in libraries to transfer and sort books. In the courtroom, these carts are used to hold very thick binders of papers, all ready to be used as exhibits in the case to show evidence of the defendant's guilt.

As a youngster, I heard my *rabbeim* describe how we will be judged in the *Bais Din Shel Maalah*. They will take out our books and show all that we have done during our lifetime. The scene in the courtroom of those library carts really made my *rabbeim's* description come real and alive.

I am sharing this with you for several reasons. One of them is to reinforce the idea that our children learn in many different ways. I am sure that you have heard about how some children are auditory learners and some are visual learners. I am a mixture of the two and yet I have such a clearer understanding about what the trial looks like as a result of seeing it for myself.

This is so important to take into consideration as we think about the *chinuch* that our children are receiving. Many of the visual lessons and experiences that will leave an impression that we really want are too difficult to fit into a normal school day. This is where parents can be very supportive by helping out and giving our children these extra forms of support. At the very least, if your child's *rebbei* or *morah* goes out of the way to present a lesson using a variety of modes for learning, be appreciative and thankful. Don't complain about the possible waste of time. Trust me, it is time very well spent.

Another sight that made me think hard and strong was the jury section of the courtroom. Seated in their chairs were a group of twelve American citizens and several alternatives. I have respect for these people who are doing their civil service as Americans. However, I had a headache listening to the testimony and cross-examination for just a few hours and these people, with very limited experiences, have to listen for many days to what appears to be very complicated testimony.

I asked myself several questions at this point. Is this the best way to conduct a fair hearing? Hashem wants us to make *hishtadlus* and we have to secure the best defense

team available. We, the brothers and sisters of Shalom Mordechai, have the ability and power to change the verdict.

Each time a total stranger sends a donation to help pay for the legal expenses of the trial by making out a check to the Yated's fund, there is a good chance for that donation to make a difference between a verdict of guilty and not guilty. Join me and imagine the results of what would happen if each one of us, including young children, would take three minutes of their day during the trial to say just one *perek* of *Tehillim*.

As I was looking at the members of the jury, the following thought came to mind. These jurors don't live in a city that has a noticeably Jewish presence, and many of them never met a Jew. Can you imagine what effect could be had if one or more of these jurors was once on an airplane and saw a Jew create a *kiddush Hashem*?

Just last week, I was on an airplane and stood up to help an elderly passenger get a piece of luggage into one of the upper compartments. One small act, noticed by dozens of travelers, can possibly be what will set the stage for a non-Jew to demonstrate positive feelings towards other Jews down the road.

We don't realize the power of our actions...

In summary, I would like to suggest that we share some of the lessons of the trial with our children. Use the trial to impress upon them the idea of us being responsible for each other. Use the trial as an opportunity to stress the need for them to always make a *kiddush Hashem*, and use the trial as an opportunity to have them experience what it feels like to help another Jew in trouble by saying *Tehillim*.

In the *zechus* of all that we do, may we merit to hear *besuros tovos*.

Checks can be made payable to Klal Yisroel Fund, and mailed to 53 Olympia Lane, Monsey, NY 10952



# Sunsets and Headlines

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BY LIBA LIEBERMAN

Far Rockaway is situated between two stretches of boardwalks, and at this time of year, they provide sunsets that stagger the imagination. While walking recently on the Atlantic Beach boardwalk after work, approximately at sunset, I saw right here in my hometown what Monet was also inspired by - a marbled sky in blue-gray, and peach-pink tones. I own a copy of one of his paintings with that exact color scheme, which must have been painted from a setting somewhere in France. But I wasn't in France, and I wasn't looking at a painting. A miracle that we commonly call sunset was happening, changing into a new masterpiece every few seconds as the sky darkened and the clouds shifted to the dictates of the wind.

At one point, the sun began melting into the horizon. The intensity of the burning peach hues had hit its peak, and already behind me at the other end of the boardwalk the sky was beginning to darken. The utter beauty of Hashem's world! A sunset at the beach can contain all the emotion in the world condensed in a sky burning with life. The ocean below that sky was whipped up with the fury of the autumn wind, and wave after wave rushed toward the home stretch of the shoreline with frothy determination.

*Olam Haze* is a world filled with extremes. Everywhere one looks, there is extraordinary beauty and incomprehensible problems. Just two weeks ago, *Klal Yisroel* read *Parshas Bereishis*, when *Gan Eden* was within reach and was lost. This past week's *parsha* was *Noach*. It is filled with despair, yet the seed of *Klal Yisroel* is protected.

The drama of everyday life is the playing field of a *Yid's* existence. Sometimes the drama is one of awe, like the experience of sunset on an autumn beach. Or remembering the first baby steps of a child as that same child is being walked to the *chupah*. Sometimes the drama is about terrible dangers; a casual look at the headlines is enough to determine the gravity of current events.

Iran's nuclear potential, the Goldstone Report condemning the Israeli army's conduct during Operation Cast Lead, and, on a national level, the health care reform effort that is slamming the door in the face of any opposition, are chilling reminders of why we need to seek the protection of the *Ribono Shel Olam*.

The Rubashkin trial in South Dakota is another example of drama with implications that

recall the blood libels of yesteryear.

The playing field of life is vast, and was created for one reason, and one reason only: that we become inspired by it to turn to Hashem, Who is always waiting to hear from us. Real world scenarios are Heavenly cues for *Klal Yisroel* to remember the only Head of State, and beseech Him for mercy when necessary, and praise Him for allowing us to serve as His chosen people in a world of daily miracles.

*The Rubashkin trial in South Dakota  
is another example of drama  
with implications that recall  
the blood libels of yesteryear.*



# Rubashkin Defense Begins Presenting its Case

BY AVI YISHAI AND AVI SHIFF

Reb Shalom Mordechai Rubashkin's lawyers began calling witnesses on Monday to counter allegations against the former Iowa slaughterhouse vice president. The list of possible defense witnesses includes the plant's former bankruptcy trustee, Joe Sarachek, and Postville schools guidance counselor Ron Wahl, who worked extensively with the town's immigrant population. Reb Shalom Mordechai's father, R' Aaron Rubashkin, the family patriarch who founded Agriprocessors, Inc. in Northeast Iowa, testified on Tuesday.

The Rubashkin trial, being held in Sioux Falls, South Dakota, began its fourth week on Monday with the prosecution concluding the presentation of its case against Reb Shalom Mordechai.

The trial is being held at the US District Court on S. Phillips Avenue in Sioux Falls and is being presided over by U.S. District Judge Linda Reade.

Shalom Mordechai Rubashkin faces 1995 years in jail if found guilty of the charges he is facing, which will be brought in two trials. The current trial consists of 91 charges relating to bank fraud. The second trial will focus on 72 immigration-related charges.

Reb Shalom Mordechai will take the stand on his own behalf, defense attorney Guy Cook said, and that may come as soon as Thursday.

Federal prosecutors concluded their case on Monday after 10 days, 47 witnesses and scores of internal company records were presented. The prosecution concocted a case on behalf of the government against Reb Shalom Mordechai. Observers felt that many of their witnesses were shown to have selective memories, while others were discredited altogether.

It should be noted that Reb Shalom Mordechai's limited resources are somewhat compromising his ability to fight back against the blood libel created by the legal team representing the government.

"There is no question," commented a volunteer involved in raising funds for Shalom Mordechai, "that with additional funds, his legal team could have been expanded to give him a better opportunity to refute the bogus charges being leveled against him."

Agriprocessors was the site of a May 2008 immigration raid that rounded up 389 illegal workers. The raid, one of the largest in American history, and unprecedented in nature and scope; forcing the plant into bankruptcy six months later. It was then, prosecutors allege, that the court-appointed trustee discovered a plot to defraud the plant's lender. The defense on Monday began its effort to prove that the charges are totally unfounded.

Shalom Mordechai will face the 72 federal immigration-related charges in the second trial now scheduled to begin on December 1.

## DEFENSE TEAM FILES FOR MISTRIAL

Last Wednesday morning, Shalom Mordechai's attorneys twice filed motions for a mistrial after a key government witness, former hu-

man resources manager Elizabeth Billmeyer, divulged details of illegal immigrants working at the company. Attorney Cook protested in court to Judge Reade that by permitting this testimony about the alleged hiring and harboring of illegal immigrants at the plant, the bank fraud case currently on trial would suffer from a "death by a thousand cuts." The attorneys took exception to the details allowed, because Reade had split the trial into two parts.

Reade rejected the motions, allowing the trial to proceed.

In her initial decision to split the trial, Reade had ruled that allowing all charges in one trial could unfairly prejudice the jury, allowing evidence for one group of charges to be applied to others. Reade had said she expected it to be difficult for a jury to compartmentalize damaging information.

Last Tuesday, when Billmeyer testified, the government presented evidence that the company received no-match letters from the government - notification that its employees did not have matching Social Security numbers - for several hundred employees, as well as a sharply worded e-mail from Billmeyer warning that people could go to jail if nothing was done.

On cross-examination, however, defense attorney F. Montgomery Brown blamed Billmeyer for the failure to discover illegal immigrant applicants. Brown also presented several strongly worded e-mails to other plant managers, in addition to the one she sent Shalom Mordechai. This was to show that the government's claim that Shalom Mordechai was solely responsible for the goings-on at Agri is a gross misrepresentation.

The human resources manager agreed with Brown's assessment that she had "a little bit of a temper," was "a little excitable," and was "prone to drama."

In blaming Billmeyer for failing to discover illegal immigrant applicants, Brown said, "Someone was asleep at the switch for a couple of years, and hundreds of illegal aliens were hired."

Laura Althouse, who in May pleaded guilty of conspiracy to harbor illegal immigrants, corroborated some of Billmeyer's testimony.

Last Wednesday, Cook accused prosecutors of cherry-picking the best evidence from the upcoming immigration trial to sway the jury. He called it a "powerful potion to pour in front of the jury."

At the conclusion of testimony on Wednesday, reports the *Des Moines Register*, Reade reprimanded Cook for broaching the forbidden topics of possible union activity at the plant and the personal struggles of the Rubashkin family in an attempt to gain sympathy from the jury. Reade said Cook was right "on the line" of finding himself in major trouble.

## ABRAHAMS: RUBASHKINS WERE IN 'OVER THEIR HEAD'

On Monday, Chaim Abrahams, a purchasing manager at Agri, said

*The raid, one of the largest in American history, and unprecedented in nature and scope;  
forcing the plant into bankruptcy six months later.*

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*The defense on Monday began its effort to prove that the charges are totally unfounded.*

that Shalom Mordechai was overworked and that chronic under-staffing at Agri led to sloppiness in the plant's day-to-day operations. Shalom Mordechai, he said, juggled five to seven tasks at a time and was difficult to reach unless dire problems arose.

Abrahams said that Shalom Mordechai, his brother Heshy, and their father Aaron "were in over their head."

Abrahams said he was uncomfortable sharing his assessment in public, but was pressed by defense lawyer Brown. Rubashkin's legal team say that what the government terms fraud at the plant was simply incompetence and poor record keeping, and not related to corruption in any way.

Abrahams said that Shalom Mordechai "was always... trying to get [people] to stop spending money, to look for ways to save money." His brother, Heshy, by contrast, he said, pushed aggressively to expand the plant, Plant managers added an "oven bake" line three times larger than what was originally projected because they assumed it would be successful, Abrahams said.

Abrahams still works at the plant, now named Agri-Star and under new management, led by Montreal businessman Hershey Friedman.

Abrahams said he is still friends with Heshy Rubashkin and had remained close to Shalom Mordechai "until 7 to 8 months ago, when I was told not to talk to him."

The defense lawyers also called Bill Heter, a Greene County farmer, who told jurors that he had a strong business relationship with Shalom Mordechai and had sold the plant 7,000 heads of cattle without any problems.

Heter told the court that everything he did with Shalom Mordechai was based on a handshake. "His word was gold," said Heter, who talked about the plant and how Agri always honored its word.

Hank Hartig, a farmer testified that farmers weren't paid until their invoices were verified, but that once they were, the bills were immediately paid. He noted that the Rubashkin's word was as he needed when dealing with them, as they were implicitly trusted. Greg Risinger, another farmer also testified warmly on behalf of Shalom Mordechai. The defense introduced the testimony of a Nebraska resident, David "Polly" Plume a Native American tribe leader, who related how his tribe had been considered to be living in one of the poorest states of any group in the country, as stated during a visit by former President Clinton in 1999. They contacted Agri, and in 2002, the meat company established a plant in near them in Nebraska and revitalized their economy and employment situation. When the government shut down the Agri plant Postville, the Nebraska branch inevitably closed as well, throwing the community there into a situation of financial distress once again.

The witness explained how involved Shalom Mordechai was in the establishment of the plant there and how helpful he was to the Native American community.

The defense sought to show how Shalom Mordechai had so many responsibilities and obligations in his position at Agri that there was no way he could possibly have been involved in, and orchestrated, the things that the feds claim he orchestrated.

Abe Roth, a Brooklyn accountant, who, along with his firm Marks Paneth & Schron, handled the Agriprocessors account in the past and is knowledgeable about the company's finances, testified that First Bank Business Capital, Agri's St. Louis-based lender, seemed to know about all activities at the slaughterhouse, but purposely looked the other way because their loan arrangement was profitable. At issue is a \$35 million credit line the bank extended to Agri to keep the plant open.

Prosecutors claim that Agri deliberately diverted funds between various accounts to mislead the bank in order to maintain the credit line with the bank, the defense lawyers responded that bank officials obviously knew about the activity but didn't care because of the money they were earning. Agri always paid interest to the bank on schedule, and First Bank received at least \$13.5 - \$20 million in interest before production at Agriprocessors collapsed.

"It was humanly impossible for (the bank's) auditor to miss this," Roth said. "...The information was so obvious, so openly presented, that the auditor should have seen it the first time around. I'm convinced they saw it, but it wasn't important to the bank."

Roth also related that the FBI, during their investigation, never once visited Agri's accounting firm. Last week, attorney Cook questioned a government witness from the FBI about why, during their weeks of investigating the case against Rubashkin, they never once visited the Marks Paneth & Schron firm in Manhattan which providing accounting services to the company.

The message by the defense was that the government conducted an investigation without trying to ascertain whether the testimony being provided was true or not.

What was immensely frustrating for the defense attorneys, the *Yated* learned, was that Judge Reade refused to allow Mr. Roth, who had traveled from New York to testify, to discuss certain matters, thereby cutting out a large portion of his testimony. Later, the attorneys were allowed an "offer of truth," during which they shared with the judge these details of Roth's testimony, with the audience there, but without the jury present. Roth wished to convey that it is impossible that the bank didn't know what was going on at the company. Judge Reade responded that the bank can't be blamed for what occurred. The defense countered that since the bank was aware of what was taking place and participated in the formulation of the company's financial projections, that cannot be called defrauding the bank.

Shalom Mordechai's son, Getzel, also testified. He told the court that monies which the prosecution claims were taken from the company by Shalom Mordechai were, in truth, all related to company expenses and not for personal use. Credit cards and vehicles belonging to Shalom Mordechai were used for the benefit of the company, explained Getzel.

#### DEFENSE ATTORNEYS ASK JUDGE TO DISMISS FRAUD CHARGES

On Monday, the defense attorneys filed a motion asking Judge Reade to acquit their client. The request, which is a standard court procedure, was filed in court papers and states that the charges should be dismissed because of the prosecution's failure to prove Shalom

*The witness explained how involved Shalom Mordechai was  
in the establishment of the plant there  
and how helpful he was to the Native American community.*

Mordechai's guilt during their ten days of presenting their case. "The government's case has been oversold," attorneys wrote in the motion, prepared by lawyer Adam D. Zenor. "Simply put, the government has overreached. There is an insufficient linkage for a criminal conviction between Agriprocessors' ultimate failure to make payments under a loan agreement and Agriprocessors' business practices. Breach of contract does not equal a crime."

**REB AARON RUBASHKIN TESTIFIES**

On Tuesday, Reb Aaron Rubashkin, who founded Agriprocessors, testified in court that he spent "every penny" he could gather to keep his meat plant afloat after it was raided by federal immigration agents. Aaron, who opened the company in 1987, told jurors that he mortgaged his home, two buildings that he owned and his store in Brooklyn, N.Y., after the May 2008 raid. The effort ultimately failed, as the plant run by his two sons slipped into bankruptcy the following November.

Aaron, a survivor of the horrors of the Second World War and Stalin's Gulags, made his way to America after the war and established a butcher store in Boro Park, Brooklyn. Mr. Rubashkin realized the importance and the need for a full-time *shechitah* to provide *glatt* kosher meat for the New York Metropolitan area and other locales around the world, and he eventually came to the understanding that the best way this can be accomplished is by the establishment of a *frum*, *Chassidische* community in close proximity to the meat-packing plant which would provide a home and community for the *shochtim*, *meshgichim* and their families, with *yeshivos* and *mikva'os*. Aaron and members of his family took over a defunct meatpacking plant near Postville and began the historic development, growth and expansion of Agriprocessors.

Aaron said in court on Tuesday that he managed to gather between \$4 million and \$5 million from his personal assets after the raid. "We tried to get all the help we could," he said. He said he was unaware of any illegal immigrants working at the plant, and had trusted the plant's human resources manager, Elizabeth Billmeyer, before the raid.

"I used to trust her. She is a very strong woman," Aaron said. "I cannot understand how this happened."

Attorneys also showed photos, outside the jury's presence, of the Rubashkins with prominent politicians. Included in the images were U.S. Sen. Chuck Grassley, former Iowa Gov. Terry Branstad, and former U.S. Rep. Jim Nussle.

Judge Reade has not allowed the photos into the trial for several reasons, including prosecutors' objections that the photos lacked a legal foundation to be included in trial.

Shalom Mordechai's wife, Leah, also testified on Tuesday, telling the court about the simple lifestyle they live and the fact that their home is open to the community. She described the *chesed* activities of the family and their focus on reaching out to others and assisting anyone in need. Her words appeared to have a strong impact on her listeners.

Rav Chaim Cohen offered strong defense for the company's hiring practices and rebutted several of the prosecutors' allegations.

**NAT LEWIN: RUBASHKIN DID "AMAZING JOB"  
AND IS "ENTITLED TO WIN"**

Nat Lewin, renowned constitutional law expert and lawyer, is one of the most prominent attorneys in the United States and has defended

numerous famous clients, including former President Richard Nixon. Lewin sees himself primarily as a defender of freedom of religion - or, more accurately, a defender of the rights of the Jewish community and individuals in it. A pioneer in Jewish public interest litigation, he has argued 27 cases in the Supreme Court, many of them on Jewish issues. Elie Zirkind of *What, Where, When*, a Baltimore Jewish monthly family magazine, recently interviewed Lewin, who had strong statements regarding the ongoing case of the government against Shalom Mordechai Rubashkin.

Zirkind asked Lewin what his *role was in defending the Rubashkins and why he agreed in the past to take their case. The following is Lewin's response:*

"I am not representing Rubashkin any longer. I represented Rubashkin and Agriprocessors in a number of legal matters prior to the matter that is presently pending. I represented him in connection with the allegations that PETA, People for the Ethical Treatment of Animals, suddenly made after they put somebody in the plant undercover - in what I thought was illegal trespass onto the premises - and took pictures of what was going on in the meat plant.

"I have to say, unfortunately, that I thought the Orthodox community, including the Orthodox Union, did not sufficiently come to Rubashkin's defense at that point, and that, I think, is what began the whole slide down for Agriprocessors. I think Rubashkin and Agriprocessors did an amazing job for the Jewish community, and were entitled to the support of the Jewish community. They were disappointed that they did not receive that support. The *Jewish Forward* even began a series of articles, many of which were filled with misrepresentations, lies, and false statements against Rubashkin.

"As far as the current matter, regarding Agriprocessors having employed illegal aliens, it was a well-known fact that Agriprocessors employed illegal aliens - as does every other meatpacking plant in the United States. It's a perfect job for illegal aliens, who don't know English and are willing to work in Iowa, in freezing temperatures, dragging around dead animals. Most Americans are not ready to do that. I will say definitively, from everything I saw, that Rubashkin treated his employees better than the employees are treated at all the major slaughterhouses in the United States. They were paid better and treated more humanely.

"*The Forward*, for its own reasons, decided they were going to write exposés about Rubashkin's employees. These exposés were false and were based on statements made by selected employees who had grievances. The result was that many Jews accepted what *The Forward* said, and then came the immigration raid. Federal officials decided to raid the plant, even though they did not do so for any other slaughterhouse.

"Now the interesting thing is that, under the Obama administration, immigration officials have now changed their policy and are no longer raiding plants. They have decided simply to talk to employers to get them to fire their illegal employees. This was something Rubashkin was always prepared to do. Was Rubashkin's system perfect? No. Many of his employees provided false papers.

"Rubashkin is now being represented by local lawyers from Iowa. I hope he wins his case; he is entitled to win it," concluded Lewin.

All are asked to continue *davening* for Shalom Mordechai Halevi ben Rivkah.

# Rubashkin Trial Wraps Up

BY DEBBIE MAIMON AND AVI YISHAI

The trial of Reb Shalom Mordechai Rubashkin wound to a close Monday, with prosecutors and defense attorneys giving closing arguments that painted radically different pictures of the defendant.

U.S. Attorney Peter Deegan, addressing the jurors first, said the defendant masterminded an enormous fraud scheme and harbored illegal immigrants at the plant. He accused Shalom Mordechai Rubashkin of being obsessed with control.

Jabbing his finger at the defendant in a theatrical display of pious indignation, he said “This man knowingly defrauded First Bank by offering false invoices for orders that never existed! He lied! He cheated!” Deegan mocked Reb Shalom Mordechai’s claims that he was not responsible for all financial transactions and that he did not know that his actions crossed the line into illegality.

Deegan urged the jury to find Rubashkin guilty on all 91 counts - virtually sentencing him to life imprisonment.

Defense attorney Guy Cook told jurors that the prosecution had invented a story that didn’t happen. He asked the jury to take the necessary time to think about the evidence and to weigh it carefully.

“The prosecution wants you to set aside the evidence, and regardless of whether it makes sense, to find the defendant guilty,” he said. “I’m asking you not to rush to judgment but to think carefully about what you’ve heard here. Think about the evidence. Any reasonable person can see the government’s case is implausible. It goes against common sense.”

## Bank Signaled Its Consent

Cook addressed the central charge that Reb Shalom Mordechai had defrauded the bank by creating false invoices to show inflated sales, so as to entitle Agriprocessors to additional loan funds.

Cook said, “Shalom Rubashkin has acknowledged he made mistakes. But it was obvious the bank knew about it and still continued to lend Agriprocessors money. In so doing, the bank was signaling its tacit consent.”

Interest on the \$35 million line of credit came to \$13.5 million and was enormously lucrative for the lender bank. It helped shaped the bank’s policy of not looking closely at Agriprocessors’ paperwork, never once conducting an audit, and continuing to lend the meat company millions of dollars even after the government raid.

Given the bank’s intentionally turning a blind eye, how could the government possibly cry fraud, Cook asked the jury. Furthermore, while the bank itself launched its own civil suit against Agriprocessors to recover its loan money, strikingly, the lawsuit makes no complaint of fraud.

Cook said that this fact underscores that the government has manufactured a federal criminal case out of a matter that should have remained in civil litigation. The government had overreached in this case, he said.

He said his client was an inexperienced businessman who tackled too much. “My client is guilty of incompetence and oversight. That doesn’t make him a criminal. Defaulting on a bank loan is not a crime.”

The Government of the United States Against.... Shalom Rubashkin?

Cook reminded jurors of some of the terms in the plant’s loan contract with the bank, that Aaron Rubashkin, Shalom’s father, carries “unlimited” responsibility for the \$35 million loan, while Shalom was responsible for just \$1 million. He noted that Agriprocessors had many high-level managers, and Reb Shalom Mordechai was not responsible for all financial transactions.

The fact that the government insists on singling out Reb Shalom Mordechai exclusively for every minor and major violation they uncovered invites suspicion, Cook said. How is it possible in a business so massive, he asked, for one person to be single-handedly responsible for every single mistake and oversight?

Cook wondered aloud why prosecutors had not a single question for Aaron Rubashkin while he was on the witness stand. “It seems they had a script they had to follow, and it called for concentrating all their ammunition at my client. Questioning the true owner of the plant might uncover information that would weaken their case against Shalom. That couldn’t be allowed. The script had to be followed to the end.”

Aaron Rubashkin, who opened the Postville slaughterhouse in 1987, told jurors that he mortgaged his home, two buildings that he owned and his store in Boro Park after the May 2008 immigration raid.

“I don’t want to describe what was there (following the raid),” the 80 year-old said. “I’m sure the architects who made it have pictures.”

His efforts to save the company ultimately failed, as the plant slipped into bankruptcy the following November.

Defense lawyers called the elder Rubashkin, a Lubavitcher *chossid* who began his career decades ago processing meat in Paris after fleeing Russia, to contest the charges.

“When we came to Postville, every street (had) 4-5 homes for sale; Stores were for rent,” Aaron Rubashkin said. “We bought a rundown plant; everything was rotten. We built a new water facility.”

He said he commuted to Brooklyn, NY, every week, while his two sons who helped him in the company, Shalom Mordechai lived in Twin Cities, MN, and Heshy in Rochester.

Building a *shul*, *mikvah* and school to properly conduct Jewish-observant life was a necessary step. By the time of the raid, the Iowa town was a full-fledged Jewish community.

When asked what Shalom Mordechai’s job title was when he began, Aaron Rubashkin simply replied: “Son.”

"We ran it like a family business," he added.

His son, Yossi Rubashkin, and son-in-law, Shalom Minkowicz, managed the sales in New York. His daughter did the same in Florida.

Following the raid, Aaron Rubashkin said he managed to gather between 4 and 5 million dollars from his personal assets. "We tried to get all the help we could," he said.

He said he was unaware of any illegal immigrants working at the plant, and had trusted the plant's human resources manager, Elizabeth Billmeyer, before the raid that detained 389 illegal workers.

"I used to trust her. She is a very strong woman," Aaron Rubashkin said. "I cannot understand how this happened."

At the end of his confident testimony Tuesday morning, the prosecution said it did not wish to cross-examine Aaron Rubashkin in front of the jurors. "Clearly they were afraid of the positive image he portrayed," a supporter who was in court said. "He practically said the banks left him hanging to dry as he struggled to find funds they had promised to lend him, and that every financial move was consulted with them."

### WILDLY INFLATED INDICTMENT

Attorney Cook said the wildly inflated "91 counts of bank, mail and wire fraud" with which Reb Shalom Mordechai is charged constitute an obvious ploy to sway the jury.

"Where does this "ninety-one" come from? Bank, mail and wire fraud - it's all the very same charge. This massive number is meant to overwhelm you. You're supposed to think "Ninety-one counts? He must have done something terrible. Even if he's only guilty of a quarter of them, he must be a criminal!"

Cook reminded the jury that of the 50 witnesses the prosecution called, none of them who had any acquaintance with Reb Shalom Mordechai had a bad word to say about him.

"Did you hear from a single one of them that Shalom is a liar, a cheater, a greedy person?" he asked. "Think about the adjectives they used... 'Generous,' 'kind,' 'honest,' 'trustworthy,' 'hard-working,' 'problem-solving...' People who did millions of dollars of business with him over many years said his word is gold. You heard one witness testify that with Shalom, no contracts were necessary - a handshake sufficed."

Cook also showed jurors a Power Point slide of Reb Shalom Mordechai with his wife and their 10 children. He reminded them that the fake invoices were never kept hidden or handled with secrecy, testifying to Reb Shalom Mordechai's belief that he was doing nothing illegal.

"Would he knowingly put his family at risk?" Cook asked. "Does he have the criminal intent that the government assigns him? To convict him, you must be certain beyond any reasonable doubt that Shalom Rubashkin set out to break the law, to cheat and defraud."

Cook held up the plant's loan contract with the plant, which looked to be at least 100 pages, and reminded jurors that Reb Shalom Mordechai never read it. To emphasize his point, he dropped it on the floor.

### CRUCIAL TESTIMONY SUPPRESSED

Witness testimony considered crucial by the defense team in establishing Reb Shalom Mordechai's innocence was repeatedly barred by the presiding judge at the trial. Witnesses who had traveled considerable distances to testify were told by the judge that their information was not "relevant" and could not be presented before the jury.

Judge Linda Reade, prodded by the prosecution, composed a list of topics that she would not allow the defense to mention at the trial, arguing that these topics could unfairly sway the jury in the defendant's favor. By rigidly insisting on adherence to these restrictions, Reade deprived the defense team of opportunities to prove Reb Shalom Mordechai's innocence, trial watchers said.

Taboo topics included any mention of Reb Shalom Mordechai's

flowing generosity and charitable activities. There was no place in the trial for an "emotional litany reciting the defendant's good works," Reade intoned. The defense team was also forbidden to mention politicians or elected officials who had toured Agriprocessors in the past, and had publicly lauded the plant, its management, operations and contribution to the community.

Lastly, the defense was admonished to avoid all mention of the challenges the family faced in dealing with their 16-year old son's autism, lest it evoke sympathy from the jury.

### STRAIGHT-JACKETING THE DEFENSE

The suppression of other important testimony had the effect of straight-jacketing the defense. It cleared the way for the prosecution to paint Reb Shalom Mordechai as a conniving law-breaker who enriched himself and his family by defrauding the bank and exploiting the immigrants in his employment.

Witnesses came forward to challenge this image, but jurors were instructed by Reade to leave the room while they spoke. The witnesses recounted examples of Reb Shalom Mordechai's unusual humanitarianism and acts of kindness toward Jew and non-Jew alike. They testified to his stainless reputation in his own community and far beyond as a man of his word, honorable and trustworthy in business.

Even when attorneys argued that the above testimony was important in disproving money-laundering allegations, or to dispel insinuations that Reb Shalom Mordechai lived a lavish lifestyle by misappropriating funds, Judge Reade rigidly imposed her restrictions.

At various points in the trial, the hamstringing of the defense reached the point of absurdity. A prosecution witness testified that she was often asked by Reb Shalom Mordechai to drive her and his son to meetings. Prosecution attorneys insinuated that the defendant and his son were engaged in clandestine activity at the office and therefore preferred not to have the family's car in the parking lot.

During cross-examination, the witness admitted that when Reb Shalom Mordechai needed a lift, it was usually because he had put his car at the disposal of one or other of the many visitors who found their way to his Postville address, seeking help. As for the son who accompanied his father to the "secret" meetings, "Are you aware that the defendant's son, Moishe, is a special-needs autistic child?" Cook asked the witness.

"Objection!" the prosecutor exclaimed. "Sustained!" snapped the judge, sharply admonishing Cook for mentioning the forbidden topic of autistic Moishe.

### FINANCIAL EXPERT'S TESTIMONY BARRED

In another instance of Judge Reade barring crucial testimony, Manhattan-based Abe Roth, CPA, had made a comprehensive review of correspondence between Agriprocessors' financial officers and FBBC, the lender bank Reb Shalom Mordechai was accused of defrauding.

Working pro bono, Roth came to Sioux Falls of his own volition, prepared to demonstrate to the judge and jury a fact vital to the defense: that it was virtually impossible that the bank was unaware that some of the paperwork submitted by Agriprocessors contained inflated numbers.

The discrepancies were too glaring to go unnoticed, Roth stated, indicating that the bank was complicit with the inflated sales numbers; due to the immense profits it reaped from the credit it extended Agriprocessors.

Roth never did get to present his findings to the jury. In one of many rulings that smacked of one-sidedness, Judge Reade ruled in pre-trial discussions that Roth's testimony was inadmissible, since it represented his "opinion," as opposed to "evidence."

### "LOOK ME IN THE EYE...."

Reade also refused to allow jurors to hear the testimony of Post-

*He said he was unaware of any illegal immigrants working at the plant, and had trusted the plant's human resources manager, Elizabeth Billmeyer, before the raid that detained 389 illegal workers.*

*"I used to trust her. She is a very strong woman," Aaron Rubashkin said.*

*"I cannot understand how this happened."*

ville farmer Stan Martin who made the five-hour trip to Sioux Falls to tell a poignant story of how "Shalom" rescued him from disaster. With jurors out of the room, Mr. Martin recounted that after a plague killed off his entire hog farm, he came to Reb Shalom Mordechai for help. Pleading for a loan to restart himself in business by purchasing cows, he named a huge sum of money needed for the investment. "I'm so sorry, I simply don't have that kind of money to lend," Reb Shalom Mordechai told him.

"Look me in the eye," the man said brokenly. "I need your help desperately. I have nowhere else to turn."

"Well, Shalom stood up and looked me in the eye," Mr. Martin recalled. "Meet me at the bank in an hour," he said to me. "I met him there an hour later and he arranged the loan. This is the sort of man you're dealing with," he said with a catch in his voice.

#### FISTFUL OF HUNDRED DOLLAR BILLS

Mrs. S. traveled from Postville to Sioux Falls the same day, hoping to be able to repay a man who she said was like an angel from Heaven in her time of need. Her testimony too, was barred. Before the judge, attorneys from both sides and the court stenographer, but with the jury out of the room, Mrs. S. told of having fallen on hard times. She said she made an appointment to see Reb Shalom Mordechai at his office.

"I described how we were going through very difficult straits... My husband was in between jobs. Our electricity was about to be turned off. Rabbi Rubashkin didn't ask questions or give advice. He reached into his pocket and withdrew a fistful of bills - hundred dollar bills. He gave me the money with a kind word and an encouraging smile... This scenario was repeated a number of times over the year, before we finally began to get back on our feet."

#### A CASE BUILT ON INSINUATIONS

Attorney Guy Cook argued for the right to present testimony about these sweeping acts of charity to the jury. The defense sought to counter the prosecution's accusations that over a million dollars passed through Reb Shalom Mordechai's bank account, that the defendant used the grocery and the *yeshiva* he supported to launder money for his own use, for "gold and silver items and jewelry."

Yet these alleged purchases were never specified or identified in court, and no evidence was ever produced that the money allegedly used to buy them came from illicit sources. Under cross-examination, Cook exposed a case so weak that it relied solely on insinuations and the hope of planting suspicion in jurors' minds. Cook asked the government-appointed accountant who made the claim about the huge sum of money passing through Reb Shalom Mordechai to elaborate.

"Can you tell the court where all this money went, where and how

it was spent?" Cook asked.

"Our investigation did not focus on that information," the witness answered.

"But you presented your testimony as a summary of the Rubashkin's bank account," Cook said.

"No, sir, I called it a summary *from* his account."

"In other words, you are presenting a partial report, out of context?"

"I'm presenting a summary of the deposits only."

"To be absolutely clear, you have no information about how the money was spent, whether for business or personal reasons, for loans, charity or anything else?"

"That is correct."

What's the point of half a story? Why did the investigation refrain from discovering what the money was spent on? Wouldn't that shed light on whether the defendant was acting within the law or outside it?

The government-appointed accountant had no answer. He was simply doing what he was told to do. But the implication was clear to everyone in the courtroom. The government stopped short of investigating the expenditures in the Rubashkin account because the facts discovered might have crippled their case. Revelations that considerable sums of money went to help people like farmer Stan Martin or indigent people in the community like Mrs. S. would throw a monkey wrench into a case so weak it rested solely on insinuations to sway the jury.

#### MONEY-LAUNDERING?

The shabbiness of the government's case was further hammered home during cross-examination of one of the prosecution's star witnesses, Yom Tov (Toby) Bensasson, who turned informer in a plea agreement with the government.

Bensasson testified against Reb Shalom Mordechai, his former boss and close friend. He said that Reb Shalom Mordechai orchestrated the fake invoices, and that instead of sending bank payments directly to the lender bank as required, he sometimes rerouted the money, depositing it in the grocery store or the community *yeshiva*, which Agriprocessors owned. The prosecution called this "money-laundering," insinuating that Reb Shalom Mordechai withdrew this money for his own use. Guy Cook challenged this charge while cross-examining Bensasson.

*Cook:* To your knowledge, did Shalom siphon off money from these funds for his personal use?

*Bensasson:* No, sir.

*Cook:* Are you aware of any outside bank accounts to which he re-routed any of it?

*In another instance of Judge Reade barring crucial testimony, Manhattan-based Abe Roth, CPA, had made a comprehensive review of correspondence between Agriprocessors' financial officers and FBBC, the lender bank Reb Shalom Mordechai was accused of defrauding.*

## ***Roth never did get to present his findings to the jury.***

*Bensasson:* I am not.

*Cook:* Granted that the money was re-routed for a couple of days, didn't every penny of it ultimately reach the bank?

*Bensasson:* Yes.

### **DEFENSE CALLS FOR MISTRIAL**

In pre-trial rulings, Judge Reade had separated the charges of bank fraud from immigration-related charges, calling for two separate trials. She reasoned that combining the multiple issues and charges would confuse the jury, making a fair trial impossible.

This ruling was repeatedly violated during the actual trial. Reade permitted the prosecution to call up seven witnesses to testify about illegal immigrants being harbored at the meat-packing plant, allegedly with Reb Shalom Mordechai's knowledge. Their testimony stretched over ten hours, continuing for a day and a half.

Although the defense team objected, even filing for mistrial, Reade overruled them and allowed the testimony to proceed.

Reb Shalom Mordechai took the stand last Thursday in his own defense. He told the court that learning of the impending immigration raid one day before it was launched, he and his lawyers had petitioned the government to allow the plant's management to make the necessary changes without disrupting operations. Reb Shalom Mordechai pledged to comply with all requirements regarding the filing of legal identification papers, and the terminating the employment of unauthorized immigrants. The petition was ignored.

The defense team wanted to subpoena the lawyers to testify that they were in the plant's office the day of the raid, working to process new papers for many of the unauthorized workers. Reade refused to allow their testimony.

The fact that Reb Shalom Mordechai took the stand was somewhat of an anomaly, as it is rare, in a case of a defendant facing a 2,000-year sentence, to take the stand and subject himself to the grilling of the prosecutors.

"Reb Shalom Mordechai had no choice, however, because the judge had disqualified much of the defense's evidence and many of their arguments, and didn't permit witnesses for the defense say their piece," relates a Rubashkin supporter. "When he testified, he spoke very calmly - as it says in *Chovos Halevavos* that one with *bitachon* is blessed with calmness. They tried to rattle him and it didn't go. Hashem put the right words in his mouth and he stymied the prosecution. The *siyata diShmaya* was clear."

Reb Shalom Mordechai told the court that he never intentionally violated federal fraud or immigration laws.

"I made mistakes," he said. "I'm a human being. I took the information people gave me and sort of went with it without really

drilling down to see if it was for real or not."

Assistant U.S. Attorney C.J. Williams confronted him about a statement he allegedly made to Elizabeth Billmeyer, the plant's human resources director. Billmeyer testified last week that she warned Reb Shalom Mordechai about illegal immigrants working the plant. She said Shalom Mordechai told her: "It's my company, and I'll run it the way I want."

"Did you say that?" Williams asked.

On the stand, Reb Shalom Mordechai shook his head and said he was offended.

"First of all, Agriprocessors is not my company," he said. "I don't talk like that. I never, ever made a statement like that. It's not me."

Defense lawyer Guy Cook walked Reb Shalom Mordechai through his upbringing in the Boro Park neighborhood in Brooklyn, then asked about his family and faith as a *frum* Jew.

Prosecutors objected to the narrative nine times in the first 25 minutes of testimony.

### **WITNESS COACHED**

Disturbing evidence that witnesses were intimidated, threatened and repeatedly coached about how to testify emerged during various points during the trial.

One of the immigrants, who testified to being hired with false papers, admitted under defense cross-examination that he was told by investigators that unless he cooperated with the government and did as instructed, his visa permitting him to remain in the country with his family would not be renewed.

Another witness admitted to being repeatedly coached by prosecutors as to exactly what she was to say. "I was told to speak only about Shalom Rubashkin, and to say nothing that would implicate anyone else," April Hamilton admitted under cross-examination.

Over the past few weeks, Sioux Falls, South Dakota, saw dozens of his family, friends and members of the *frum* community arriving to provide *chizuk* and moral support.

Local motels were hosting *rabbonim*, *bochurim*, *askonim* and others who came out of support for Reb Shalom Mordechai.

"We will miss them (when the trial ends)," said Lynelle Dick, front desk clerk at Country Inn. "It gets quiet in the winter and they live the place."

A few words from an observer in the courthouse gallery who traveled a long distance to be at the trial sums up what Reb Shalom Rubashkin's predicament means to so many people across the country, those who know him and those who don't.

"I'm here because it could be me..."

# A Travesty of Justice

BY CHAIM RUBASH(EV)KIN\*

A travesty  
We witnessed  
When *shechitah* went on trial  
A prosecutor  
Who'd just spew  
Invectives mean and vile

No justice found  
In Iowa  
Not even one iota  
The smear campaign  
Indeed insane  
Infected South Dakota

And as we watched  
So helplessly  
While government just laughed  
With claims of  
Fraud, conspiracy  
Laundering and graft

And they would stop  
At nothing  
To relentlessly pursue  
The simple bearded  
Meat-packer  
Who also was a Jew

And no expense  
Did the Feds spare  
To hang him on a hook  
To vilify  
The sweetest guy

And paint him as a crook  
Who is this Jew  
They want to jail  
To smear his name  
Revoke his bail

Who is this *korban*  
This poor pawn

Who wakes up hours  
Before dawn  
Whose *chessed, tzedakah*  
Was renown  
To all who lived  
Around his town

And whether Jew  
Or gentile  
He helped each one  
With a smile  
But corrupt banks  
And shame-faced men  
Needed to  
Save face again

And so they picked  
A helpless soul  
One who all Jews  
Would extol  
Yet now they would  
Reverse the role  
A judge clearly  
Out of control

And now a sentence  
She shall dole  
Who does not see  
The awful toll  
The question we  
Must ask ourselves  
Is what more should we have done  
That would ensure  
Forevermore  
A case like this is won

To many of you  
Sitting home  
You say it's no big deal  
I would not stop  
Our efforts  
When Shalom goes to appeal

And ramp up  
All your *ahava*  
For a distant fellow Jew  
This case is not  
Just Iowa  
It might be about you  
*\*Today we are all Rubash(ev)kin*



# Justice Denied

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BY DEBBIE MAIMON

The guilty verdicts returned by the jurors in the Rubashkin trial last week were both deeply disturbing and surprising. In retrospect, however, they should not have come as a surprise, as the rank inequities in the way the trial was conducted all but guaranteed a miscarriage of justice.

Many who followed the trial had ardently hoped for an acquittal. Disconcerted by the one-sided rulings from the bench, they nevertheless prayed that the truth would emerge. Those hopes were dashed as Judge Linda Reade spent close to an hour reading off the list of 86 charges to which the jurors had returned a guilty verdict.

## BITTER AFTERMATH

The devastating outcome of the trial was made even more bitter by events that immediately followed. Upon the requests of the prosecutors who branded him a flight risk, Reb Shalom Mordechai was taken into federal custody over the protests of his lawyers and was made to spend the night in solitary confinement at the Sioux Falls State Penitentiary.

He was deprived of basic rights, including the right to contact his attorney and to wear his *yarmulka* and *tzitzis*. Prison guards forcibly stripped him. For two hours, they maliciously taunted and baited him, hoping to provoke him to defiance while videotaping his reaction. He forced himself to remain calm, and somehow survived the night. His family is seeking to have the videotape released.

Although his lawyer had informed the U.S. Marshals about his client's special dietary needs (kosher food), this information was not given over to the Sioux Falls Penitentiary authorities. Food sent by his family also did not reach him. Thus, Reb Shalom Mordechai ate nothing for two days, from Thursday noon until *Motzoei Shabbos*.

His family was lied to about his true whereabouts and he was not allowed to contact them. A sympathetic U.S. Marshall intervened and phoned the family to inform them where he was being held. They rushed his *tallis* and *tefillin* to him.

By the time these words are first read, Reb Shalom Mordechai's sentence will have been pronounced by Judge Linda Reade. Hopefully, he will be freed on bail pending his upcoming trial on immigration charges. Few expect her to show any leniency.

## APPEAL IS CERTAIN

As parts of the court record become accessible to the public for the first time, many are convinced that Reb Shalom Mordechai was deprived of a fair trial. An appeal is certain, his attorneys said. Attorney Guy Cook told *WCF Courier* that a key aspect of the appeal will be Judge Linda Reade's decision to allow jurors to hear vast amounts of testimony that incriminated Reb Shalom Mordechai on immigration violations.

This decision was in clear defiance of Reade's own earlier ruling that split the immigration and financial charges. In that ruling, she said

it would be difficult for a jury to render a fair verdict if they had to listen to damaging information about a host of different charges. Accordingly, the subject of harboring illegal immigrants was supposed to be barred from the financial trial.

## THREE CALLS FOR A MISTRIAL

Reade contravened her own ruling, Cook said. Over the protests of the defense, the judge allowed more than ten hours of damaging immigration-related testimony against the defendant. The defense team's objections were filed in three separate motions for a mistrial, all of which were turned down by Reade.

"It's clear that allowing unrelated charges to be brought up in a trial unfairly influences the jury to convict the defendant," Cook explained. "Make the defendant look guilty of an unrelated charge, and it's easier to pin him with criminal intent in relation to the real charges before the court. Those are grounds for a mistrial."

In effect, if not intent, Reade seemed to be assisting the prosecution. The leniency shown the prosecution contrasted starkly with the severe constraints imposed on the defense. Reade's continually suppressed great amounts of witness testimony that might have led to Reb Shalom Mordechai's acquittal.

The suppression of crucial testimony crippled the defense in several ways. A lynchpin of the prosecution's case was its portrayal of the bank as a victim of criminal deception, or fraud, on Reb Shalom Mordechai's part. The defense was prepared to prove the falsity of this claim.

## BANK NEVER ALLEGED FRAUD

Financial experts took the stand to show that the reviews and audits of Argriprocessors by the bank were so half-hearted and infrequent as to be worthless. These superficial "lip-service" audits signaled the bank's clear choice to continue their business dealings with the company from which they greatly benefited.

It should be noted that the bank never alleged fraud in their suit to recover their monies following the company filing for bankruptcy.

Prosecutors fought to neutralize the testimony of the financial experts and Judge Reade sided with them. She instructed the jurors to leave the room while these witnesses gave their testimony. She similarly blocked the testimony of six other important witnesses, claiming their remarks were part of an "emotional litany" that would unfairly influence the jury. Their testimony, however, remains part of the court record and will undoubtedly be used by defense counsel at a later date.

## COLLABORATION?

Observers at the trial were baffled by many of Judge Reade's rulings that appeared to tie the defense's hands while clearing a path for the prosecution. But those familiar with this judge's involvement in the

*Reade contravened her own ruling, Cook said.*

*Over the protests of the defense, the judge allowed more than ten hours of damaging immigration-related testimony against the defendant.*

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planning stages and execution of the ICE raid at Agriprocessors were anything but surprised.

Offering some startling revelations about the federal raid on Agriprocessors, a *New York Times* article on Tuesday addressed the phenomenon of “300 illegal immigrant workers being tried, convicted on criminal charges and sentenced to prison - all in just four days!”

“Now the legal blueprint for those extraordinarily swift proceedings has come to light, and it is raising questions about the close collaboration between the federal court in Iowa [presided over by Judge Reade] and the prosecutors who pressed the charges,” the *Times* article noted.

[The separation of powers in the United States government is a key constitutional protection, indispensable in a democracy. It prevents the perversion of justice typical of “kangaroo courts” in totalitarian societies, where the judge automatically rubberstamps the prosecutor’s findings.]

The *Times* report noted that preparations for the hearings following the raid “were overseen by Linda R. Reade, the chief judge of the Northern District of Iowa court.” It goes on to report that in an interview in May during the hearings, Judge Reade said she had begun to organize them *the previous December*, when she was advised by the immigration authorities to expect a “major law enforcement initiative.”

#### LAWYERS HAD TO FOLLOW SCRIPTS

What was Judge Reade’s exact role? In organizing the hearings, she helped prepare the “scripts” that laid out in great detail the plea deals that were to be offered the illegal immigrants. The scripts also included the official statements to be made by the judges when they accepted the pleas and handed down sentences.

According to the *Times* report, a uniform jail sentence of five months followed by deportation was imposed for all suspects who agreed to a plea deal. The majority of the immigrants were begging to be deported immediately to be able to rejoin their families. But the government had other plans for many of them.

The plea deal was written in such a way that a suspect was compelled to pledge his or her willingness to cooperate with authorities; namely, to testify against managers and other higher-ups in Agriprocessors to grand juries. If he or she rejected the plea deal, the uniform sentence of two years imprisonment was imposed, to be followed by deportation.

#### LAWYER WALKED OUT IN DISGUST

One defense lawyer who received the scripts from prosecutors on the day of the raid said he became convinced that the hearings had been organized for one purpose alone: to produce guilty pleas for the prosecution. As a result, the lawyer, Rockne Cole, “walked out in disgust,” he wrote in a letter to a Congressional subcommittee.

“What I found most astonishing,” he wrote, “is that apparently Chief Judge Reade had already ratified these deals prior to negotiations between any of the suspects and their lawyers.” The deals “pushed people into pleading guilty,” Cole said.

“I hope I am wrong... but what from I infer, the overwhelming facts

suggest a breathtaking level of coordination between the U.S. District Court Judge Reade and Department of Justice prosecutors.”

“I nevertheless strongly encourage the committee to keep an open mind and to afford all officials involved in a fair hearing, which unfortunately was not given to the defendants in Postville,” Cole concluded.

Courts are not allowed to participate in the plea agreements reached between prosecutors and defense lawyers, stressed Robert Rigg, president of the Iowa Association of Criminal Defense Lawyers.

Law professor Stephanos Bibas, an expert on federal criminal procedure who studied the scripts at the request of the *New York Times*, agreed. “The scripts do make it look as if the prosecutor and the judge have worked it out ahead of time and made it a fait accompli,” he said. “The defense might well assume the judge is behind this.”

#### DEFENDANTS CALLED FOR READE TO STEP DOWN

Because of her inside role in the pre-raid planning, including helping to orchestrate the fast-track hearings, plea bargains and sentencing of the hundreds of illegals, Judge Reade was asked to recuse or disqualify herself in the case of two defendants who were slated to come before her for sentencing.

The *Des Moines Register* cited the case of Martin de la Rosa-Loera, a former manager at Agriprocessors, who pleaded guilty under an agreement with prosecutors to aiding and abetting the harboring of undocumented immigrants.

His attorney, Thomas McQueen, said that despite the plea agreement, his client was calling for Judge Reade to step down from his case before sentencing. McQueen filed a motion questioning Reade’s impartiality. He argued that Reade worked with the federal government in organizing fast-track judicial proceedings for hundreds of defendants, and presided over the cases.

Reade refused to recuse herself, insisting that her teamwork with district attorneys did not compromise her impartiality.

#### COOPERATION OR COLLUSION?

In another case cited by the *Des Moines Register*, Reade denied a motion for recusal filed on behalf of 29-year-old Karina Pilar Freund, charged with aiding and abetting undocumented immigrants at Agriprocessors.

Freund’s attorney, Mark Brown, argued in court documents that Reade took part in pre-raid proceedings following the ICE raid. He said that “Reade’s involvement in hiring Spanish interpreters, contacting possible defense attorneys and coordinating court proceedings calls the appearance of her impartiality into question.”

In her response, Reade said she was “simply performing her official duties,” and that the defendant “repeatedly confuses cooperation with collusion.”

Did trial observers at the Rubashkin trial also “confuse cooperation with collusion?” Or did cooperation from the bench actually cross the line into collusion with the prosecution? As the full trial proceedings become a matter of public record, and as Reb Shalom Mordechai’s appeal moves forward, the public will hopefully learn the truth.

# Klal Yisroel, Where Are You?

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BY RABBI YISROEL BESSER

It was the night before *Yom Kippur*. I made my way up the steps of many Montreal homes, accompanied by a new friend, Meir Simcha Rubashkin. Warmhearted *Yidden* welcomed us, understanding that we were there for a cause.

As soon as my companion, Meir Simcha, said his last name, they understood. *That* Rubashkin. Our hosts involuntarily squirmed when he said who his father is, confronted - despite themselves - with the deep discomfort engendered by the name. Was it guilt about not doing enough and not caring enough?

Meir Simcha, with trademark Rubashkin buoyancy and cheer, smiled brightly and explained why we were there. A child of wealth and privilege, married just eighteen months, sixteen of which were spent back in Postville helping his mother cope, Meir Simcha asked *Yidden* to open their hearts and wallets for his father.

To all those *Yidden*, thank you for your warm response. You understood how hard it was for him. You saw that underneath his confident smile was an inner world torn asunder by the painful ordeal. You reached into your pockets and withdrew more than you could afford, hoping that perhaps, this way, He would be merciful on the impending Day of Judgment.

I learned, during the few nights that I was privileged to go around with Meir Simcha, just how deeply you really do care. Once the initial skepticism imposed on you by the silence of the Jewish establishment and the vicious hatred of bloggers faded away, you were more than generous.

Rabbi Moshe Sherer *zt"l* is famously quoted as saying that we have an *achrayus* to care not just about *Klal Yisroel*, but about *Reb Yisroel*.

Allow me to paraphrase the words of this great man. In this case, the Reb Yisroels have shown they care. It's the '*Klal Yisroels*' who have fallen short.

I know that things look bleak right now for Reb Shalom Mordechai, but the way they look mean little to people who inhabit the world that he does. It's a sublime place, one that, if we're lucky, we get to visit just before the *tekiah gedolah* at the end of *Ne'ilah*. It's a place of true, unwavering *bitachon*, or clarity, vision and security that there is a Plan.

One has to see him and sit with him to understand it. It's almost tangible. No, he doesn't do the hyperbole thing, letting *pesukim* and optimistic phrases fall from his lips even when he doesn't mean them.

I saw him. I sat with him. He's for real.

The bloggers think his smile is one of smugness. It isn't. He is smiling - even after the verdict - because he believes. *He believes!* They are the smug ones, sitting and passing judgment when the Mighty Hand of the True Judge can come expose them in a moment!

It's entirely possible that the many guarantees and promises made to those who choose the path of *bitachon* will be fulfilled in Reb Sha-

lom Mordechai, and we may yet see some surprising developments. He may just win on appeal and then we will have the *seudas hoda'ah* that we are so anxiously awaiting.

Do you know who the *mechutanim* will be at that affair?

It will be the *yechidim*, the Reb Yisroels out there. The *hartzige Yidden* who clipped the ads from *Yated* and mailed in a check. The *rabbeim*, actuaries, grocery clerks and everyone else who was touched and moved to contribute. It will be the children, like my own nine-year-old daughter, who asks me each day when she comes home from school, "Totty, what happened with your friend? Will he have to go to jail? I *davened* sooo hard!" It will be the ones who opened their doors wide to Meir Simcha and his siblings - who have spent most of their lives doing the opening - smiling broadly and saying, "Come in."

They - the individuals - will be the true *mechutanim*.

And the groups? The ones with large legal departments and media connections and massive banquets and conferences with the stated goal of helping *Yidden*? They will scratch their heads and try to explain where they were when the *Ribbono Shel Olam* was accepting partners.

The fact that someone has a beard and *peyos* doesn't make him a victim of anti-Semitism if he finds himself on the wrong side of law. The United States government, for better or for worse, allowed Reb Shalom Mordechai due process. He had a hearing and a lawyer and was found guilty by the jury. They were doing their jobs.

No one says that the government has to love *Yidden*, to be *moser nefesh* for them, to believe in them. I am not disappointed in Uncle Sam. He has no *mitzvah* to love *Yidden*.

But *they*, the organizations and foundations and conferences of *kid-dush Hashem*-worriers, do. At this point, it makes no difference if Reb Shalom Rubashkin made mistakes, if he is guilty and if he should have accepted a plea bargain. At this point, the only thing that should concern any feeling *Yid* is that Reb Shalom Mordechai is facing a bitter punishment. He may, *chas veshalom*, never again see his children not behind bars. He may miss out on their *chasunos*, and he may never again learn a *blatt Gemara* in the *yeshiva* he loves so much. That's what's important now.

I think that deep in their hearts, the professional *askanim* feel bad. They feel that maybe they should be doing more to help him...but how can they? How can they allow the blemish of association onto their impeccable résumés? What of the public, looking on?

So we are left with the *yechidim*, the heroes of this campaign, the anonymous army of *Yidden* that has nothing to lose by being associated with this unpopular cause.

It's true, an organization that publicly stands by him may suffer from it, from the message they are sending, but what of the message they send by ignoring him? What of the message that it's acceptable

to watch a *Yid* flounder and fall?

And to those who feel that they can't afford to take the chance, that to put their legal teams and public relations committees at his disposal would hurt them, allow me one story.

*The bochur, Yankel, was nervous, very nervous. His entire future was literally at stake. Everything had been going so well. He had been learning well, growing and developing, and a bright future had seemed assured. That had all been before the dreaded envelope had come. Once it had come, and with it the ominous draft notice, his world had grown dark. The prospect of being forced into the army, of facing many, many years with virtually no hope for any sort of spiritual growth, was a horrible one. He had immediately left yeshiva and headed for Warsaw, where he planned on using every bureaucratic means at his disposal to earn an exemption.*

*It was on the train to Warsaw that he caught a glimpse of the noble face. Could it be? Was the great Brisker Rov, Rav Chaim, on his train? He took a few steps back and looked again. Yes, there was no doubt about it. It was Rav Chaim Soloveitchik of Brisk.*

*He timidly approached the gaon and shared his predicament with*

**I am not disappointed in Uncle Sam.**

*He has no mitzvah to love Yidden.*

*But they, the organizations  
and foundations and  
conferences of kiddush  
Hashem-worriers, do.*



*him. "Could the Rov possibly help me in any way?" Rav Chaim told Yankel that, while in Warsaw, he would be meeting with several influential people and he would try to help. "But please come to where I am staying and remind me," he said.*

*Yankel took down the address and returned to his seat. The train arrived in Warsaw and Yankel set out to do that which he had come to do, meeting with whomever he thought could help him. After a few days, he decided to go remind Rav Chaim of his promise to help and made his way to Rav Chaim's lodgings.*

*He arrived and was greeted by a large crowd in the waiting room. It seems that Rav Chaim was in the middle of meeting a large group of gedolei Yisroel, great rabbonim, roshei yeshiva and rebbes, along with the most prominent activists and askanim, discussing issues of importance to Klal Yisroel. The crowd outside consisted of attendants and gabbaim to the illustrious personages in the room with Rav Chaim.*

*Yankel wasn't deterred. The prospect of spending the next few decades fighting for Russia, marching across the freezing wasteland, eating vegetables for sustenance in the company of uncouth soldiers, was a lot more unpleasant than having to fight for an audience with the Rov. He approached the door of Rav Chaim's room and asked the attendant if he could just, for a moment, go in and remind Rav Chaim about his predicament. The attendant informed him that there was no way he would be allowed entry. Yankel argued back, insisting that Rav Chaim had told him to come and that this was true pikuach nefesh. The attendant was adamant; no one was to disturb the gedolim.*

*The shouts grew louder. The noise reached the great men in the room and, finally, Rav Chaim himself appeared in the doorway. The embarrassed attendant indicated Yankel and Rav Chaim took in the situation at a glance. "Ah yes, the bochur from the train. Indeed, I told you to come. Step inside the room."*

*Rav Chaim excused himself from his distinguished colleagues and sat down with Yankel in a corner of the room, listening closely as Yankel filled him in on the progress of his mission. He asked and advised, finally hitting on a plan of action and promising Yankel that he would do his part.*

*Only then, when Yankel felt calm and reassured, did Rav Chaim return to his meeting. As they resumed conversation, Rav Chaim detected that some of the people at the table were puzzled by his behavior; he had kept them waiting, this important group, people to whom every minute was precious, while he had dealt with the yeshiva bochur.*

*Rav Chaim heard their unspoken question and looked around before answering. Then, he said, "Rabbosai, everything that we discuss, deliberate and decide here is for what purpose? That of Klal Yisroel. We are dedicated to Klal Yisroel and have made the trip here, to Warsaw, to help Klal Yisroel in whichever way we can. Well, rabbosai, that yeshiva bochur, who sits and learn behasmanda and just wants to get an exemption from the army so that he can return to yeshiva...he is Klal Yisroel!"*

*So to you, the organizations and movements that are out there working for the Jewish nation, I plead: Before you set the agenda for your meeting, banquet or kinnus, remember: This unassuming *Yid*, the one who slept with a thin sheet and had no food this past *Shabbos*, he, with his wife and ten children, the *Yid* who is just like us, looking to Heaven and waiting for a ray of sunshine...he is Klal Yisroel.*

# Sadness in Sioux Falls

BY RABBI YITZCHOK HISIGER

I sit here just hours after having heard the news. I am dumbfounded and confounded. I am shaken up. I feel like a ton of bricks has hit me.

I am experiencing feelings I seldom have felt before.

It is Thursday night. I should be taking care of various *Shabbos* preparations, but instead I sit here unable to move.

How can I possibly go on with life like nothing has happened? Our brother was just been taken away, in handcuffs, by four officers, like a hardened criminal.

A jury has found a good man guilty of dozens of charges in a case that was nothing more than a concoction of lies and misrepresentations. I wish I could go out into the streets of America and let the world know the truth. I want to tell people of the evidence and testimony that the judge, Linda Reade, did not allow the defense to present to the jury. Most of all, I want to let the world know that the American court system is broken.

As someone who was in the courtroom told me a day before the trial wrapped up, "If the masses knew the way the court system in America truly operated, there would be riots in the streets."

A jury listened for four weeks to flawed and empty testimony and decided that Reb Shalom Mordechai Rubashkin is guilty of 86 of 91 charges.

Their task was to consider whether the defendant is guilty beyond a reasonable doubt. Even without the crucial evidence that was withheld, the jury could not have possibly come to a logical conclusion that Reb Shalom Mordechai is guilty beyond a reasonable doubt.

So perhaps the jury system is broken too. Maybe it was bias. Maybe it was sheer ignorance. Or perhaps the government's shock-and-awe tactic of throwing countless charges at their target worked. Maybe the jury, like so many other uninformed people, decided that if there's smoke - even if the smoke was planted by the Federal government - there must be fire.

What blinded the five-man, seven-woman jury at the federal courthouse in downtown Sioux Falls? I don't know. Was it anti-Semitism? Was it the site of a bearded Jew that prevented them from seeing the truth?

Reb Shalom Mordechai was targeted for destruction by PETA and the very unions which have destroyed manufacturing in this country and sent millions of jobs overseas. The Heksher Tzedek initiative was partner in this greater effort aimed directly to bring down this successful company and family.

*Even within our communities - and this is painful to say - there were and there are those who believed the fodder that the mainstream press coughed up on a regular basis.*

*If the Federal government charged a man with over 91 counts,*

*how virtuous can he possibly be? Right?*

*Wrong.*

*These people never met or spoke to Reb Shalom Mordechai. They never heard the voice of this man who lives with Hashem every breathing second and has respect for the country we live in and its laws.*

*They never spoke to this individual who throughout this first trial was more worried about spreading the word of Hashem than the fact that he is being judged for his very life.*

*They never spoke to this consummate ovoid Hashem who, during the days of his trial, was busy making copies of a sefer at the local Staples store in Sioux Falls. While awaiting the verdict, what was he doing? Giving a shiur to some bochurim who had come to give him chizuk.*

*The detractors never conversed with this special neshama who, during his very own trial, brought Torah and Yiddishkeit to Sioux Falls for the first time, igniting the pintele Yid in a dozen Jews who have been assimilated in the melting pot of America.*

*They never bothered to sit down and study the case, and try to make heads and tails of the charges that the prosecutors had thrown at Reb Shalom Mordechai.*

*They never bothered to try to understand why the government had targeted a vice president of the company and blamed him for all the crimes that they claimed were committed at the meat plant.*

*There never bothered to try to understand how in the world the very judge who ordered the unprecedented raid on Agriprocessors back in May 2008 could be the judge presiding over the case against Reb Shalom Mordechai. Wouldn't she be biased against the defendant and attempt to steer the case in a fashion that would now justify her earlier decision to allow the company to be raided?*

*In our world, we call that a nogeiah b'dovor, a conflict of interest. In the American justice system, it's called, well, justice, I guess.*

*Last Sunday, I spoke to Reb Shalom Mordechai. I picked up the phone and asked, in a voice filled with admiration, "Am I speaking with the semel (symbol) of bitachon here in the United States?"*

*He humbly laughed. He didn't realize that I meant it with every fiber of my being.*

*He said modestly, "Mir darf hubben bitachon."*

*To him, it was so simple. You believe in the Ribono Shel Olam. What the Master of the World does is good and with a reason. A Yid believes that there's a plan. Even when you are the victim of a flawed judicial system and a biased judge, you maintain your trust in the Ribono Shel Olam. That's Reb Shalom Mordechai Rubashkin.*

*Rabbi Moshe Feller of Minneapolis told me several weeks ago that Reb Shalom Mordechai is a "Tehillim Yid." He has been completing Tehillim daily for years.*

*A pure and holy Yid. A Yid who knows the lashon hara spread about him, but is undeterred and undaunted.*

*A Yid who lives with Hakadosh Boruch Hu every day.*

*Halevai oif mir gezokt.*

*It was thus so heartbreaking to learn of the jury's decision Thursday evening. I was numb. I knew the facts and the fabrications. I knew that Reb Shalom Mordechai was hampered in his effort to provide evidence to prove his innocence.*

I tried to regain my bearings and I thought back to when this all started several years ago. Allegations of animal abuse were suddenly made by PETA, People for the Ethical Treatment of Animals, after they planted someone in the Agriprocessors plant undercover - in what noted attorney Nathan Lewin said was illegal trespass of the premises - and took pictures of what was going on in the meat plant.

I thought of the fact that from then, until now, the greater frum community - with few exceptions, including our publisher, Rabbi Pinchos Lipschutz - did not sufficiently come to Reb Shalom Mordechai's defense. The company that had provided meat to the greater Jewish community for years - and at no cost to countless *kehillos* and *mosdos* - and should have received the support of the Jewish community was left hanging for the unions and others to jump in and tear the company down.

These efforts were buttressed by articles filled with distortions and falsifications about the Rubashkins printed in *The Forward* and on countless websites and blogs. To this day, shockingly, *frum* publications, in print and online, have been almost totally silent, failing to point out what has been nothing less than a travesty of justice, even before the verdict of the Sioux Falls jury was handed down.

The Rubashkins treated their employees better than the employees are treated at all the major slaughterhouses in the United States, according to Attorney Lewin. They were paid better and treated more humanely. But false exposés take on lives of their own and people believe what they want to believe.

Federal officials then raided the plant, something they never did at any other slaughterhouse or company accused of hiring illegal immigrants. As Mr. Lewin has pointed out, suddenly, under the Obama administration, immigration officials have changed their policy and are no longer raiding plants. They have decided to simply to talk to employers to get them to fire their illegal employees. This was something the Rubashkins were always prepared to do. The government never gave them that chance.

When I learned of the verdict Thursday afternoon, I read that the jury had acquitted Reb Shalom Mordechai on five charges and wondered which ones those were. I read: *The jury found him not guilty of five counts of violating a law requiring payment of livestock providers within 24 hours.*

Those following the case know that prosecutors alleged that the company violated a 2002 order by the U.S. secretary of agriculture to pay cattle providers within 24 hours of a sale. The charge stemmed from a 1921 law, the U.S. Packers and Stockyards Act. The law requires "prompt payment" to protect livestock producers.

However, scholars who have studied the law said they had never seen it invoked in a criminal case.

Chris Kelley, a University of Arkansas law school professor, at the time, said, "This is the first time in my life that I've heard of that."

Reb Shalom Mordechai's attorney, Guy Cook, addressed this charge at the time by stating that the livestock producers themselves, to this day, have a positive opinion of Reb Shalom Mordechai and have said that his "word is gold." Agri always paid fair money and the cattle people were happy with the arrangement. The government tried to enforce a law that has never been invoked and that has not been called into question by the cattle producers themselves.

The jury apparently recognized that. What they failed to realize was that just as this charge was patently preposterous, the entire case against Reb Shalom Mordechai was no less spurious.

And what did the jury think about the fact that the government insisted on singling out Reb Shalom Mordechai exclusively for



every minor and major violation they claimed to have uncovered? Why didn't that invite suspicion? Frankly, how is it possible in a business so massive for one person to be single-handedly responsible for every single alleged mistake and oversight?

Why didn't prosecutors ask even one question - not a single one - of Aaron Rubashkin while he was on the witness stand? Perhaps, as Attorney Cook said later, questioning the true owner of the plant might uncover information that would weaken their case against Reb Shalom Mordechai. That couldn't be allowed. They were following a script and they were going to follow it all the way to the bitter end. There was no desire for the truth.

They threw 91 charges at Reb Shalom Mordechai. For what? For bank, mail and wire fraud, which are all the very same charge. The government was on a mission to overwhelm the jury.

Cook told the jury, "You're supposed to think, 'Ninety-one counts? He must have done something terrible. Even if he's only guilty of a quarter of them, he must be a criminal!'"

Sadly, the government's ploy seemed to have worked. The jury fell into their trap.

How about the fact that of the 50 witnesses the prosecution called, none of them - not one - who had any acquaintance with Reb Shalom Mordechai had a bad word to say about him?

Consider the fact that in pre-trial rulings, Reade had separated the charges of bank fraud from immigration-related charges, calling for two separate trials, and yet this ruling was repeatedly violated during the actual trial. Reade had said that combining the multiple issues and charges would confuse the jury, making a fair trial impossible, but she still inexplicably permitted the prosecution to call up no less than seven witnesses to testify about illegal immigrants being harbored at the meat-packing plant, allegedly with Reb Shalom Mordechai's knowledge.

Most disturbing, perhaps, is that crucial evidence by the defense team in establishing Reb Shalom Mordechai's innocence was repeatedly barred by Judge Reade. Witnesses who had traveled considerable distances to testify were told by the judge that their information was not "relevant" and could not be presented before the jury.

"401. 402. 403."

Those are the numbers of the court rules that were cited again and again throughout the case by Reade, ruling that certain evidence and testimony were not "relevant."

Reade said she was afraid that certain topics would sway the jury in the defendant's favor.

G-d forbid.

Reade did nothing less than deprive the defense team of opportunities to prove Reb Shalom Mordechai's innocence.

What was considered taboo, you want to know?

Reb Shalom Mordechai's generosity. His charitable activities. His care and concern for others. Any demonstration that this is an upstanding, law-abiding, moral and ethical man. There was no place in the trial for an "emotional litany reciting the defendant's good works," Reade intoned. The defense team was also forbidden to mention politicians or elected officials who had toured Agriprocessors in the past, and had publicly lauded the plant, its management, operations and contribution to the community.

The defense was admonished to avoid all mention of the challenges the family faced in dealing with their 16-year old son's autism, lest it evoke sympathy from the jury.

What a *shandeh*. What a disgrace.

The suppression of other important testimony had the effect of straight-jacketing the defense. It cleared the way for the prosecution to paint Reb Shalom Mordechai as a conniving law-breaker who enriched himself and his family by defrauding the bank and exploiting the immigrants in his employment. Even when attorneys argued that the above testimony was important in disproving

money-laundering allegations, or to dispel insinuations that Reb Shalom Mordechai lived a lavish lifestyle by misappropriating funds, Judge Reade rigidly imposed her restrictions.

The shabbiness of the government's case despite the omission of this testimony was apparently still lost on the jury. Reb Shalom Mordechai was trained as a rabbi, not a businessman, and any alleged sloppy business practices that might have occurred didn't amount to crimes.

It would appear that the government and the judge had their minds made up before this trial began. They had targeted Reb Shalom Mordechai and they were hell-bent on accomplishing what they set out to do.

### A SILVER LINING

Amidst all the darkness and gloom, there have been streaks of light and inspiration. There is, first and foremost, the unbending - and almost supernatural - spiritual strength of Reb Shalom Mordechai.

At the same time, there has been an absolutely remarkable outpouring of support from *Yidden* across the country. No one knows about it, because those who have decided to contribute to this cause have, on their own, done so from the privacy of their homes, writing out a check or donating by credit card to take part in this effort to help a Jew caught in witch-hunt.

I recently looked through some of the checks that came in for the Pidyon Shvuyim Fund established for Reb Shalom Mordechai. I saw true *achdus* on the ground level, with *Yidden* of all kinds responding to the *Yated's* appeal and sending in checks ranging from \$2 to \$10,000. Many of these checks were accompanied by thoughtful notes, heartfelt *brachos*, and offers to help out in any way. I saw checks from Jews down south and donations by Lakewood *yungeleit* who barely have enough to sustain their own families. There were addresses from out West and donations from prominent *rabbonim* and *askanim*. The diversity of the donors was touching. I saw how people cared. Rather than the cynicism and antipathy that some would have us believe prevail out there, I saw care, compassion and sensitivity.

My heart swelled with pride, because I knew that the *Ribono Shel Olam* could only be *shepping nachas* from the unbelievable exhibition of thought and concern being shown. It is heartwarming to consider that in this economy, with many struggling as they are financially, people have truly taken to heart the plight of a Jew they never met and knew very little about until recently. *Mi ke'amcha Yisroel*.

### ME OR YOU

Despite what others may say, this entire effort to destroy Reb Shalom Mordechai was not an isolated case. It was an attack and an assault on *shechitah* in general. Today it was Reb Shalom Mordechai and tomorrow it could be the new company in Postville and its owners who bought the plant and have reestablished the operation on the sweat, blood and tears of the Rubashkins.

A family business that provided more charity and *tzedakah* than any of us will ever know has gone up in smoke. Its founder, 80-year-old Aaron Rubashkin, has watched as his own son, whom he asked to assist with the running of the company, has been sacrificed on the altar of the American justice system.

We sit here powerless, as PETA, the unions and others wait in the wings to destroy other companies. They await the opportunity to pounce on other *shechitah* operations. And they won't stop there. As this case has shown, any *yarmulke*-wearing Jew running a business better look over his shoulder.

Today the blood libel was against Reb Shalom Mordechai.

Tomorrow the victim could be me or you.

# The Truth about the Trial

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BY DEBBIE MAIMON

Nothing exposes the government's flawed, overzealous prosecution of Shalom Mordechai Rubashkin as much as the prosecution's decision two weeks ago to drop all 72 immigration charges against him.

This move followed just a few days after Shalom Mordechai's conviction on bank fraud charges, in a trial marked by bizarre irregularities and one-sided rulings from the bench that all but predetermined a guilty verdict.

The move to dismiss immigration charges took many by surprise. Prosecutor Peter Deegan, in his motion to dismiss, stated that his reasoning was that a conviction on immigration charges would be completely "eclipsed" by the severe sentence Shalom Mordechai faces for bank fraud. He also cited the expense of a second prolonged trial and the inconvenience to the witnesses.

The decision was hailed by defense attorney Guy Cook, who said the charges should have been dismissed long ago, and that the dismissal vindicated his client. Yet many who followed the case closely suspect the prosecution's move was self-serving. They feel it was driven by an unwillingness to hold a trial that might end up focusing unwanted scrutiny on the government's actions in connection with the raid and the excessive prosecution of Shalom Mordechai Rubashkin.

## HOW PROSECUTORS WON THEIR CASE

How were charges deemed so serious that they were used to justify the devastating raid at Agriprocessors so simply dropped? Weren't immigration violations part of the very backbone of the government's case?

The charges of harboring aliens and aiding them in document fraud were in fact responsible for almost half of the 163-count indictment against Shalom Mordechai. Not only that, but the now-dismissed charges, although they were supposed to be barred from the fraud trial, actually played a key role in the jury's guilty verdict.

U.S. Prosecutor Peter Deegan acknowledged as much in his motion to dismiss: "*The jury's verdicts on several of the fraud counts were premised, at least in part, upon the defendant knowingly [misleading] the bank with regard to harboring undocumented aliens...*" he wrote.

Jurors already heard much of the evidence of Rubashkin's guilt in regard to immigration violations, and even "premiered" their verdict on it. The "public interest would not be served" by repeating the process, Deegan said.

Wait. Let's have that again.

Prosecution rides roughshod over Judge Linda Reade's ruling to exclude immigration testimony from the bank fraud trial; sneaks in many hours of such testimony; uses it to paint the defendant as an

arrogant lawbreaker which persuades the jury to return a sweeping guilty verdict - *only to drop all 72 immigration charges afterwards?*

Simply put, the prosecution won a conviction that can send a man to jail for life based in large measure on charges that have now been totally dismissed!

If that isn't scandalous enough, what of the prosecution's manipulation of the jury by mixing immigration-violation testimony into the fraud trial - with an apparent green light from the bench despite Reade's earlier ruling forbidding it?

The likelihood of confusing the jury by mixing the charges is precisely why Judge Reade ruled they should be separated. Yet, over the defense's objections, she allowed the testimony, ignoring three defense motions calling for a mistrial.

This is the same judge who not only authorized the raid on Agriprocessors, but helped prepare the plea bargain scripts that illegal immigrants were forced to use, and worked actively with prosecutors in expediting their sentencing.

What is one to make of this breathtaking disregard of due process, the most basic and fundamental right of every citizen in this country? Read on. It only gets worse.

## 'DIRTYING UP' THE DEFENDANT

Defense attorney Guy Cook protested the prosecution's tactics of "dirtying up" the defendant with unrelated charges in order to criminalize him in the jury's mind.

Prosecutors were required to prove that Shalom Mordechai had "criminal intent" in his dealings with the bank, but lacked the evidence to support fraud and money-laundering charges. Their strategy was to prop up a weak case by selling the jury a sinister profile of a man who played fast and loose with immigration laws, by harboring aliens, conspiring to engage in Social Security fraud, and other immigration-related crimes.

These tactics worked, but only because Judge Reade made sure they were not undermined by defense witnesses who challenged their credibility. These witnesses included lawyers, CPAs and ordinary citizens who came forward to prove that Shalom Mordechai had hired lawyers to help resolve his immigration problems prior to the raid.

Their testimony exposed the falsity of the charges of bank fraud and money-laundering.

Yet the jurors never heard a word of their testimony. They were sent out of the courtroom while these witnesses took the stand.

Cook said this subversion of the jury process would be a key argument in Shalom Mordechai's appeal. "The government poisoned the financial trial with prejudicial evidence from the immigration charges, which for their own reasons they have now dismissed," he said.

## PUTTING ICE RAID ON TRIAL

Critics of the government's ICE raid on Agriprocessors, including immigration lawyers and activists for immigration reform, were deeply disappointed by the dropping of charges. They had hoped to use the trial as a platform to expose the mistreatment of the men and women who were seized and prosecuted. Sharp criticism of the unprecedented harshness that characterized the raid continues to hound ICE and has led to the formation of a congressional subcommittee to investigate the matter.

Many say the trial's dismissal, in addition to avoiding unnecessary expense and inconvenience, saves ICE authorities from being "put on trial" themselves. Having their actions in connection with the raid subjected to scrutiny might open up a Pandora's box.

Critics want to know how and why the huge, coordinated effort that required intense planning and vast resources before it swooped down in May 2008, seizing about 400 workers, was first launched. Who gave the go-ahead to this enforcement action? Who wrote the "stage instructions" for shotgun-wielding agents in heavy riot gear to break down doors and corral the workers, whisking them away in chains to makeshift courts and detention centers in northern Iowa?

At this far-flung location, far from their homes and family members, the immigrants, most of whom spoke no English and were given minimal translation, were pressed to plead guilty and serve five to 12 months in prison, or face a maximum of 10 years and a \$250,000 fine at trial.

Their plea agreements had been pre-scripted by government authorities, one of whom was Judge Linda Reade, and required the immigrants to admit to aggravated identify theft - a charge that carries serious prison time - and to cooperate with the government in helping to prosecute others.

Even after serving their five-month sentence, the ordeal continued for some 40 of the "convicts," recalled against their will as material witnesses in the charges now being dropped.

## WITNESSES BEGGED TO BE DEPORTED

Now that they are no longer needed, they are begging to be deported. They have no livelihoods, homes or community to return to in this country. After more than a year in legal limbo and electronic shackles, with the families they supported enduring severe hardship, they have only one desire: to be allowed to leave the country and rejoin their families in Guatemala and Mexico.

Local community leaders in Decorah and Postville, Iowa, said federal authorities dumped the potential witnesses in their towns without making arrangements for their housing, food or work. The men showed up in the November cold shoeless, wearing light prison-issued clothing and socks with thin soles, a community spokesman told *The Gazette*, a local paper.

## WHAT AN IMMIGRATION TRIAL WOULD UNCOVER

If the immigration charges against Shalom Mordechai were allowed to go forward and these witnesses had a chance to testify, ICE officials would be forced to address a number of burning questions.

"They'd have to answer why illegal immigration was singled out and criminalized at Agriprocessors in a way it has never been before," writes Dr. Erik Camayd-Freixas, a professor of Hispanic studies at Miami University, who also served as a court appointed translator for arrested immigrants at Agriprocessors.

"A year later, it is clear that the feds crushed hundreds of workers and their families, at an unprecedented scale, to build an exemplary immigration case against Shalom Rubashkin," he said. "Dropping those charges now as unnecessary makes the raid all the more scandalous.

"Under the old way of doing things, the illegal workers would have been simply and swiftly deported. Instead, more than 260 were

charged as serious criminals for "aggravated identity theft" - for using false Social Security numbers, and most were sentenced to five months in prison."

At an immigration trial, officials would be forced to address the fact that a few months following the raid, the US Supreme Court slammed the charges of ID theft that were used to coerce guilty pleas from the immigrants. The court said identity theft applies only when the defendant knows the correct identity of the owner whose documents he steals.

In the case of the illegal workers, most had no clue about the significance or content of their false papers. Their convictions should therefore have been vacated and the people freed. Why weren't they?

Why was Agriprocessors targeted when it is widely known that the livestock industry uses illegal immigrants extensively? With 19 million illegals and a cloudy policy at best, why was Agri singled out? In an immigration trial, these questions could no longer be stonewalled.

Shalom Mordechai's lawyers have for months been requesting documents explaining how the raid was planned, organized and executed. They want to know how the operation was justified, how authorities arrived at the presumption that violation of the law was the norm at Agriprocessors. ICE officials have repeatedly shunted aside their requests.

After three follow-up letters asking ICE officials about the open-records request,

Defense lawyers sued for the information under the Freedom of Information Act. "Despite several requests for production of the information sought, it is apparent ICE will not honor Shalom Rubashkin's FOIA requests without legal pressure," Guy Cook and Montgomery Brown wrote in the lawsuit.

An immigration trial would have produced evidence that would have crippled the prosecution's charges that Agriprocessors not only knowingly hired illegal aliens, but aided them in document fraud. The plant twice rejected the employment application of a federal "sting" informant because of fraudulent work documents.

He was hired the third time he applied after authorities equipped him with legitimate papers, and he was thus able to infiltrate the plant. With clear evidence that the plant had screening procedures in place and did not indiscriminately hire illegal aliens, "prosecutors knew their case was tenuous," noted Washington attorney Nathan Lewin. Is this why they decided to cook up a bank fraud case against Rubashkin?

Had an immigration trial gone forward, ICE officials would have had to address the fact that prior to the raid, the plant had retained a prominent international law firm to negotiate with ICE officials so as to resolve the immigration problems and remove illegal employees. The law firm had represented a large beef-slaughtering operation that had employed hundreds of illegal aliens, and these lawyers had succeeded in avoiding a raid.

But in the case of Agriprocessors, the federal agents refused to call off the planned raid. Why? The brutal enforcement action and the attendant national publicity poisoned public opinion against Shalom Mordechai and the company.

## WHAT BECAME OF THE GOVERNMENT'S LURID LLEGATIONS?

Remember the first reports that hit the press right after the government raid last year? Agriprocessors was painted as a den of iniquity by an ICE affidavit that allegedly uncovered lurid criminal activity.

In addition to harboring aliens, and exploiting and mistreating their workers, the plant was accused of being a front for drug production, of harboring a meth lab within its facility. Weapons and bombs were said to be present in the plant. One affidavit even quoted a worker who claimed he was tied up by a rabbi.

The lies and fabrications were so ludicrous, they would have been laughable had they not been gobbled up by a media and a public will-

ing to believe the worst.

Whatever happened to these wild, slanderous allegations? "If ICE truly believed in the veracity of the document it publicized so openly, it would have dispatched a HAZMAT (Hazardous Materials) team to the site at the time of the raid," noted attorney Lewin at the time.

Lewin added that following the raid, state and federal officials began speaking out against Agriprocessors "without any independent inquiry or due diligence." The allegations dominated the headlines for a while, swiftly turning the tide of public opinion as elected officials railed against Agriprocessors.

### PUBLIC OFFICIALS RUSH TO JUDGMENT

Iowa Governor Chet Culver utilized his position to slam Agriprocessors for taking "the low road." He publicly outlined the stringent measures he would take against the plant, yet turned down an invitation to visit the plant for himself and develop an informed position.

A group of uninformed Jewish congressmen sent a critical letter to Aaron Rubashkin, which echoed many of the libels circulated by PETA (People for the Ethical Treatment of Animals) - the extremist animal-rights group - and the UFCW (labor union known for its strong-arm tactics). Then-Senator Barack Obama even threw in a few barbs against Agriprocessors while campaigning.

Who was behind all of these wild allegations and the pressure brought to bear on public officials? To many, they seemed to carry the fingerprints of the anti-Agri 'cabal,' consisting of the PETA people, Union officials, and left-wing Jewish groups.

The reaction was catastrophic. The liberal Jewish media churned out story after story of abuse and negligence by Agriprocessors. The *JTA* ran an almost daily update. Many liberal Jewish journalists showed up in Postville hoping to obtain incriminating information for their columns. They even went into the local church and took quotes from hostile spokesmen.

The decline of Agriprocessors had been set in motion.

### CONNECTING THE DOTS

Nathan Lewin, who at one time represented Agriprocessors, traces the demonization of the meat-packing plant and particularly of Shalom Mordechai Rubashkin to events of five years ago when PETA sneaked one of their agents into the plant. The agent took a secret video of cows being slaughtered, after which the animal-rights group released the video, claiming it showed the abuse of animals.

The USDA, which monitors the plant and has a team of more than 20 inspectors continually on site, never closed the plant for even one hour and never corroborated the video. *Rabbonim* and *poskim* verified that *shechitah* procedures were being followed exactly according to Torah law.

Independent audits of the company and exhaustive reviews revealed no instances of inhumane slaughter, and gave Agriprocessors high marks for both its handling of livestock and its slaughtering procedures.

### ANTI-SHECHITAH GROUP GAINS MOMENTUM

Yet PETA was relentless. Their agenda to put an end to *shechitah* in the United States received a boost when their aggressive smear campaign against Agriprocessors won the alliance of the United Food and Commercial Workers Union (UFCW), a powerful labor union known for forcing businesses into submission, as well as the *Forward* newspaper.

Joining forces, these elements wielded formidable influence in both the public and political arena, and succeeded in demonizing Agriprocessors and its management.

The Union was determined to make Agri "pay" for refusing to unionize, and their tactics extended even to Jewish communities in Boro Park and Flatbush, who received automated phone calls slandering Agri's products. The *Forward* began a series of articles, many

of which were filled with misrepresentations, lies, and false statements against Shalom Mordechai Rubashkin.

### SMEAR CAMPAIGN

The net effect of the smear campaign was predictable, culminating in the almost universal vilification of an innocent man. Under its steady exposure, support eroded for Shalom Mordechai and Agriprocessors, even in the Orthodox Jewish community.

As a result, Shalom Mordechai was convicted in the courtroom of public opinion long before he had his day in court this past month. Most dishearteningly, the prosecution's campaign to portray him as the mastermind of a massive fraud scheme - based on empty allegations and insinuations - had made inroads in the Orthodox community.

Comments from intelligent people reveal a breathtaking lack of information about the case, and worse, a lack of sufficient interest and motivation to probe beneath the media hype for the truth. Hearing about "fake invoices" allegedly approved by Shalom Mordechai has propelled people to snap judgments, casting an honest man as a swindler.

### BANK FRAUD CHARGE DOESN'T STAND UP

As attorney Lewin points out, even assuming the charge to be true, "the creation of fake invoices is not a criminal offense unless the invoices are used to defraud someone," and prosecutors failed to prove that the bank - or anyone else - was defrauded.

"The bank was not defrauded because it really did not care what the invoices showed and could readily have discovered the truth," Lewin explained in correspondence with the *Yated*. "Thus, no crime was committed. At best, it may have been a technical offense that did not warrant the massive charges brought against Shalom Rubashkin."

Lewin said he believes "a neutral and fair federal prosecutor - not blinded by the prospect of enormous publicity for going after a high-profile target - would never have brought Rubashkin to federal court on bank fraud charges."

Yet prosecutors in this case did so, and were successful in dressing up minor offenses as bank fraud, he said.

### PUNISHMENT 'STAGGERINGLY DISPROPORTIONATE'

"Shalom Rubashkin has been given a raw deal," concurred the OU's Rabbi Menachem Genack. "The excessive prosecution of this man is staggeringly disproportionate to his mistakes. Rabbi Genack noted that Shalom Mordechai "maintains his innocence of bank fraud charges, and indeed, anyone who had dealings with him can vouch for his integrity."

He added that in his own visits to the plant, he never saw the slightest "cutting of corners in either *halacha* or ethical conduct. USDA inspectors were in the plant at all times, and they never reported a violation of any kind," he noted.

"Few media outlets described the extraordinarily good side to this man, his generosity and kind-heartedness toward everyone, Jew and non-Jew," Rabbi Genack said. "The *Yated* is an outstanding exception and deserves tremendous credit for rallying behind Shalom Mordechai."

Rabbi Genack believes that "whatever lapses may have occurred under duress when he was scrambling to save his company, do not warrant the kind of excessive prosecution and lifelong punishment that should be reserved for hard-core criminals."

"This is a man who - unlike a notorious all-time swindler people like to compare him with - lived modestly, was kind and trustworthy, and never fleeced a single customer. Even after the raid, under impossible pressures, he kept his payments to the bank coming punctually. To keep his commitments, he and his family mortgaged everything they owned. If anyone is deserving of sympathy, support and leniency, it is Shalom Rubashkin."

# Rubashkin Lawyer Speaks Out

BY DEBBIE MAIMON

*Chanukah* has come and gone. For some of us, the days flew by in a whirlwind of celebration and activity. But not for everyone. For Sholom Mordechai Rubashkin, waiting patiently in an Iowa jail while a court of appeals weighs a judge's decision not to grant him bail, time seemed to be crawling.

After prolonged negotiations with various prison officials, Aleph Institute, a Florida-based organization that offers services to Jewish prison inmates, won permission for Sholom Mordechai to light *Chanukah* light. In view of the regulations forbidding fires of any sort, and the vehement opposition they encountered from officials, the granting of special permission was embraced by the Rubashkin family as a miracle in its own right. It buoyed their trust in Hashem for a full *yeshuah*.

Each night of *Chanukah*, a guard escorted Sholom Mordechai from his cell to a cinder-block room. There he lit his *menorah* and was given an hour's respite to gather his thoughts and *daven*, while gazing into the tiny flames as they lit up the bleak surroundings.

In a lengthy interview with the *Yated*, attorney Guy Cook, who appealed Judge Linda Reade's bail decision, says that justice moves slowly, but he is very hopeful that the bail denial will be overturned in the coming days. He mentioned the strong arguments in the motion filed last week.

"We're talking about someone for whom 43 people offered their homes as guarantees that he wouldn't flee. That's over 8 million dollars in equity. Rabbis came forward to offer their synagogues' holy scrolls worth hundreds of thousands of dollars as collateral. Guarantees of this magnitude are simply unprecedented.

"People don't put themselves on the line to such a remarkable extent unless the person they're vouching for has earned that kind of trust," Cook added. "Reason dictates that such a person would never betray his friends, and would never dishonor himself by fleeing."

The attorney said that the court of appeals was asked to note that in just a couple of days after the jury's verdict, well over a thousand letters to Judge Reade poured in, testifying to Sholom Mordechai's trustworthiness in keeping a promise.

The court was also asked to look at the ten months of bail compliance he had already demonstrated in the months leading up to the trial, as well as the extra guarantees his lawyers had offered. These included an electronic monitoring ankle bracelet and home detention, as well as 24-hour armed surveillance at the Rubashkins' expense.

## DEFENSE COUNSEL TAKES *YATED* BEHIND THE SCENES

Guy Cook shared his perspective with the *Yated* on some of the key issues in the case, particularly as they pertain to the ap-

peal now being drafted by Sholom Mordechai's new legal team. Cook is working with noted Washington attorney Nathan Lewin and other lawyers on the appeal, which can be filed only after a sentence is handed down. That could take another month.

Cook said he is troubled by what he calls the "duplicitous, dishonest" tactics used by the prosecution which he feels robbed Sholom Mordechai of a fair trial. He cited the abuse of the grand jury system; the trick of massively inflating the indictment; intimidating and manipulating witnesses; and prejudicing the jury against the defendant by cloaking non-criminal offenses as serious felonies.

Equally destructive, he said, was the prosecution's sneaking in three days of immigration-violations testimony, after Judge Reade had earlier ruled that immigration charges could not be mixed in with the bank fraud trial.

It's an old trick and it worked like a dream, Cook said. Incriminate the defendant on an unrelated matter, and the job of convicting him on the charges he's standing trial for becomes much easier.

Cook slammed the prosecution for the "shock and awe tactics" in creating a sweeping 163-count indictment that he said overwhelmed the jury.

"Where did this astounding number come from? If you look into the counts, you see that they consist of a very small number of charges that were duplicated and subdivided again and again. It's as if I were arrested for J-walking, and was then charged separately for each and every step. That's what the government did with the bank fraud charges. A single charge sliced up into 86 pieces," said Cook.

Jacking up the counts to a shocking number was "duplicitous," he said, because it wrongly prejudiced the jury, making it easy for them to view Sholom Mordechai as a criminal. It also guaranteed that a guilty verdict would result in a long prison sentence.

## HOW NON-CRIMES BECAME FEDERAL FELONIES

Cook said the problem facing the prosecution was that the evidence didn't support the sinister image they wanted to project of Sholom Mordechai as an arrogant lawbreaker. It was necessary to stretch the truth, to dress up non-crimes as federal felonies, in order to win a conviction.

And it was necessary to position Sholom Mordechai as the mastermind who orchestrated the practice of the so-called "fake invoices," which then became the prosecution's "smoking gun."

Sholom Mordechai testified that while he knew about the inflated invoices, he did not generate them. They were part of a system put into place before his tenure as manager of the company began, and were perpetuated by Agri's financial department under CFO

Yom Tov Bensasson and CPA Mitch Meltzer. Both men advised him that the system was acceptable to the bank.

Earlier this year, Bensasson and Meltzer pleaded guilty to bank fraud. At the trial, they were the prosecution's two lead witnesses against Sholom Mordechai, shifting the blame for the invoices onto their former boss and friend.

[Under cross-examination, Bensasson admitted to having agreed to testify against Sholom Mordechai in return for a "deal" - a reduced sentence. Like most of the other prosecution witnesses, Bensasson was not told what that sentence would be until after the trial. The tactic ensured that he would earn his "reward" by performing well on the witness stand.

Other witnesses admitted under cross-examination that they were coached and warned about how to answer questions, and to focus their testimony on Sholom Mordechai alone. Their plea deals were apparently "performance-based" - with the reduced penalty or punishment to be handed down only after the trial, according to how well the witness stuck to the "script."]

### **BANK TO AGRI: DON'T BOTHER ME WITH THE DETAILS**

What are the true facts regarding the "fake invoices"? What was their precise function and were they in fact illegal?

Shedding light on a misunderstood aspect of the case, Cook explained to the *Yated* that these invoices from Agriprocessors inflated the company's receivables. They provided documentation that the lender bank required to justify to its investors the ongoing deal they had with the meat-packing plant. The deal provided Agri with loans from a \$35 million credit line in return for exorbitant interest rates that enriched the bank to the tune of millions of dollars.

So profitable was the arrangement for the bank that their officials chose not to look closely at Agri's paperwork, or to conduct even the most basic GAAP audit (a widely accepted set of procedures for reporting financial information).

"The reviews they did conduct were so superficial, they were a joke," said Cook. "Imagine bank auditors driving by Agri and calling out, 'Hey you guys. How's business?' 'Great!' someone answers. 'That's mighty fine. Keep it up fellas!' the auditors yell back and drive on.

"Of course that's a simplification. But it gives you a pretty accurate idea of how casually the bank ran things with Agri. The question is: what was behind this lackadaisical policy, this unspoken policy of 'Keep the payments coming and don't bother me with the details?'"

### **INVOICES TREATED LIKE PAPER MONEY**

"The answer," says Cook, "is they didn't look too closely because they didn't want to upset the apple cart. They were making a killing off this high-interest loan, the payments came in reliably, and that's all that mattered. So the invoices were like the paper money you use in Monopoly. You know it's paper money and the other players do, too. There's no deception involved.

Observers may wonder, does it really matter what the bank knew or could easily have known about the inflated invoices? Isn't the very act of creating false invoices itself illegal? The answer, says attorney Cook, is no. It is only illegal if the one who wrote the invoice intended to mislead (defraud) the other party.

This issue - the question of "criminal intent" - cuts to the heart of the charges against Sholom Mordechai. The prosecution claimed that the creation of padded invoices clearly proved intent to defraud.

Yet, two leading CPAs, one from Brooklyn and the other from Iowa, took the stand to testify that after studying all available data, they were convinced there was simply no way the bank could *not* have known about the inflated receivables. The inconsistencies



were so glaring, any layman would have spotted them. To claim the bank was deceived totally defies common sense, the accountants said.

Important as well is the fact that, as mentioned, the invoices were part of a system that existed prior to Sholom Mordechai's tenure, created by Agri's financial department under CFO Yom Tov Bensasson and CPA Mitch Meltzer.

Defense Counsel: Errors From The Bench Cost Sholom Mordechai A Fair Trial

But the CPAs' testimony - so crucial to the defense - never reached the jurors. Judge Reade ruled that the testimony was inadmissible and sent the jury out of the room. Her reason? "It's not the bank who is on trial."

"The judge clearly erred in not allowing their testimony," said Cook's co-counsel Montgomery Brown. Reade compounded that error with other one-sided rulings, such as the barring of witnesses whose testimony disproved the allegations of money laundering.

Brown said that a number of witnesses traveled to Sioux Falls to testify that they had received tens of thousands of dollars in charity from Sholom Mordechai to help them through a crisis or in times of need. Their testimony collapsed the prosecution's allegations that the defendant had pocketed extra funds from the business for his own use, tried to "launder" it through a Jewish school, or used it to buy false papers for undocumented workers in the plant.

Yet, these witnesses, too, were silenced. The prosecutor's repeated shouts of "Objection, 403!" (legal abbreviation for "Objection to testimony that might sway the jury by arousing sympathy for the defendant!") were sustained. The jury was instructed to leave the room while the witnesses testified to an empty courtroom.

### **BOGUS CHARGES AND RED HERRING**

The prosecution tried every possible avenue to criminalize Sholom Mordechai, alleging that he had misused Agri funds to buy jewelry and that "a cache of valuable coins" was purchased by him and sent to a strange address.

In addition, prosecutors charged that money that should have been paid directly to the bank was diverted to other sources and once again “money-laundered.”

One by one, these bogus charges were punctured. Guy Cook produced the cancelled checks that showed that Sholom Mordechai had docked certain amounts from his paychecks as repayment of money borrowed from Agri to buy engagement gifts for his son’s *kallah*.

The mysterious “valuable coins” turned out to be nothing more than a supply of silver dollars he had bought to be used in *shul* for *pidyon habens* and other occasions.

Montgomery Brown showed how the money-laundering charges were false, inasmuch as all payments reached the bank, although not always punctually on the due date. “At the very most, you might call the late payments a breach of contract,” said Brown. “To call it money laundering is misleading and untrue. It’s simply a red herring” [i.e., it diverts attention from the main issue].

Why, then, did the prosecution employ the term “money-laundering”?

“For the same reason they used emotionally charged language like ‘cheating,’ ‘stealing,’ ‘lying’ and ‘masterminding’ to describe non-criminal behavior,” Cook said. “Because even though it’s misleading and manipulative - and we feel we exposed that - it still impacts a jury.”

#### BEING FORCED TO BOX IN A TELEPHONE BOOTH

By barring the most important defense witnesses, Cook said that Judge Reade in effect prevented Sholom Mordechai from having his day in court. “It was like having to box in a telephone booth with your hands tied behind you. Even if you could free your arm, how could you defend yourself? How could you land a punch?”

Cook recalled the frustration of having a strong defense crippled by unreasonable and prejudicial rulings from the bench. He said that by allowing the prosecution to hammer away at immigration violations for three days, Judge Reade violated her own ruling and as much as guaranteed that a fair trial was impossible.

Reade ignored Cook’s objections, and his warning that he would call for a mistrial if the improper testimony continued. She allowed the proceedings to continue, as Cook called for a mistrial not once but three times during the next three days. Yet there was no way to prevent jurors from being inundated with prejudicial testimony of witnesses who had been coached to point to Sholom Mordechai as the person responsible for every violation in question.

The judge’s suppression of testimony vital to the defense; allowing the prosecution’s litany of immigration testimony against Sholom Mordechai; and the pumping up of an indictment to an unjustified number of counts to prejudice the jury are some of the key arguments in the appeal that is currently being drafted, Cook told the *Yated*.

“We look forward to presenting these arguments to the court of appeals,” he said. It will take time...but we hope justice will finally be served.”

#### “WE BEG YOU NOT TO DESTROY....”

Cook also described the cross-examination of an ICE official who acknowledged receiving a letter from Sholom Mordechai a number of days prior to the raid. The letter pleaded with the government not to raid the meat-packing plant, and asked for a federal overseer to help resolve the company’s immigration issues peacefully. The letter promised Agri’s full, wholehearted cooperation.

“We beg you not to destroy a company that gives jobs and sustenance to so many people, and that contributes so much to the production of kosher meat for hundreds of thousands of people across the United States,” the letter said.

“Did you receive this letter from Sholom Rubashkin in the week

prior to the raid?” Cook asked the ICE official.

“I did,” he replied.

“What did you do about it?”

“We took no action on it.”

“In other words, you ignored it?”

“Yes.”

“Why?”

Those were his instructions, the official said.

ICE Trying To Boost Arrest Statistics?

“Why did ICE prefer a raid over peaceful negotiation and resolution?” asks Cook. He answers his own question: “They wanted big action with splashy theater.” But this only leads to a string of deeper “whys.”

Why throw millions of dollars into an operation that isn’t necessary just to make a splash? Why destroy a town, uproot families and tear apart so many lives? Why pick a kosher meat-packing plant in the middle of nowhere?

Some say that higher-ups in ICE needed to justify a massive budget for an organization that was primarily designed to guard America’s borders from dangerous terrorists. Showing an impressive record of arrests and convictions creates the illusion that ICE is keeping Americans safe.

The problem is that criminality and terrorism do not provide enough daily business to maintain the readiness and muscle tone of this expensive force. For example, according to statistics published in the *New York Times*, in 2007, ICE criminal investigations resulted in 164 arrests and 91 convictions. Terrorism related arrests were not any more substantial.

The real numbers are in immigration: During the same year, ICE removed 276,912 illegal aliens. ICE is under enormous pressure to turn out statistical figures that might justify a fair utilization of its capabilities, resources, and ballooning budget.

Simply put, the criminalization of illegal workers may just be a cheap way of boosting ICE arrest statistics, with no regard whatsoever to the vast human wreckage such tactics leave in their wake.

A Private Glimpse

Although both Guy Cook and Montgomery Brown chose their words very carefully in their interviews with the *Yated*, one can sense the outrage they share with Sholom Mordechai and his family over a judicial process that demonized an innocent man. “We spent hundreds of hours with this person,” Brown says. “We got to know him well. We regard him very highly.”

The government’s excessively harsh, unreasonable treatment of Sholom Mordechai defies understanding, Cook says.

“They bring him to bail hearings in an orange prison jumpsuit, handcuffed at the wrists and at the waist, with leg shackles. What are they afraid of? That he’ll take a flying leap over the balcony and make a run for it in his orange prison clothes and handcuffs? It’s ridiculous beyond words. I asked them to please remove the chains. They took off the handcuffs, but that was it.”

He marvels at the strong faith that is carrying Sholom Mordechai through a nightmare. He relates that during the trial, he, his co-counsel and the Rubashkins all stayed in the same hotel, where he glimpsed a more private side to his client.

“One morning, I got up unusually early and took the elevator downstairs to the conference hall to get some work done,” Cook recalled. “Getting out of the elevator, I heard some humming or mumbling in one of the rooms adjoining the hall. I stuck my head around the corner to see what it was.

“It was Sholom, praying alone in a corner of the room. I just stood there watching him... This man’s faith is real. Despite everything he’s gone through and is still going through, he’s holding on. His focus is not on this motion or that motion. His focus is his faith. He feels he’s following the path G-d has chosen for him. He’ll continue on that path no matter what.”

# Bringing The Joy of Chanukah to Sioux Falls

With R' Sholom Mordechai Rubashkin waiting in a Cedar Rapids jail for a bail ruling from the court of appeals, his family, an hour and a half away in Postville, gathered in the kitchen the second night of *Chanukah* after *hadlokas neiros* to plan strategy. Not about the appeal or how to pay for it. Not about lawyers, judges or motions. Instead, Mrs. Leah Rubashkin and the older children were trying to devise a plan that would let them bring the warmth and joy of *Chanukah* to Jews who lived five hours away in Sioux Falls, but would enable them to return home the same day. They needed to be on hand early in the morning for a *Chanukah* play, in which the younger Rubashkin children, who were staying behind, would be performing.

"It was a little bit of a wild idea, but I thought about the special friends Sholom Mordechai and I had made in this city during the trial," Leah Rubashkin said. "Some of them are so thirsty for Torah, for the smallest taste of *Yiddishkeit*. It would be a real *chessed* to bring the warmth and *freilichkeit* of *Chanukah* to them. It's the kind of thing that Sholom Mordechai would love to do if he could.

"I broached it with my kids and they loved the idea. We contacted the people we had gotten to know in Sioux Falls and asked if they'd be interested. They were thrilled. One of the women had a good friend who worked in the Cultural Center in downtown Sioux Falls. She wrangled permission for us to hold a *menorah*-lighting ceremony in the early evening. Another person arranged for us to use a Wellness Center, connected with a local hospital, for the party itself.

"Sunday morning, out came the pots and pans and ingredients for a baking marathon. We rolled up our sleeves and went to work. A few feverish hours later, we had hundreds of steaming *latkes* and jelly doughnuts."

The Rubashkins piled into a 15-seat passenger van with a group of *yeshiva bochorim* for the five-hour ride to Sioux falls. The mouthwatering aromas of fresh *latkes* and home-baked jelly doughnuts tantalized them all the way to North Dakota.

Driving to Sioux Falls without Sholom Mordechai was poignant for Leah. They had made this trip together many times in the past four weeks while the trial was in progress. That ordeal was finally over, but with Sholom Mordechai incarcerated while they wait and pray for him to be allowed home on bail, the present situation was even more difficult. Everyone missed him terribly. "Another *Shabbos* without Totty," the little ones would say tearfully as Friday rolled around.

But there was no time to brood. It was *Chanukah*, a time of miracles and rescue, of joy and gratitude. There were three *Chanukah* events to put together in Sioux Falls on very short notice - two *Chanukah* parties to accommodate the schedules of two different groups, and a *menorah*-lighting. Sholom Mordechai was always the driving force behind these events. They would need every ounce of energy and organization, not to mention a huge dose of *siyata diShmaya*, to pull it all off.

She thought about the people they would see in Sioux Falls. There

was the Russian American couple, Mark and Celia Rogoff, who had little Jewish education but were very drawn to Judaism. They'd been rebuffed by the only synagogue around for miles - a Reform temple - because they were too tradition-oriented.

Mark had begun to use his Hebrew name, Menachem Mendel. He came to the courthouse every single day during the trial, giving Sholom Mordechai his blessings for an acquittal.

And there was Stephanie and Philip who had started out in Sioux Falls but had moved to the East Coast with their two children to be closer to a Jewish community. They'd lived in Long Island and in Brooklyn. Walking down the streets surrounded by religious-looking people, they couldn't summon up the courage to approach anyone to make a connection. And nobody approached them. After a few years, realizing that their experiment failed and they would always be outsiders, they moved back to North Dakota.

Stephanie and her family had attended a *Shabbaton* that the Rubashkins had made in the hotel during their first *Shabbos* in Sioux Falls. At one point, she turned to Leah with tears in her eyes. "Who would have ever dreamed that we had to go back to Sioux Falls, where there are no Jews, to make a connection with Judaism?"

Stephanie's friend worked in the Cultural Center, a prestigious building that has hosted symphonies, concerts and other cultural events. The friend got the management's consent to set up a *menorah* on a platform right outside the Center, and to have it lit as the Center was closing for the day.

The van pulled into Sioux Falls a little before 4:30. By five o'clock, people were starting to stream out of the building. 23-year old Getzel Rubashkin set up the *menorah*, and as curious onlookers gathered around, he said a few words about *Chanukah*, about spiritual freedom and the importance of giving G-dliness a place in one's life. He recited the *brachos* and lit the *menorah*. The *bochorim* sang *Maoz Tzur* with Getzel accompanying them on a keyboard, as the crowd grew.

In the evening, they hosted a *Chanukah* party with music, food and words of Torah. The *latkes* and doughnuts disappeared faster than they could serve them. The guests lingered, savoring the music, the warmth and Jewish spirit in the room. So this was *Chanukah*!

At ten o'clock, the Rubashkin clan did the entire event over again in Hebrew for a group of Israeli *yordim* who had just come home from work in a nearby mall. Sholom Mordechai had met these young men during their first week in Sioux Falls and, in his characteristic way, had forged a bond with them.

How do you manage to focus on others in the midst of your own pain? I wanted to ask. As if reading my mind, she answered. "It made the kids so happy to bring a little *Yiddishkeit* to people who are so thirsty for it," she said. "Because that's what their father would have done if he could. That's Sholom Mordechai."

# Something is Rotten In The Justice Culture

BY DEBBIE MAIMON

The wrongful conviction of Sholom Mordechai Rubashkin will soon climax in a shockingly long prison sentence - if the prosecutor in the case has his way.

Assistant US district attorney Peter Deegan, in court papers, has given his recommendation for a sentence of 25-27 years, "for offenses that no fair-minded prosecutor would ever have prosecuted as federal crimes," attorney Nathan Lewin has said.

Sholom Mordechai was convicted of 86 counts of bank fraud after prosecutors crafted an extraordinary number of charges out of a single count. Defense attorney Guy Cook called the tactics of building an inflated indictment by ringing up a separate offense for every fax, phonecall and email related to the same so-called 'crime' "legally improper and dishonest."

"They figured out how to slice this piece of 'kosher meat' remarkably thin," he said, with biting irony. Cook added that the prosecution wrongly turned what was essentially a case of poor business management into something approaching the crime of the century.

## UNSAVORY TACTICS

Coming at a time when prosecutorial misconduct in a number of high-profile cases has made headlines, the Rubashkin saga raises disturbing questions about the way the prosecution built its case prior to the trial, and the unsavory tactics used to win a conviction.

Critics cite the abuse of the grand jury system, padding the charges in the indictment, bribing and coercing witnesses, as well as exaggerating and mislabeling the defendant's offenses. There are suspicions that prosecutors suppressed information that might have exonerated Sholom Mordechai.

The fact that the prosecutor in the case could recommend a 27-year sentence for a man uniformly praised for his good character, a man convicted of offenses that hurt no one and never rose to the level of federal crimes, reveals a level of vindictiveness that cries out for investigation.

## VINDICTIVENESS

That special zeal to administer as much torment as possible was on display in the bail hearing that took place after the trial. There, the prosecutor, Peter Deegan, not satisfied with a conviction that could impose a bitter prison sentence, used every means at his disposal to keep Sholom Mordechai from being released on bail while awaiting sentencing.

Under cross-examination, he attempted nothing less than a rerun of the trial, dragging out the same fraudulent allegations and insinuations to paint Sholom Mordechai as an unrepentant law-breaker.

Although the trial issues should have had no bearing on the question of whether to grant bail, Judge Reade permitted Deegan not only

to rehash old charges, but to even invent new crimes, such as obstruction of justice, that were not part of the indictment and were never raised at trial.

"You lied under oath, didn't you? You didn't tell the truth to the jury, isn't that correct?" the prosecutor badgered Sholom Mordechai, infuriated at the defendant's refusal to budge from his position that he was innocent of bank fraud.

Deegan's arguments bordered on the ludicrous. "He's committing a felony offense right here in your courtroom, your honor!" he expostulated. He also tried to fashion a sinister twist to the avalanche of endorsement and support that flowed in from thousands of friends and supporters vouching for Sholom Mordechai's trustworthiness in honoring bail conditions.

"All that financial support could be used to help him flee with his family," he challenged Rabbi Sholem Hecht, coordinator of a fund that has raised huge amounts for Sholom Mordechai's legal defense.

"That's ridiculous," countered Rabbi Hecht on the witness stand. "We've paid huge sums for his defense. We're paying for lawyers to get him acquitted through the proper legal process, not for someone to help him flee to Timbuktu!"

Knowing full well that the Rubashkins' passports, including those of their younger children, had been confiscated, and that the safeguards offered by the defendant made flight an impossibility, Deegan persisted in his arguments that Sholom Mordechai was a criminal who didn't deserve to be released on bail.

Compounding the rank injustices in this case with yet another, Judge Linda Reade denied bail.

## LEWIN CITES JUDGE'S FAILURE TO MEET LEGAL CRITERIA

In a strongly worded appeal to the 8<sup>th</sup> circuit court of appeals to have the bail denial overturned, attorney Lewin noted that Reade failed to meet legal criteria for denying bail.

His brief argues that a judge is required to release on bail a defendant who a) is not a threat to society, b) who proves that he is not a flight risk, and c) for whom safeguards have been established to ensure that he will appear at sentencing.

Sholom Mordechai fully satisfied all of these conditions, the brief argued, making him legally eligible for bail. The safeguards included \$8 million worth of private homes offered as guarantees, 24-hour camera surveillance, armed security posted at his home, and an electronic monitoring ankle bracelet. His prior bail compliance in the ten months leading up to his trial offered further proof of his reliability.

Lewin noted that Judge Reade completely ignored the third of these conditions (adequate safeguards), raising serious questions about the integrity and soundness of reasoning in her decision.

His brief also noted the strong grounds for an appeal of the guilty

verdict, including serious procedural errors in the way the trial was run. It cited the impropriety of intertwining testimony about immigration violations - intended for a separate trial - with the bank fraud charges, which overwhelmed and prejudiced the jurors, exactly as Judge Reade herself had predicted would happen.

Inexplicably, Reade reversed her ruling about keeping the charges separate, providing clear grounds for calling a mistrial. In the appeal brief, Lewin also cites errors in Judge Reade's instructions to the jury.

Meanwhile, Sholom Mordechai remains behind bars, still awaiting a ruling by the court of appeals.

#### PROSECUTION REDEFINED LAWS TO WIN CONVICTION

The Rubashkin case will be remembered for the government's selective and excessively harsh prosecution, beginning with the arrest of Sholom Mordechai in October 2008 on a single count of conspiracy to commit document fraud. For that single white collar offense, he was compelled to post \$1 million bail - unprecedented for a peaceful law-abiding citizen with a previously clean record.

With that move, the government signaled its intention to pursue a conviction with particular ferocity.

The case continued to grab headlines and to shower federal prosecutors with high-profile attention as they repeatedly padded the charges against Sholom Mordechai, making the indictment balloon to an unprecedented 193 counts. The additional charges included money laundering and some "dead laws" never before used to prosecute anybody.

For many observers at the trial, it was the money-laundering conviction that dramatically showcased the prosecution's "win-at-all-costs" mentality, even though winning this case required willfully misinterpreting the law to the jury.

"Money-laundering," by definition, assumes illicit self-enrichment. Yet, the jury foreman told the presiding judge that while he and his fellow jurors found Sholom Mordechai guilty of this charge, they rejected the claim that he had personally profited from the so-called money-laundering.

If that has you totally befuddled, it's with good reason, because if the jury found that the defendant reaped no profit, the charges should have been dropped. A guilty verdict in such a case is nonsense. Even a child would understand this; why didn't the jurors?

#### CALLING AN APRICOT A NECTARINE

The answer is simple. Since Sholom Mordechai's dealings didn't fit the definition of money-laundering, the prosecution simply *altered* the definition. They stretched the legal definition of money-laundering to include temporarily detouring funds from their rightful destination even *without* intention of financial gain.

"Although this is akin to calling an apricot a nectarine," said one of the defense lawyers, the strategy worked. Temporarily diverting funds does not constitute money-laundering as long as the funds end up at the right place, but are jurors supposed to assume they know more than prosecutors?

To make things more confusing, the judge appeared to rubberstamp the prosecution's dishonest tactics in her instructions to the jury.

Prosecutors did the same kind of redefining of the law - and the facts - when it came to the charges of bank fraud. Fraud means deliberately cheating another party. Where no criminal intent is present, the charge of cheating doesn't apply.

#### MORE THAN A REASONABLE DOUBT

At the trial, the defense raised far more than a reasonable doubt about criminal intent by asking jurors a simple question: If the defendant had truly orchestrated a massive fraud scheme against the bank, why was "fraud" never mentioned in the bank's lawsuit to recover its funds after Agri declared bankruptcy?

Even after the prosecutors arrested Sholom Mordechai in October

2008, bank officials refused to echo the Feds' allegations of fraud. If a massive fraud had indeed been perpetrated, why weren't bank officials raising a hue and a cry?

The answer is that no fraud had occurred and the bank knew it. As explained in this column previously, bank officials knew about the inconsistencies in Agri's paperwork but deliberately avoided "discovering" them, by failing to perform standard audits and reviews.

Had bank officials later turned around and cried fraud, their complicit policy of "looking the other way" for so many years would have inevitably come to light at trial. That would have discredited any claim of fraud and placed them in a very embarrassing position.

The bank's silent complicity never did come to light, because Judge Linda Reade excluded the testimony of financial experts who sought to show evidence of that complicity to the jury.

Over the protests of the defense counsel, Reade sent jurors out of the room while the witness testified. This was an enormous boost for the prosecution, because the testimony of financial experts might well have crippled the prosecution's case - a crucial point that defense attorneys will raise in the appeal.

With Sholom Mordechai convicted, his many enemies, an unholy alliance of big labor, PETA, and the crusaders for Hekhsher Tzedek - a pseudo *hechsher* based on its sponsors' arbitrary notions of ethics - are reportedly gloating over his downfall.

"The Conservative Movement Gives Its Seal of Approval to Rubashkin Verdict," proclaimed the *JTA* in the aftermath of the trial. The article described the deep satisfaction "of the movement's Hekhsher Tzedek Commission, directed by Rabbi Morris J. Allen, [who] issued a statement praising the verdict and...siding with the prosecution."

That kind of hatred speaks for itself.

#### PROSECUTORIAL MISCONDUCT DOMINATES HEADLINES

Many view the miscarriage of justice that climaxed the Rubashkin case in terms of a broader problem of prosecutorial misconduct that plagues the judicial system in this country.

The *Wall Street Journal* and *New York Times* reported this week on a number of recent scandals involving high-profile defendants, in which judges threw out cases due to flagrant prosecutorial abuse.

"In yet another instance of gross prosecutorial misconduct, in which abusive Justice lawyers went after an unsympathetic political target," D.C. District Judge Ricardo Urbina threw out the indictments against five former security "Blackwater" guards "who were accused of going on a killing spree against unarmed Iraqis," the *Wall Street Journal* article reported.

The guards maintain that they came under attack by terrorists and were responding in self-defense.

Judge Urbina dismissed the charges because prosecutors misused sworn statements the guards were forced to make to investigators after the shooting, under the threat of being fired from their jobs. They were told that the statements would not be used in criminal prosecutions.

"Not only were the statements used by prosecutors, but they were also leaked to the media, which ran with the narrative of modern-day Hessians gone berserk," the article noted.

"The judge's accusations of prosecutorial misconduct were the latest in several recent blows to federal prosecutors, in which judges dismissed high-profile cases, citing prosecutors' disdain for the law," the *New York Times* reported.

Early in the year, for example, a federal judge threw out the conviction of former Senator Ted Stevens (R.-Alaska) for having failed to report gifts on his disclosure forms. Prosecutors in that case were found to have intentionally withheld from the defense potentially exculpatory evidence (proof of the defendant's innocence), as required by law.

And last month, a federal judge stunned observers by throwing out a highly publicized case against top executives of the billionaire Broadcom Corporation. The judge, in a scathing rebuke to prosecutors, said

that witnesses had been intimidated into testifying in a manner favorable to the prosecution, and that prosecutors had leaked information to the press to prejudice public opinion against the defendants.

#### EX-CONVICTS SUE IOWA PROSECUTORS FOR FABRICATING EVIDENCE

In one of the most striking recent cases claiming prosecutorial abuse, two men who served 25 years in prison for first degree murder sued the Iowa prosecutors who convicted them.

The men, after being released from prison, accused two Iowa prosecutors of arresting them without probable cause, fabricating evidence, coercing witnesses to testify against them and withholding exculpatory evidence.

The prosecutors asked a lower court judge to dismiss the case, citing prosecutorial immunity. (Prosecutors are granted legal protection from prosecution in criminal cases they have tried in court.) But the lower court ruled that this immunity did not apply to actions that had taken place prior to the trial.

The case wound its way to the Supreme Court. Just as it was about to be heard, the two prosecutors, anticipating a negative decision, reached a settlement with the two men they had sent to jail, in what now appears to have been a blind rush to convict, if not an outright frame-up.

Although the settlement exempted the prosecutors from having to admit to wrongdoing, the \$12 million they agreed to pay the two ex-convicts says it all.

#### ABUSE OF POWER PLAGUES THE CRIMINAL JUSTICE SYSTEM

“Prosecutorial misconduct occupies a dark and poorly policed corner of our criminal justice apparatus,” writes NY University law professor Stephen Gillers in the *New York Times*.

“Few people have the financial means and legal resources to mount a persuasive claim of prosecutorial misconduct. And on the infrequent occasions when courts do overturn convictions because of clear prosecutorial misconduct, the research shows that no action is taken against the prosecutors themselves. There is no threat of discipline, and little risk even of detection for misconduct.

The unfortunate reality is that the lack of transparency and accountability within our criminal justice system has allowed prosecutorial abuse of power and misconduct to become far more commonplace than many people realize.

The responsibility of a prosecutor is not to simply seek convictions, but to seek justice. This means that, in addition to convicting the guilty, the prosecutor has a duty to protect the innocent and guard the rights of the accused. Yet, every day, in courtrooms across the country, prosecutors misuse their power. They engage in misconduct that leads to flawed verdicts and the conviction of innocent people.

For some prosecutors, the pursuit of justice has been subverted by the pursuit of convictions. These individuals easily allow their sense of ethics to be overwhelmed by the desire to win and, at times, as in the Rubashkin case, by sheer vindictiveness.

Prosecutors also tend to get carried away by their role as “avenging angels,” self-appointed guardians of justice piously uprooting corruption from the face of the earth. Others are lured by the rewards of winning a case, whether in the form of high accolades from fellow prosecutors, or promotion to more prestigious and lucrative posts such as judgeships or, quite often, to political candidacy.

“Something is rotten in the culture of Justice, leading ambitious government crusaders to think they can get away with flouting due process, especially when political winds are blowing hot,” writes the *Wall Street Journal*.

Congress and the press corps may be too complicit in this “prosecutorial malpractice,” so it may be up to the judiciary to apply more stringent sanctions, the article concluded.

*Many of us were silent  
when they came for  
Sholom Mordechai Rubashkin.*

**Who will speak up  
when they come for us?**

#### “HOW THE FEDS TARGET THE INNOCENT”

In a book recently published by a prominent legal scholar and defense attorney, Harvey Silverglate, the author argues that the problem is much bigger than a fringe group of unscrupulous prosecutors abusing their power.

In “Three Felonies A Day: How The Feds Target The Innocent,” Silverglate makes the point that the criminalization of the innocent actions of ordinary citizens is far more widespread and dangerous than people imagine, and makes us all potential targets.

Attorney Alan Dershowitz wrote in the introduction to the book: *The average professional or businessman in this country wakes up in the morning, goes to work, comes home, eats dinner, and then goes to sleep, unaware that he or she has likely committed several federal crimes that day.*”

How is this possible? The answer lies in the very nature of modern federal criminal laws, which have exploded in number but also become impossibly broad and vague.

In “Three Felonies a Day,” Harvey Silverglate reveals how federal criminal laws have become dangerously disconnected from the English common-law tradition that stipulates that criminal intent must be present for an action to be defined as a crime. No longer do juries treat “criminal intent” and “reasonable doubt” as binding mandates.

Silverglate explains that prosecutors can pin federal crimes on any one of us, for even the most seemingly innocuous behavior. He argues that the rising volume of federal crimes and convictions in recent decades does not reflect an increase in criminal activity as much as it reflects the increasing abuse of prosecutorial power.

Prosecutors use the overblown, massive Code of Federal Regulations to obtain “vague and exceedingly complex and technical prohibitions to stick on their hapless targets,” the author writes. The dangers spelled out in “Three Felonies a Day” apply not only to white collar workers, professionals and politicians, but to the entire gamut of rank and file citizens, he says.

**“No social class or profession is safe from this troubling form of social control by the executive branch, and nothing less than the integrity of our constitutional democracy hangs in the balance,” attests Dershowitz in the foreword to the book.**

This is not the America of our childhood and our youthful dreams. But this is the America we live in now, Silverglate notes. Silence and indifference will only reinforce the mounting phenomenon.

Many of us were silent when they came for Sholom Mordechai Rubashkin. Who will speak up when they come for us?

# Confident Simcha

BY RABBI PINCHOS LIPSCHUTZ

We live in an era that celebrates celebrity status. People sacrifice a great deal to achieve stardom and garner attention. If we were to look closely into our own hearts, we would have to admit that each of us, too, in various ways, seeks out public approval to reassure ourselves that we count and that we are significant.

The need for approval is so basic to human nature that it tends to shape people's actions and perceptions more profoundly than we realize.

Have you ever noticed how the wisest, most dignified people keep their opinions and knowledge to themselves and don't seek to impress others with their abilities? It is those who are lacking self-esteem and deeper intelligence who make the most noise and are constantly trying to impress everyone.

A person who is secure in his beliefs and confident in who he is doesn't crave public acceptance. Such a person can accomplish much more, because he will always do what is right, no matter what people around him say.

If you don't need the support and adulation of the people around you, you don't have to cater to other people's whims and you don't have to move with the styles. You have the strength to persevere and seek true accomplishment in this world.

This is why *Chazal* constantly admonish us not to seek honor, because the drive for honor and public respect forces one to compromise on ideals and the truth. One who distances himself from the limelight and shuns popularity has a better chance of staying true to his faith in Hashem and withstanding the temptation to compromise on his principles.

The Alter of Kelm explains that this is the meaning of the *posuk* in *Mishlei* (3:35) which states, "*Kavod chachomim yinchal.*" For a true *chochom*, *chochmah* is a *nachalah*, an inheritance. It is an integral part of him that no one can take away. One who needs others to validate his *chochmah* doesn't really possess it in the first place. In his dependence on others, he forfeits his claim to *chochmah*, along with a part of his self-respect.

The Alter states that the objective of Amaleik in every generation is to demoralize the Jewish people and cause them to seek the recognition of others. He says that this is the meaning of the *posuk* we recently *lained* in *Parshas Beshalach* (17:11), which states, "*Vehaya kaasher yorim Moshe es yado vegovar Yisroel.*" When Moshe was able to keep his hands and heart upraised, not permitting them to fall as a result of Amaleik's disdain and mockery, *Klal Yisroel* triumphed. If they were to look to Amaleik for acceptance and honor, they would suffer defeat.

*Chazal* explain that "*kol zeman sheYisroel nosim libom la'Avihem shabaShomayim, vegovar Yisroel.*" For victory to be complete and lasting, *Am Yisroel* must follow Moshe's example,

turning to Hashem, and only Him, for approval.

This is what is meant by the *posuk* in *Megillas Esther* which states, "*UMordechai lo yichrah velo yishtachaveh.*" Mordechai would not lower himself to Haman. Despite Haman's preeminence in the kingdom, Mordechai ignored him. He was totally unconcerned with Haman's opinion of him. He remained devoted to Hashem and His Torah and therefore was able to overcome Haman and his henchmen.

A story is told of a *Sefardi chacham*, *Rav Chaim Sinvanni*, who was extolling the virtues of two fellow *chachamim*. To the surprise of those around him, *Rav Chaim* expressed his opinion that one of the *chachamim* was greater than the other.

The story behind his assessment was as follows. The *Rav Chaim* was hosting the two other *chachamim*, in addition to a third guest. The host set down a meal before the guest and urged him to partake. The fellow explained that he was embarrassed to eat by himself and would rather not eat alone. The host then urged the *chacham* who was nearby to join the guest in eating. The *tzaddik* explained that he fasted on Mondays and Thursdays of Shovavim, the weeks of *Shemos* through *Mishpatim*, which are said, *al pi Kabbolah*, to be especially appropriate for *teshuvah*. Since it was one of those fast days, he couldn't join him in the meal.

They called in the other *chacham* and asked him if he was interested in eating lunch with the guest and he readily agreed. He sat down and ate with the other fellow, keeping him company.

That person who partook of the food was the bigger *tzaddik*, the *chacham* explained. He, too, observed the custom to fast during the weeks of Shovavim. However, he hid his *tzidkus* from people. He didn't want anyone to know that he was fasting. Thus, when the *Rav Chaim* called him in to eat lunch, he didn't explain that he couldn't do so. As painful as it was for him to break his custom, he washed and sat down and ate.

The one who hides his nobility from others, the one who shares his secrets only with Hashem, has reached a higher level of *lesheim Shomayim* than most. His actions are purer and his reward is greater. This is not to suggest that there is anything wrong with people knowing when you do something good. The yardstick by which your good deed is measured is the motive behind it. Is your aim to give *nachas* to the *Borei Olam* or are you driven by the need for respect from other people?

When you do the right thing for the right reason, free of the desire for recognition from others, your actions come from a loftier plane. They reflect a person secure in his beliefs and not likely to be swayed by personal agendas.

A *chossid* once came to his *rebbe* and asked for a *bracha* for his new business partnership. The *rebbe* asked him if he wrote up

## People who are unshakable in their *emunah* can withstand the worst trials.

a contract with his partner. When the man said that he hadn't, the *rebbe* asked for a pen and paper. "You must have a contract," he told the man. "Without a contract, you are heading for trouble."

With that, the *rebbe* said, "I will write a contract for you." He wrote two letters, an *alef* and a *bais*. The man looked at the *rebbe* as if the *rebbe* was mocking him.

"*Rebbe*, this is a multi-million dollar deal. Why is the *rebbe* poking fun at me?" the man asked.

The *rebbe* explained the contract. "*Alef* - if you will deal with *emunah* and if you will have *emunah*, then you will have *bais*, *bracha*. Remember that."

People who are unshakable in their *emunah* can withstand the worst trials. Those who are not strong in their belief in the *Borei Olam* fall apart at the first real challenge.

I have a new friend, Sholom Mordechai Rubashkin. He is sitting in jail in Iowa for crimes he didn't commit, awaiting sentencing. We hope and pray that the sentence will be overturned on appeal when the truth is finally brought to light. A terrible miscarriage of justice will then be righted.

The jail is freezing cold. He has no warm kosher food. Without a clock to tell time by, days and nights merge in dreary confusion. Despite his immense suffering, he is *besimcha*. He says that he is an *eved Hashem*, and if Hashem wants him to serve Him from a dungeon, then that is what he will do.

Sholom Mordechai is a simple, straightforward, good person. Not long ago, he ran a \$135 million business and now he is locked into an unheated cinderblock room. How does he maintain his sanity? With *emunah*, with *bitachon*, and with Torah. He learns *Shaar Habitachon* of *Chovos Halevavos* every day. He literally knows it by heart. As he has been doing every day for decades, he awakens before dawn to learn and recite the entire *Tehillim* before *davening*.

Locked up far from civilization, with every reason to lie in bed depressed, Sholom Mordechai learns *Chumash*, *Gemara*, *Mish-*

*nayos* and *inyonei chassidus* every day. He doesn't *daven* like a man in solitary confinement with only a cement slab to call a bed and no amenities except for his *seforim* and *bitachon* in Hashem. He *davens* out loud, with *kavanah*, as if he were a *chazzan* in the *shul* in his old town of Postville, Iowa. He sings as he *davens* as if he's been transported to another place.

He never dreamt that he would be where he is now. He stays sane only *bekoach haTorah*. He won't turn on the TV in his cell. Ever. Not even to know the weather, not even to know the time. So if you're feeling bad for yourself for whatever reason, think about Reb Sholom Mordechai and count your blessings.

If his life had been built around sports, cars, fun and games, then, stripped of these diversions, he'd be finished. But his life was always built around Torah and *avodas Hashem*. So now, robbed of his freedom, he can still be strong. He doesn't let Amaleik define him. He defines himself, even in his bitter *matzav*.

What happened to him is extreme. Where he finds himself is the extreme of what can happen to a person, but it provides a lesson to us in our daily lives. What happened to him is so hard to fathom that it beggars the imagination. But to speak to him, to witness his endurance and his trusting faith is to come away with a profound sense of connecting with someone for whom Torah and *emunah* are not just words, but powerful, tangible realities - the only anchors in a world gone mad.

We need Torah to maintain our equilibrium. We need *chochmah* to be our *nachalah*.

This is the meaning of the *posuk* we discussed previously: "*Vehaya kaasher yorim Moshe es yado vegovar Yisroel.*" When the Jewish people uphold *Toras Moshe*, they have the power to overcome Amaleik in all his guises, and despite his machinations aimed at undermining our faith and destroying us.

May we merit the ultimate *simcha* of *Adar* with a *nitzachon* over Amaleik and a complete and lasting *yeshuas Hashem* that comes *keheref ayin*.

# Perfidy and Justice

BY DEBBIE MAIMON

In the Linn County jail in Cedar Rapids, Iowa, Sholom Mordechai Rubashkin stirs in his cell. In the few seconds before full consciousness dawns, it all feels like a ghastly nightmare. The claustrophobic cubicle, a dimly lit dungeon with cinder block walls and a crude slab of concrete underneath him... harrowing images... being hurled against the prison walls... This can't be happening! But the bone-chilling cold, stiffening his fingers and toes under the thin blanket, drives home the sickening truth.

A terrible heaviness settles in his chest as he opens his eyes.

He reaches for his lifeline to sanity, the one *sefer* he's allowed, and begins learning until footsteps scrape the floor, signalling the guard's approach. At six-thirty each morning, they come to remove the thin piece of padding that serves as a mattress in his solitary confinement cell. That is the only way he has an inkling of the time. He puts away the *sefer* and takes out his tefillin, anguish at his bitter situation welling up as he prepares to daven.

It is his fourth day in solitary confinement, three and a half months since he was incarcerated pending his sentencing. The incident that landed him in solitary is one more reminder of the diabolical universe holding him captive. Each day, his faith and humanity take another beating.

In this underworld, wrapped in his *tallis* and tefillin, Sholom Mordechai had been assaulted by a brutish cell mate who became enraged by a Jew continuing to pray aloud when ordered to be silent. The man had been spewing anti-Semitic obscenities and threats of violence ever since he'd been transferred into Sholom Mordechai's cell, a few days earlier.

Prison authorities, who had previous run-ins with the hostile inmate, had inexplicably placed him into "the rabbi's" cell. Three days after the transfer, deeply disturbed by the man's increasingly sinister behavior, Sholom Mordechai confided to his friend, Rabbi Pinchos Lipschutz, over the phone that he was afraid for his life. "If I'm found dead in the morning, I want you to know one thing," he said. "No matter what they say, it wasn't suicide. I was killed."

The attack came the following morning. Thrown across the room, Sholom Mordechai fell against the bars of the cell. He pounded on the door and shouted for help. Prison guards finally came to his rescue.

Authorities decided to punish both men with a week of solitary confinement. The story was sold for public consumption as a scuffle between inmates that was being investigated, while both parties remained in solitary.

"Rubashkin In Scuffle With Another Inmate Over TV," one newspaper headline trumpeted. "Former AgriProcessors CEO Moved After Fight With Cell mate," another blared.

"Such a trouble-maker, that Rubashkin!" the public thinks.

Given the skewing of the facts, can one blame someone for mistaking the victim in this story for the aggressor? After all, Sholom Mordechai has been a favorite whipping boy of the media for so long. Hearing the truth about the jail incident, one is struck by the painful echoes of a centuries-old theme: Jews are attacked and beaten, not even daring to defend themselves, and are afterward blamed for the violence.

This inverted morality is reflected on a global scale today, with the Goldstone Report casting Israel as the ruthless aggressor in the Gaza war, perpetrating war crimes on innocent civilians. The world community gives its assent to the Big Lie, castigating and punishing Israel while giving a pass to Hamas and other arch terrorists who intentionally used thousands of civilians as human shields.

## "WHAT IS THIS MAN DOING HERE?"

This twisting of the truth is deeply painful to Sholom Mordechai and his family. In the blue-collar crime prison population where raucous behavior and obscene language are a ubiquitous part of the landscape, Sholom Mordechai's refinement, dignity and respectful demeanor is conspicuous. His classification as a model prisoner is on record.

As he was parting from Sholom Mordechai, a recent visitor, Rabbi Hillel Mandel from Chicago, was approached by a non-Jewish woman who came to the prison to visit her husband.

Noticing Rabbi Mandel's rabbinic appearance, she asked if he had come to visit "the rabbi" on the third floor. When he answered in the affirmative, she exclaimed, "Can you explain something to me? What in the world is that man doing here? My husband told me all about this rabbi—that he's the gentlest, nicest person. He doesn't belong in a place like this!"

Another Iowan, a woman receptionist at the prison, spoke with obvious respect about Sholom Mordechai to Rabbi Mandel. "I understand you applied to see him as a clergyman. You should be getting the authorization soon. The next time you come, you're going to be able to meet this rabbi face to face." She shrugged and shook her head ruefully, as if to say, "I know it doesn't make any sense that he's here!"

## THE PRICE HE PAYS

Solitary confinement means that Sholom Mordechai is at least temporarily protected from the overt malice of the cell mate who attacked him. Yet, the price he pays for that kind of protection is extremely high.

Only once a day is he allowed to leave his frigid, window-less cell—and then, for only 45 minutes. The guard opens the door to take him out for a few minutes of exercise, or to make a phone call.

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The respite comes at a different hour each day, but since there are no clocks in the prison, Sholom Mordechai has no idea what time it is when he is finally allowed to make a call.

The precious minutes fly by as he frantically tries his family, his closest friends. His words come out in gulps, as if the very act of speaking to his loved ones gives him an infusion of oxygen.

But in the early morning hours as he puts away his tefillin and turns to his *tehillim*, the relief and joy of hearing the voices of those he longs to be with are still many hours away. Once, when he was free, there were far too few hours in the day to accomplish all that needed to get done. Now, in solitary confinement, cut off from civilization, with few prospects of receiving visitors, the day stretches ahead of him like a vast, parched wasteland.

#### WAITING FOR A RESPONSE FROM APPEALS COURT

Attorneys for Sholom Mordechai say his constitutional right to remain free on bail until his sentence begins is clearly being violated. Nathan Lewin noted that no written explanation accompanied the 3-judge panel's decision to turn down the first appeal to the 8<sup>th</sup> Circuit, submitted in December. His explanation for that silence is simple: the arguments for release were irrefutable—the judges could offer no justification for rejecting the appeal.

In that brief, Attorney Nat Lewin established that Trial Judge Reade failed to meet legal criteria for denying bail. He argued that a person cannot be jailed before his prison sentence begins, unless there is compelling cause to keep him behind bars. This means that a defendant who a) is not a threat to society, b) proves that he is not a flight risk, and c) proves that safeguards have been established to ensure that he will appear at sentencing, is legally required to be freed on bail.

Sholom Mordechai satisfied all of these conditions, the brief argued, making it illegal to deny him his constitutional right of bail pending sentencing.

The safeguards included \$8 million worth of private homes offered as guarantees; 24-hour camera surveillance; armed security posted at his home; and an electronic monitoring ankle bracelet.

Sholom Mordechai's prior bail compliance in the ten months leading up to his trial offered further proof of his reliability, the brief attested. Lewin also demolished the prosecutor's arguments that Sholom Mordechai had assisted one of the people being sought by the government to escape after the raid.

He eliminated the remaining roadblocks erected by the prosecutor by noting that none of them had carried enough weight to induce Judge Reade to withhold bail in the pre-trial period. They therefore could not be re-introduced in the post-trial period.

Lewin noted that Judge Reade completely ignored the fact that all three conditions for proving eligibility for bail pending sentencing had been fully met. Her failure to deal with this fact raised serious questions about the integrity and soundness of her reasoning.

In the second appeal submitted three weeks ago to the full 8<sup>th</sup> Circuit, these arguments were buttressed with references to previous appellate court decisions. More of the legal background to the

case was included. Hopes are high that the clear violation of Sholom Mordechai's constitutional right to freedom will soon be corrected.

#### PERFIDY IN IOWA SPURS GROWING AWARENESS

In a broader context, the unjustified denial of bail has led to growing public awareness of the many irregularities in Sholom Mordechai's trial. *Perfidy In Iowa*, a collection of Yated articles reporting on the tragic saga of the Postville Raid and its aftermath, and providing detailed coverage and analysis of the Rubashkin trial, is slowly generating an impact.

The book exposes evidence of prosecutorial duplicity, backed by a judge whose impartiality has been repeatedly questioned. Claims that the grand jury process was tampered with, that witnesses were intimidated and coerced, and many charges concocted out of thin air, are examined.

The machinations of the labor unions is looked at, along with the destructive role of organizations like Hechsher Tzedek and the Jewish Forward who sowed the seeds of AgriProcessors' destruction—and afterward gloated over it in print.

A great number of still-unanswered questions surround the Postville raid. Who were the officials in Immigrations and Customs Enforcement (ICE) who instigated and orchestrated the raid on AgriProcessors? Who said "Yes!" to the destruction of a flourishing company that provided affordable kosher meat to so many hundreds of thousands? It is not known who specifically gave thumbs up to the evisceration of the Postville immigrant community, and the savaging of Sholom Mordechai Rubashkin.

The deeper question of "why" they did it continues to haunt a great many people. Although this information was supposed to be made available to Sholom Mordechai's lawyers, ICE officials have not as yet been forthcoming, and will probably continue to stonewall. A new documentary titled "Abused" seeks to answer some of these questions.

#### A HAUNTING VISIT

Perhaps we will one day have the all the facts behind ICE's massive act of destruction that reaped no benefit that anyone can point to. But for now, let us take the elevator at the Cedar Rapids jail to the third floor. Let's try to understand precisely what "destruction" means in the context of the day-to-day life of a very special human being, as perceived by a visitor who shared with Yated the details of his recent visit with Sholom Mordechai.

*From Rabbi Mandel:*

I hadn't seen my childhood friend, Sholom Mordechai, for forty years, since we were kids. I grew up in Far Rockaway, in a neighborhood with few *heimishe* friends. To compensate for that, my father found a *heimeshe* bungalow colony in Swan Lake where we went for the summer. The families were all from Brooklyn, and the kids all knew each other and stuck together. I was the only "outsider."

Sholom Mordechai was "*mekarev*" me. He was just a young boy, but he was such a *mentch*. He was a *hartzigeh* boy, friendly, sensitive and kind. He was very *leibidig* and mischievous but the type

who avoided fights. He never lifted a hand to anyone. We clicked right away and became best friends. At the end of each summer we'd say goodbye and a year would pass before we'd pick up our friendship again, but we'd be closer than ever.

My whole family loved him. On our way to Swan Lake, even my little sisters would talk about him. "Hey, we're going to see Sholom Mordechai again!" one of them would remind the other.

The last summer we spent together was when I was twelve and he was eleven. Though our paths never crossed again, I never forgot him. When his troubles in Postville began, I'd read about it and feel a terrible ache in my heart for him. I knew the terrible things they said about him couldn't be true.

I found out he was in jail in Cedar Rapids, about five hours from where I live in Chicago. Even though visitors were allowed just a half hour, I decided to make the trip. I had to see him again.

As soon as I sat down before him at the jail, with the glass *mechitzah* between us, the years vanished. We were buddies once again. I started crying and so did he. We had to use the phone to talk through the window. We caught each other up on our families and our lives very briefly; he met my son who had come with me, and spoke to him with such *freilichkeit* and warmth.

When we talked about his family, he got very emotional. It's killing him to be cut off from them. This is such a loving father and husband. It was too painful to talk about. He said, "Let's learn together, Hillel, that's what I'd like."

He opened up a *Chovos Halevovos* to *Shaar Habitochon* and we started learning. He knew it in great depth and was able to tell me all kinds of interesting *p'shotim*. The minutes flew by and we had to stop. He asked two *kashas* and said, "I'm not going to tell you the answers. I'm hoping you'll come back for them!"

I looked around at the jail... the inmates... the guards. I couldn't bear to leave him. I wanted to give him a hug but the window between us made it impossible. He threw me a kiss as I turned to go. I cried half the way home.

When my application to visit him as a clergyman was finally approved a week ago, I came back to Cedar Rapids, this time with my wife. As a clergyman I'd be allowed a few hours with Sholom Mordechai, not on opposite sides of a window, but in a conference room together.

I stopped off in Postville first, to meet his family. What amazing, special people. I spoke to his wife about my vivid memories of Sholom Mordechai as a child. She said he hadn't changed at all. I met Moishy, their autistic son. He misses his father desperately, they told me. He kept coming over to me and repeating the same question. "How old were you when you first met my father?" He wanted me to talk about Sholom Mordechai but didn't know how to say, "Tell me about my father, I miss him so much!"

I took a walk through AgriProcessors, now called AgriStar. I asked the woman at the desk, a native Iowan, if she was working here when Rabbi Rubashkin was the manager. She nodded. "You don't know what a wonderful person he is," she said. "What a respectful, nice, good person."

It was the same at the Kosher Grocery store, once part-owned by Sholom Mordechai. "Ever since he's not here, it's not the same. It's so sad without him," one of the workers said.

### FEARS

I finally got to Cedar Rapids. He was so happy to see me. He confided in me his fears of a new cell mate, a violent type that caused conflict wherever he was put. The fellow objected to Sholom Mordechai davening and would turn up the TV volume to drown out his murmuring. "You better be quiet! I don't want to hear you!" he would shout. He talked about his hatred for Jews and ominously warned Sholom Mordechai that "people get killed in prison."

Sholom Mordechai described the living conditions in the jail...

*He reaches for his lifeline to sanity,  
the one sefer he's allowed,  
and begins learning  
until footsteps scrape the floor,  
signalling the guard's approach.*

the blaring TV with its mind-numbing noise and stupidity that invaded one's mind. He tried to describe the shouting, raucous laughter, fighting and vile language going on in the prison all at once. He said he had no means of blocking it out, no one to talk to but Hashem, and he didn't want to crack. This place can break a person, he said. His *davening* and *tehillim* were keeping him sane.

I listened to him, aghast. How could any normal person survive this? He said he had tried to be conciliatory to his cell mate. "I'm sorry you're upset. I'm not trying to annoy you," he'd told him. "I'm supposed to pray. Please try to understand. I'm not out to antagonize you."

I saw he wanted to switch the subject. He really wanted to learn together. So we learned *chassidus* and some *mussar*, and *farbrenge*d together. We focused on the *posuk*, "*Ain ode milvado*." And we sang it fervently, over and over, getting inside the deeper meaning of the words *al pi chassidus* and *mussar*. Tears streamed down our faces. We clung to one another. We sang an old *niggun* "*Ochain atah kail nistatair*," which means, "*Aibershteh*, You're hiding from me—but I know You're there!"

He told me he's afraid of being abandoned, that people will forget about him, will get tired of thinking about him. I told him I personally know people who never met him who can't get him out of their minds, who daven and plead with Hashem every day to help him and his family. And I meant it.

I had brought him a batch of letters the children in the cheder had written to him. He not only read every single letter but studied each one carefully, finding something special in each one, even the ordinary ones. I was amazed. Letters from little children, eight or nine years old, meant so much to him! What a precious *Yid*. He put the letters into his *Chovos Halevovos* and said he wanted to read them again and he would answer each one.

Saying goodbye was wrenching for both of us. I was returning to freedom, he was being locked up behind bars. It was heartbreaking. I lingered by the door, watching him go back to his cell. The guard saw the children's letters sticking out from his *Chovos Halevovos* and confiscated them. An inmate wasn't allowed to bring anything from the "outside" back into the prison.

Sholom Mordechai's jaw dropped, his shoulders sagged. I saw the pain in his eyes. Those letters warmed his heart. They were a small ray of sunshine. Even that was being taken from him.

I called out to him desperately, "I'm switching places with you, Sholom Mordechai!"

He looked at me. "No, Hillel," he answered sadly, his eyes filled with tears. "You don't want to come here... But do me a favor. Promise me you'll tell the children in the cheder to keep *davening* for Shalom Mordechai Haleivi ben Rivka. Their *tefillos* are very precious."

# J' Accuse

TODAY'S EMILE ZOLA

BY YATED STAFF

## INTRODUCTION

*Yated Neeman* has been featuring the saga of Sholom Mordechai Rubashkin for over two years. With much painstaking work we have compiled this article which accurately portrays the perfidy taking place in Iowa.

This article describes the gross disparity between usual procedures in federal criminal prosecutions under the immigration and bank-fraud laws and how Iowa federal prosecutors treated the case of Sholom Rubashkin, the Orthodox Jewish Hasidic businessman who was arrested on immigration-law violations relating to the Agriprocessors plant in Iowa and was found guilty after a jury trial of bank fraud and failure to pay cattle owners promptly.

The enormous disparity between the treatment of Mr. Rubashkin and others who committed similar offenses began with the Immigration and Customs Enforcement ("ICE") raid on Agriprocessors ("Agri") on May 12, 2008, and has continued to this day.

### 1. SHOULD ICE HAVE CONDUCTED THE MASSIVE MAY 2008 RAID?

Because it was apparent from government activity in the neighborhood of Agriprocessors' Postville plant that ICE might be planning a raid, Agri took the advice of the American Meat Institute and retained the services of Robert W. Kent, Esq., an attorney with the international law firm of Baker & McKenzie. Mr. Kent had represented Swift & Co. – a meat-packer that had been raided by ICE in six states in December 2006, when approximately 1297 illegal employees were found. When ICE sought to raid Swift again in Texas, Kent persuaded them to proceed without a raid and instead to examine Swift's employment records and weed out the illegals. Kent called the Iowa prosecutors on May 9 and followed up with a faxed letter on May 9 requesting a meeting and stating that Agri – which was "the largest kosher meat production company in the country" -- wished to cooperate with ICE and avoid the dangers and disruption of a raid. Kent's requests were summarily denied and the raid took place.

Approximately 600 federal agents in heavy riot gear stormed the Agri plant on May 12, supported by Blackhawk military helicopters. A total of 389 illegal aliens were arrested and entered guilty pleas in production-line fashion after being told that they could be charged with a major federal criminal felony that the Supreme Court held in 2009 (*Flores-Figueroa v. United States*, 129 S. Ct. 1886) was inapplicable to their situations. The Department of Homeland Security reversed ICE's raid policy and, since an announcement made on April 30, 2009, will conduct raids only in extremely limited circumstances.

The May 2008 raid received national publicity and ultimately

resulted in the bankruptcy of Agri. It demolished Postville's economic infrastructure, destroyed a legitimate business that was the town's major employer, wiped out livelihoods of both legal and illegal aliens, forced businesses to shut down, and drove away residents. Postville's population has shrunk by half, and many of those who remain are unable to sell their homes. The town is nearly insolvent. And the raid demolished the principal source of kosher beef and poultry in the United States, creating kosher meat shortages across the country.

### 2. WAS THE POST-RAID TREATMENT OF RUBASHKIN COMPARABLE TO OTHER ICE RAID TARGETS?

**(a) Swift & Co.** – Although Swift was a major employer of illegals in six states and 1297 illegals were found on those premises in the December 2006 raids, neither the company nor any of its officials was criminally charged. In Iowa, for example, one United Food and Commercial Workers ("UFCW") official at Swift's Marshalltown, Iowa, plant was charged with harboring illegal aliens in an Iowa federal court and was sentenced to one year and a day in prison and a \$2000 fine after being found guilty by a jury. Another Swift employee who had pleaded guilty was sentenced to probation.

**(b) Michael Bianco, Inc. ("MBI")** – A manufacturer of leather goods and handbags in New Bedford, Mass., was raided by ICE on March 6, 2007, after an undercover operation from which it was learned that Francesco Insolia, the owner, intentionally sought out illegal aliens and exploited them with punitive fines and terrible working conditions. Approximately 326 illegal aliens were detained in the raid. Insolia was sentenced in January 2009 to one year and a day in prison and fined \$30,000. The company was fined \$1.51 million and ordered to pay \$460,000 in restitution.

**(c) Action Rags USA** – A Houston, Texas, clothing and rag exporting company was raided by ICE on June 25, 2008 – little more than a month after the Agri raid. Approximately 85% of the business' workforce consisted of illegal Mexican aliens, and approximately 150 aliens were arrested. The owner, Mubarik Kahlon, and two managers were indicted on immigration charges in July 2008. A jury trial was set for June 15, 2009, but on June 10, Kahlon and one manager pleaded guilty. Kahlon was sentenced to two years' probation and a \$6000 fine.

**(d) Miyako Sushi and Panda China Buffets** – ICE raided these restaurants in Ocean City, Maryland, in June 2007, on evidence that illegal aliens were hired as below-minimum-wage employees (paid in cash) in the restaurants and were provided living accommodations in condominiums owned by the restaurant owners, Bo Hao Zhu and Siu Ping Cheng. The owners pleaded guilty

to immigration-law violations and were sentenced on September 12, 2008, to 18 months' probation. Their partnership was ordered to pay a \$50,000 fine.

**(e) Rosenbaum-Cunningham International, Inc. ("RCI")** – On February 22, 2007 ICE raided 63 locations in 17 states of a national janitorial service that provided cleaning crews for restaurants. Almost all RCI janitorial employees were illegal aliens who had no documentation whatever, and they were paid in cash. The owners, Richard M. Rosenbaum, Edward Scott Cunningham, and Christina A. Flocken were charged not only with immigration-law violations, but also with defrauding the United States of more than \$18 million in federal employment taxes. On March 4, 2008, Rosenbaum was sentenced to 10 years' imprisonment, Cunningham to 51 months, and Flocken to 30 months.

The cases described above are typical. No case following an ICE raid has even come remotely close to the draconian threats and punishments imposed on Mr. Rubashkin.

### 3. WERE POST-RAID PUBLICIZED ARRESTS AND IMPRISONMENT OF RUBASHKIN WARRANTED?

Following the nationally publicized Agri raid, the Iowa federal prosecutors conducted an investigation of Agri. The sworn complaint on which the raid was based had acknowledged that Agri had screened job applicants and had, in fact, twice rejected an ICE undercover agent who tried to gain employment with false identity papers. Only when ICE provided him with authentic documentation was he hired. Rubashkin denied that he had knowingly violated the immigration laws and Agri retained Robert Kent to discuss the charges with the prosecutors.

The prosecutors made arrests and filed immigration-law charges against various of the company's employees. Most of these steps were accompanied by substantial local and national publicity. Agri's and Rubashkin's counsel was in regular communication with the prosecutors to attempt a resolution of potential criminal charges against Agri and Rubashkin.

Although he was served with a letter identifying him as a "target" of the investigation, Rubashkin himself remained in his Postville, Iowa, home during the almost six months following the raid. He made one trip to Canada to visit a sick friend and returned promptly to Postville. There is not a scintilla of evidence that he made any effort to flee.

It was clear that Rubashkin would surrender voluntarily if notified of any charges, but the local prosecutors had him arrested without any advance warning, to the accompaniment of great publicity, on October 30, 2008. Page A14 of *The New York Times* of October 31, 2008, for example, had a story headlined "Arrest Made in Iowa Plant Case" and a photograph – coverage that would not have appeared had counsel been requested, as is usual in such cases, to bring in his client to answer charges.

An indictment charging one violation of the immigration laws was returned. At Rubashkin's bail hearing on the indictment, the prosecutors and the Magistrate Judge permitted him to be released on a one-million-dollar bond and with an ankle bracelet and electronic monitoring. Individual employers charged in all other immigration-law prosecutions have been released either on personal recognizance or on the submission of a nominal bond. No other employer accused of violating the immigration laws has ever been restricted with an electronic bracelet or required to post a bond of one million dollars.

On the day following his release, the Iowa prosecutors had Rubashkin arrested again on an allegation that he had committed bank fraud after his first arrest. Their claim was that, in the routine certifications that Agri made to the St. Louis bank with which it had a \$35 million line of credit, it had falsely represented that it was in compliance with the law when, in fact, it was harboring

illegal aliens, and that Agri had failed to deposit all checks it received from customers in the "sweep account" that was security for the bank loan and had temporarily used (but had subsequently reimbursed) money for a store and school in Postville that Agri was administering.

Although there was no proof that the bank was actually misled by this conduct or that its loan, on which timely interest payments continued to be made even after the raid, was imperiled in any way, the Iowa prosecutors asserted that this conduct by Rubashkin constituted "non-compliance" with the terms of Rubashkin's release on bail and asked that he be denied bail and imprisoned.

Among other arguments for denying bail to Rubashkin, the prosecutors asserted that Rubashkin could flee to Israel because he is Jewish, although there was no evidence whatever that he had sought to travel to Israel (and this same specious contention would justify the imprisonment of any Jewish person ever arrested on any charge). In his opinion denying bail, the Magistrate Judge accepted the Iowa prosecutors' claim regarding flight to Israel.

Rubashkin spent the next 76 days in prison. No other individual accused of an immigration-law violation and no other non-violent and non-threatening person charged with nothing more than having compromised the security of a bank loan that was otherwise being kept current has ever been denied bail, prior to trial, on such a charge unless he was apprehended while actually attempting to flee.

### 4. WHY WERE SEVEN SUPERSEDING INDICTMENTS FILED WITH INFLATED ALLEGATIONS AND A FORFEITURE DEMAND?

After a hearing held in January 2009, the District Judge found insufficient evidence to keep Rubashkin in prison as a "flight risk" and ordered his release pending trial. In the meantime, the Iowa prosecutors had begun ballooning the immigration and bank-fraud charges with a series of superseding indictments.

The following is a list of the dates and number of counts of the superseding indictments:

- First Indictment November 13, 2008 3 Counts
- Second Superseding Indictment November 20, 2008 12 Counts
- Third Superseding Indictment December 11, 2008 13 Counts
- Fourth Superseding Indictment January 15, 2009 97 Counts
- Fifth Superseding Indictment March 31, 2009 79 Counts
- Sixth Superseding Indictment May 14, 2009 142 Counts
- Seventh Superseding Indictment July 16, 2009 163 Counts

The basic charges of immigration-law violations and bank fraud remained the same throughout this entire series of indictments. In the Third Superseding Indictment the Prosecutors added the request that the entire Agri business be forfeited to the United States. That demand – for the forfeiture of an entire business because some of its employees were illegal aliens – was not made in any other case involving violation of the immigration laws.

The Fourth Superseding Indictment added the allegation under 7 U.S.C. § 195 that Rubashkin had failed to make prompt payments to cattle owners in violation of an Agriculture Department regulation because his payments were, on occasion, several days late. This was the first time in the history of federal law enforcement that such a criminal charge has ever been made.

The number of charges was increased by the Iowa prosecutors not because any new offenses were discovered. Rather, the basic bank fraud allegation was multiplied because each of the bank's advances of funds to Agri under the \$35 million line of credit and each month's report to the bank by Agri was charged as a separate offense. Money laundering was also alleged to have been committed when Rubashkin deposited some funds received from customers to the accounts of a local kosher grocery store and religious school that Agri was maintaining in Postville.

## *The number of charges was increased by the Iowa prosecutors not because any new offenses were discovered.*

*Rather, the basic bank fraud allegation was multiplied because each of the bank's advances of funds to Agri under the \$35 million line of credit and each month's report to the bank by Agri was charged as a separate offense.*

The effect of this deliberate fragmentation of charges was that Rubashkin was ultimately tried before a jury not on one basic charge of submitting false reports to the bank regarding the security for the bank's loan but on 91 counts of bank fraud, money laundering, and failure to pay cattle dealers. The jury found him guilty on 86 counts.

### **5. WHY DID PROSECUTORS PROVE IMMIGRATION-LAW VIOLATIONS AT THE BANK-FRAUD TRIAL**

Recognizing that the jury would be prejudiced against Rubashkin in considering the bank-fraud allegations if it heard evidence regarding immigration-law violations, the District Judge severed trial of the 72 immigration violations in the Seventh Superseding Indictment from the 91 bank-fraud charges. Nonetheless, contending that he committed bank fraud when he represented to the bank that Agri was complying with the law, the Iowa prosecutors presented more than two days of highly inflammatory testimony regarding the immigration allegations during the bank-fraud trial. The District Judge denied repeated defense requests for a mistrial.

### **6. WHY WAS RUBASHKIN DENIED RELEASE ON BAIL PENDING SENTENCING?**

During the almost ten months between his pretrial release (after 76 days in prison), Rubashkin complied punctiliously with all the bail conditions. His Probation Officer even testified that on one occasion, when his electronic ankle bracelet became dislodged, "he alerted her immediately to allow for its expedient repair." The District Judge found "that Defendant took great pains to comply with the terms of his pretrial release."

Nonetheless, when the jury returned a guilty verdict, Rubashkin was immediately remanded to prison. In a hearing on the Iowa prosecutors' request that he be denied release pending sentencing, the defense offered to post as security approximately \$8 million in the equity of 43 supporters of Mr. Rubashkin and to pay for a 24-hour armed guard that would prevent him from leaving his home without prior authorization. The District Judge granted the Iowa prosecutors' request, and Rubashkin has now been in the Linn County Jail for more than 130 days, in addition to the 76 days he spent in prison between November 2008 and January 2009.

The law regarding release pending sentencing (the Bail Reform Act of 1984, 18 U.S.C. § 3143(a)) does not authorize the pre-sentencing imprisonment of a defendant who is not a danger to the community if he is not a "flight risk" and his future presence can be assured by any conditions of release. The District Judge stated

no reason for imprisoning him other than her unsupported conclusory statement that he is a "flight risk." The Court of Appeals denied bail also without stating any reason. These unexplained denials of bail violate the provision of the Bail Reform Act that requires "a written statement of reasons for the detention." 18 U.S.C. § 1342(i)(1).

### **7. WHY HAS RELEASE FOR PASSOVER SEDERS BEEN OPPOSED?**

Although Rubashkin's counsel believe that any detention of Rubashkin pre-sentencing is unlawful and are applying to the Supreme Court to reverse the rulings of the District Court and the Court of Appeals, they filed on March 18, 2010, a motion to permit him to observe the first two days of Passover (March 30 and 31) at home. The motion was opposed by the Iowa prosecutors and was denied by the District Court on the day after it was filed.

Federal law (the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a)) protect the religious rights of prisoners in federal custody unless the Government has a "compelling interest" in denying the religious right and is taking the "least restrictive alternative" in enforcing that interest. Neither of these standards was satisfied by the Iowa prosecutors or the District Court in denying permission to Rubashkin to observe the Passover Seders in his home.

### **8. WHY IS AN EXCESSIVELY SEVERE PRISON TERM BEING URGED?**

The jury found in a special interrogatory that Rubashkin did not profit personally from false invoices presented to the lending bank. Evidence of his very modest lifestyle and his extraordinary charity was proffered at his trial but objected to by the Iowa prosecutors and excluded by the District Judge. He is the father of 10 children, including an autistic teenage boy who depends on him. Nonetheless, the Iowa prosecutors have indicated that they view an appropriate prison sentence as being in the 22 to 27 year range.

Although they dismissed the 72 immigration-law counts after the jury's verdict on the bank-fraud allegations, the Iowa prosecutors have submitted to the Probation Office more than 30 pages of unproved inflammatory allegations regarding the employment of illegal aliens at Agri. These assertions – which Rubashkin has never had any opportunity to challenge and disprove – are designed to prejudice the District Judge against Rubashkin and increase his sentence.

# Trial Transcript Reveals Web of Lies

BY DEBBIE MAIMON

## PART I

As portions of the transcript of the October-November trial of Sholom Mordechai Rubashkin become available to the public, a web of falsehoods fed to the jury during the prosecutor's closing arguments and later used to engineer shockingly harsh sentencing motions, is sparking deep concern in the Jewish community.

Heavy-handed prosecutorial tactics in courtrooms across the country are nothing new. But observers studying the released portions of the transcript can't help but wonder whether the strategies employed by federal prosecutor Peter Deegan cross the line from being manipulative to employing outright lies.

One does not need extensive background in the case to spot these falsifications. All that's required is to compare witness testimony to the prosecutor's closing arguments. This column will lift the veil on some of the most glaring examples of duplicity.

### FICTITIOUS SCENARIO

In his closing arguments, the prosecutor reminds the jury of witness testimony they heard during the trial that showed that Sholom Mordechai had engaged in document fraud and harbored illegal workers.

He reminds them that an AgriProcessors worker named Carlos testified that he had heard from a manager, Brent Beebe, that Rubashkin would be allocating funds to help some of the undocumented workers.

Deegan then informs the jury that the "help" consists of secretly purchased falsified documents for the undocumented workers, in a late-hour cover-up by Rubashkin as federal agents prepare to carry out a raid on the plant.

Deegan parlays the image of a devious plot by Sholom Mordechai to fool the federal agents. As he has done throughout the trial, he injects sinister motives into innocent, day-to-day interactions. A mundane encounter is transformed into a suspicious meeting and conspiratorial plotting. A humanitarian gesture is converted into illegal payoffs.

For a firsthand view of the insinuations and outright calumny that so misled the jury, read the trial excerpt below, followed by an accurate, unvarnished account of events.

**Deegan to Jury (page 46-50 of Closing Arguments):** *"The defendant gets word that there's an immigration enforcement action coming. And he has his lawyers send a letter to Immigration and the US Attorney's Office asking for a reprieve. But the defendant, he's got a different idea. It's time for the cover-up, folks!*

*"He meets with Brent Beebe out by the barns. Carlos told you about it, ladies and gentlemen. Defendant meets with Brent Beebe, and they have one of those conversations that nobody can hear. [Insinuation: something illegal took place.]*

*"But there's a follow-up conversation. Carlos Guerrero testified that*

*soon after that, he gets called up to the area around Sholom Rubashkin's office. And Brent Beebe and Sholom Rubashkin had been in his office talking. And Carlos gets called out to the area outside, and they [Carlos and Beebe] talk about that \$4,500 that's needed to "help the employees."* [Innuendo: to supply them with fake documents]

*"And [Carlos testifies] that Sholom Rubashkin wants to know two things. Number 1, "Who is going to make sure I get paid back?" And Number 2, "Why aren't you (Carlos) going to help all the rest of the employees?"* [innuendo: How about trying to buy false documents for all the illegal workers, not just some?]

*"And then you know what happens, ladies and gentlemen. The day before the raid – think about that! The day before the immigration raid, the defendant is in the human resource offices personally handling the new fake ID's! He's in the office telling people "I'll sign those I-9s myself."*

[An I-9 includes a manager's certification that the ID papers are legal.]

### PORTRAIT OF A CRIME BOSS

Deegan's scenarios are cut from whole cloth. Patching together pieces of testimony to create fictitious scenes, he spins a tale of crime and conspiracy at the top echelons of AgriProcessors.

Sholom Mordechai becomes the villain at the heart of the plot, akin to a mafia crime boss buying the silence of underlings with hush money. Innocent actions are given a malignant spin. Fictitious scenarios are fed to the jury as established fact.

The true picture of events leading up to the raid, as emerged through defense testimony and cross-examination, bears little resemblance to Deegan's fraudulent presentations to the jury.

In an effort to resolve the illegal immigrant problem at Agri, Sholom Mordechai, working with special immigration lawyers in the Agri office, was forced to fire workers with clearly fraudulent papers. To avoid an angry backlash from the rest of the work force, he informed them that the layoffs were due to economic cutbacks.

Carlos complained to manager Brent Beebe that the former employees, after losing their livelihoods, were in desperate financial straits. Could anything be done to help them?

### A GENEROUS EMPLOYER

Beebe approached Sholom Mordechai who agreed to put together a loan for those who had been laid off, to tide them over until they could obtain new employment. He checked the special loan fund AgriProcessors maintained to help its employees in the event of emergencies and special contingencies. Finding it depleted, he generously wrote a check for \$4500 from his own account to help about 20 of the dismissed workers. Each was to receive \$200.

It's noteworthy that neither Beebe nor Carlos testified that Sholom Mordechai instructed them to use the money to purchase false documents. What's clear is that using Sholom Mordechai's cashed check, Deegan wove nefarious motives and imagined dialogue around what he falsely called "the evidence."

With the power on insinuation, he misled jurors with explicit statements that the defendant used the funds to engage in document fraud.

What about those I-9's Sholom Mordechai was supposed to have announced he would sign? Signing an I-9 that one knows to be false is a form of document fraud, one of the federal felonies for which he was arrested and jailed.

The I-9 forms comprised a packet of documents in technical language that had to be read by a trained eye. This was done by company managers with experience in this area. Fact: Government witnesses repeated under cross-examination that Sholom Mordechai *never* signed I-9's, or instructed anyone else to do so at his behest.

Another fact: Labor and immigration attorneys hired by Agri were in the office up until the very day of the raid examining documents. Were the attorneys also part of the cover up? Does it make sense that someone would be paying expensive immigration experts to screen out fraudulent documents at his company, only to be simultaneously making payoffs to purchase more of the same?

Yet a credulous jury, deeply swayed by the prosecutor's use of witness testimony heavily laced with his own innuendo and outright fiction, bought the story.

#### THE ALTHOUSE TESTIMONY

Let's take a look at some of the government's witnesses. These were individuals who had been reduced to frightened cooperators by government tactics of hanging indictments over their heads in exchange for testimony tailored to the needs of the prosecution.

One such witness was Laura Althouse who worked in Human Resources and managed the company's payroll. Althouse was indicted with a whopping 9000 counts of child labor violations. How was such a fantastic number of crimes possible in a plant that employed only 1000 people?

Prosecutors rang up a separate count for each day an underage employee had worked over many months, multiplied by the 20 or so "child laborers" found to have lied about their age. Oh, and add on multiple counts of aiding and abetting document fraud.

Faced with an outrageously bloated indictment, unprecedented for this type of violation, Althouse quickly turned into a "cooperating witness," testifying for the grand jury three times, before going on to serve as one of the prosecution's key witnesses in Sholom Mordechai's trial.

Althouse testified that Sholom Mordechai knew about illegal workers in the plant. She also claimed that Sholom Mordechai agreed to pay her a continuous monthly salary if she went to jail and that this promise was formalized in writing. Althouse claimed that two other employees got the same deal.

If this sounds like a typical "Mafia Don Contract" we hear about in the media, where underlings take a fall for the big boss, that's exactly what the jury was meant to think. Deegan would later use this testimony to claim Sholom Mordechai had tried to obstruct justice by taking steps "to influence his co-conspirators" through the payment of "hush money."

He actually took this fraudulent claim even further. In his sentencing recommendations, Deegan demanded extra years of incarceration for Sholom Mordechai in addition to a prison sentence deemed to fall out between 22-27 years. His cynical use of an empty allegation as a tool to engineer ever harsher punishment for Sholom Mordechai crosses ethical boundaries and should be investigated.

Even it were true, the claim that employees were promised support if they were sent to prison, suggests nothing criminal or negative about Sholom Mordechai. But the prosecutor's penchant for giving innocent actions a malignant twist won the day.

#### CLUMSY LIES

In actuality, the documents produced by Deegan to back up Althouse's statements turned out to be typical employee status forms that noted a raise in salary, and the hours she was required to work. According to Sholom Mordechai, that was the only purpose and content of the form.

Yet, the jury was shown two words on the form, written in Althouse's handwriting that said "severance pay," near the word "time." Stammering through clumsy lies on the witness stand, Althouse told the jury that those notations meant Sholom Rubashkin promised to pay her a yearly salary *times* the number of years she went to prison, and that his signature on the bottom of the form was evidence of that.

*"At first, the raise was just to be salaried as opposed to being paid hourly," Althouse said. "And then -- I don't remember if it was that day or at a later date if I had already received a [government] target letter. So if I ended up going to prison, it would be the -- I don't know how to say -- a yearly salary of like -- my salary times 52 weeks, that total for how many years I would have to go to prison.* (Laura Althouse Testimony, page 12, Rubashkin Trial Transcript)

Sholom Mordechai says the words "severance pay" were scribbled in by Althouse unbeknownst to him, at some point after he had signed the form.

One would imagine that in exchange for hundreds of thousands of dollars to be paid out indefinitely to former employees in the event they went to prison, a conniving overlord would have requested *something* in return, if not in writing, then verbally. Yet the witness could cite nothing at all that Sholom Mordechai asked in return.

In the end, the sheer force of the overwhelming number of charges against him made Althouse's testimony, so full of holes and improbabilities, sound credible. After all, hadn't Rubashkin already been uncovered as a slick, powerful criminal boss running a massive, under-world enterprise?

One cannot help but wonder what might have induced Althouse to present a tale under oath that was so easily discreditable, that did nothing to exonerate her and in fact put her into jeopardy for perjury. What reasonable person would risk being exposed in such a shabby lie? It seems clear that she must have known it was safe to take the risk. Who could have assured her of this?

Not surprisingly, in return for handing the prosecution an effective weapon to further bludgeon the defendant, all charges against Laura Althouse were dropped.

#### DEMONIZING CAMPAIGN

The false accusations and distortion of facts employed by the prosecution to win its case are chilling, but even more disturbing is the fact that this process of vilification began long before the trial.

Painting the defendant as an evil overlord-butcher who must be driven out of business and removed from society, has defined the government's treatment of Sholom Mordechai from the time of the May 2008 ICE raid.

The campaign employed a number of methods of savaging his reputation, including returning to the jury multiple times to inflate the indictment to a shocking number of counts. A single offense of inflating receivables to qualify for advances from a credit line was blown into 91 crimes based on each piece of paper that constituted evidence.

This would be like accusing someone of 350 separate charges of libel and slander if they wrote a 350-page book that defamed an individual.

Allegations were leaked to the press [that were afterwards dropped], and used as a vehicle to inflame public opinion and as a justification to treat Sholom Mordechai with the punitive harshness appropriate for a mobster or hardened criminal. In such a poisoned climate of opinion, is it any wonder that he was convicted?

[The record shows that a number of prospective jurors stated during

# *Deegan's false representations to the court, Lewin claims,* resulted in Sholom Mordechai being denied bail until his sentencing.

jury selection that their opinions about Rubashkin had been so affected by news reports that they could not be objective. In spite of these admitted disqualifications, two such jurors were accepted to the jury, with one of them selected as jury foreman!]

## A VICTIMLESS CRIME

Going through the transcripts, one searches in vain for a single witness who testified to being hurt in any way by anything that Sholom Mordechai did or said. How does this fact mesh with a defendant who stands to be sentenced to a minimum of 27 years in prison?

His is a case of a victimless crime [as well as a profitless one]. Yet one cannot say the same for the prosecutor, whose dishonesty in his presentation to the jury, and whose malice toward the defendant jump from the page. His courtroom triumph, paid for in innocent blood, jacked up his prestige considerably.

The net effect of reading trial excerpts in which a prosecutor preaches about cheating and lying, while coming across one example after another in which his own duplicity will figuratively burn an innocent man at the stake, makes one question what country and what era one is living in.

## PART II

As Sholom Mordechai Rubashkin sits in an Iowa jail awaiting a possible life sentence, a strong grassroots effort has ramped up protests against what is now commonly recognized as an excessively harsh prosecution bordering on fanaticism.

Articles and editorials in both Jewish and secular publications have questioned the government's calling for the most severe punishment imaginable, for a non-violent offense by a person with no prior criminal history.

A petition carrying over 28,000 signatures representing a cross-section of concerned citizens, as well as many people from other countries, have urged Iowa U.S. Attorney Stephanie Rose to ensure fairness and justice for Sholom Mordechai.

Most recently, a *kol korei* on behalf of Sholom Mordechai signed by *gedolim* from all sects of *Klal Yisroel* exhorted the Jewish community to be proactive, to protest the disproportionate severity meted out to Sholom Mordechai and to demand a fair sentence.

With the wider Jewish community finally waking up to the travesty of justice now playing out in the final stages, the comments of historian Edwin Black, in an op-ed regarding the Rubashkin case published on *The Cutting Edge* site, are sobering.

"By some appearances, it seems as though many in the Jewish community have maintained a stance either of silence or stern condemnation. That very quiet abandonment may have tacitly green-lighted prosecutors that co-religionists would not speak up in face of excessive action," Black mused.

## PROSECUTOR'S MASK SLIPS

Some have cited discrimination and prejudice as factors contributing to what Black calls "a stunning indictment of prosecutorial zeal"

in this case.

"As a bearded, Chasidic Jew, Sholom Mordechai looks different and he's being treated differently," argues Rabbi Menachem M. Katz of the Aleph Institute, a nonprofit organization that serves Jewish inmates. "No one called him a dirty Jew or painted a swastika anywhere, but he's a stereotypical-looking Jew dealing with the justice system in a place that doesn't have Jews, in a jury pool that doesn't have Jews, in a state with very, very few Jewish residents."

As an example of prosecutorial excess, Black cited a recent article in the *Des Moines Register* that quoted District Attorney Peter Deegan condemning Sholom Mordechai for his failure to pay some cattle suppliers in the required 24-hour time frame as required by law - although they were indeed paid.

"To the knowledge of all legal experts contacted, this obscure law has never before been used to prosecute anyone," Black noted. Why was it fished out of obscurity and used to convict Rubashkin?

Furthermore, why should a man go to jail for running afoul of a "dead law" - especially when the vendors were fully paid?

"It's completely beside the point that they were paid," Deegan argued irrationally in a written explanation justifying his call for life imprisonment. "The essence of the criminal offense is the failure to *timely* pay them."

With his bizarre insistence on adding extra years in prison for the lightest of offenses for which no one else has ever been prosecuted, Deegan let his mask slip a bit further, so that the fangs actually show.

The ferocity and duplicity that have marked Deegan's methods have drawn sharp criticism. Those familiar with the case note the vendetta-like tactics, the relentless distortion of facts, and the subversion of the truth in the pursuit of a life sentence for Sholom Mordechai.

Former Judge, US Attorney Urge Court Not To Be Bound By Federal Guidelines

In a lengthy memorandum addressed to Judge Linda Reade, former Judge Paul Cassell and former U.S. Attorney Brett Tolman pointed out the injustice and absurdity of adhering strictly to government guidelines in the Rubashkin case, as the prosecutor and probation officer have done.

"Doing so will impose a significantly longer sentence on Mr. Rubashkin than he would receive for second-degree murder, kidnapping, ...hijacking or providing weapons to terrorist organizations," they protested.

"In fact, the Government's guidelines calculations are so flawed that they imply that his sentence should be the same as if Mr. Rubashkin had committed first-degree murder. Such a lengthy sentence would clearly be disproportionate to his offenses," the attorneys said.

## LIES BLOCK BAIL FOR SHOLOM MORDECHAI

Attorney Nathan Lewin, commenting on the extremism driving the prosecution's campaign against his client, said, "In the almost 50 years that I have been practicing federal criminal law - first as a prosecutor and then as a defense attorney - I have never heard of, or witnessed, as vindictive, excessive, and mean-spirited a criminal prosecution as the

one conducted in the Northern District of Iowa against Mr. Rubashkin.”

He cited examples where prosecutors stooped to making false statements to the court to ensure that Sholom Mordechai would be denied pre-sentencing bail. Some of these lies have been documented in previous columns about the case.

In a typical fabrication, prosecutors told the judge that after the May 2008 Agriprocessors raid, Sholom Mordechai arranged to send a key employee, Ben Chaim, and his family, to Israel and to help them out by taking over their real estate in Iowa. “The defendant’s intention,” Deegan told the judge, was to obstruct justice by helping a witness “disappear.”

Yet, evidence in the record shows that the arrangement for Ben Chaim to return to Israel was finalized long before the May 2008 raid, and was therefore unconnected to the raid or obstruction of justice.

Prosecutor Deegan knew this, because bank employees who handled the transference of the real estate, which took place before *Pesach* of 2008, had been questioned by government investigators. In case Deegan had somehow “forgotten” the time frame they gave him, Sholom Mordechai himself repeated it on the witness stand during his bail hearing.

Read the actual testimony below, taken from the Detention Hearing Transcript following the trial. Although the record is clear that the transference of property took place long before the ICE raid, and Ben Chaim left the country on his own, take note of how Deegan later manages to twist the facts to make obstruction of justice part of the court record.

He does this by implicating Sholom Mordechai in Ben Chaim’s departure as though it were a conspiracy between the two men, with Sholom Mordechai paying for Ben Chaim’s tickets to Israel and only then taking over his properties.

**Deegan (to Sholom Mordechai, pages 45-50 of Detention Hearing Transcript):** Let’s talk about Sholom Ben Chaim leaving the country. You certainly knew that he was going to leave, didn’t you?

**Sholom Mordechai:** No. If you want to know exactly what I knew, I think it was Saturday (before he left). He came over to me and said, “Good-bye.”

**Deegan:** Bottom line, though, you know that his tickets were purchased on your credit card, right?

**Sholom Mordechai:** My credit card was a number in a travel agent’s office that lots of [Agriprocessors] people used. It was public. I didn’t take it out of my pocket and give it to him.

**Deegan:** Prior to him leaving, you had an arrangement where you were going to take over his properties. Isn’t that correct?

**Sholom Mordechai:** That was not prior to his leaving. That was way before. It was not tied to his leaving.

**Deegan:** But after the raid, isn’t it true that you actually took over his properties?

**Sholom Mordechai:** Nevel Properties [a real estate company] did that.

**Deegan:** But you own Nevel Properties?

**Sholom Mordechai:** I own 50 percent.

**Deegan:** But this was discussed before by Shlomo Ben Chaim before he left the country, correct?

**Sholom Mordechai:** Way before.

**Deegan:** It was after the raid that you took over the properties?

**Sholom Mordechai:** I’m trying to explain to you: [Our arrangement] was way, way before any trouble started. It was a deal arranged long before with [bank vice president] Mike Kruckenberg in Freedom Bank.

#### FALSIFYING THE RECORD

As if he hasn’t heard a word of this testimony, and without any evidence to counter it, Deegan later urges Judge Reade to deny bail due to Sholom Mordechai’s “efforts to obstruct justice by paying for flights out of the country for Sholom Ben Chaim and his family. And then tak-

ing over his properties.”

Obstruction of justice is not a light matter, and Deegan doesn’t hesitate to make it part of the court record where it can be later used in the sentencing phase. Then, he and the probation officer incorporate these phony charges into their memorandum. They use “obstruction of justice” to ramp up the recommended prison sentence by a number of years.

Deegan’s false representations to the court, Lewin claims, resulted in Sholom Mordechai being denied bail until his sentencing. He has now been behind bars for over 150 days since the trial verdict. Lewin has now called for a Department of Justice Criminal Division investigation of the Iowa prosecutors for misconduct.

#### FIGHTING CHARGES NEVER BROUGHT UP IN COURT

Part of the sentencing phase requires Sholom Mordechai’s lawyers to respond to the charges listed by the prosecutor and probation officer in their sentencing memorandums to the judge.

What is now emerging is that a large number of the charges in these documents were never mentioned at the trial. To flesh out his pre-sentencing memorandum and ensure enough negative material to justify a life sentence, Deegan filled his memorandum with 25 pages of inflammatory charges about immigration violations - for which Sholom Mordechai was never tried in court and from which he therefore couldn’t defend himself.

This is permitted in a federal case because in the sentencing phase, the yardstick of proving a defendant’s guilt “beyond a shadow of a doubt” no longer applies. Allegations unsupported by evidence can be used *carte blanche* to arrive at the “total offense picture,” as long as prosecutor or probation officer decides they sound credible.

#### A CIRCUS?

The sentencing phase is where wild rumors and unproven allegations - worthless in court where they would collapse under the most minimal scrutiny - are elevated to a most important role. It is here, in the probation officer’s report, that these unproven claims can be used to justify a severe sentence if court officers so desire.

In Sholom Mordechai’s case, that is exactly what is happening.

Claims about mistreatment of workers, drug dealing and gun smuggling; money laundering, obstruction of justice, tampering with witnesses, perjury, inhumane treatment of animals, and a slew of other fantastic charges never proven or even mentioned in court have found their way into the probation officer’s report.

All this material, including stray comments, rumors and hearsay picked up in FBI investigations, was put at the probation officer’s disposal. He then cherry-picked it for the most indicting material in order to increase Sholom Mordechai’s sentence.

It’s important to remember that whether or not Sholom Mordechai was tried in court for these charges, and the very fact that all immigration charges were dropped by prosecutors, is irrelevant in the sentencing phase.

The only tool left to counter the continuing legal marauding is for Sholom Mordechai’s attorneys, in their rebuttal of the charges, to take off the gloves and to expose the prosecution’s brazen corruption. Supporters and concerned parties in increasing numbers are watching closely.

In view of the circus the case has become, whether justice department officials have singled out Sholom Mordechai for shocking and excessive punishment is no longer a matter of debate. The question is, can they get away with it?

“This is America,” observed an *LA Jewish Journal* columnist discussing the Rubashkin case. “There is no room for a lynch mob mentality.”

With the growing outcry about the cruel and unjust fate being planned for Sholom Mordechai, we can only hope and pray that at the end of the day, influential voices of reason and sanity will prevail.

# His Story is Ours

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BY RABBI PINCHOS LIPSCHUTZ

I'm sorry for writing about Sholom Mordechai Rubashkin again, but I can't help it. His tale haunts me.

I have a painting in my house of an old Sephardic woman. Painted in 1963 by a famous Israeli artist named Weintraub, I bought it for \$200. It was dusty and banged up and lying in a pile of junk in the back of a store, but the minute I laid eyes on it, I knew that it had to be mine. The lady was talking to me from under the dust and grime which had accumulated on the sorrowful painting that the storekeeper had purchased as part of an estate.

What is so great about this painting and what attracted me to it is that when you study the woman portrayed in it, you sense in her the tale of the Jewish exile. You can almost hear her telling her tale of woe: how she was driven from her native land and brought to the Promised Land where she was forced to live in a tent city. Her children were educated by the state in a language and fashion totally unfamiliar to her. Yet, she attempts to maintain her dignity and pride. And if you look carefully, you can note the hints of a smile on her lips.

This well-executed portrait tells the tale of an era much as a couple of stanzas of well-written poetry so potently because the author is able to illuminate and portray a detailed, complicated story in but a few words.

We have been highlighting the plight of Sholom Mordechai Rubashkin for some two years now, portraying it as a man fighting for his life. We were accused of being hyperbolic and, at times, I wondered if perhaps I was overplaying the drama. Maybe some secret journalistic juices which I never knew I possessed had gotten the better of me and caused me to exaggerate what was transpiring in the heartland of America. But on Friday, when government prosecutors recommended that Sholom Mordechai be sentenced to life in prison - yes, life in prison - for his bank fraud conviction, the veneer of justice was peeled off. No longer can anyone claim that the government is simply carrying out their mandate of pursuing equal justice under the law. Now it has become blatantly obvious for all to see that there is something sinister at work here.

In our Pesach edition, we published a painstakingly researched article documenting the way in which the Rubashkin case was prosecuted and the way he has been treated since his conviction. It appears as if the tale of Rubashkin is a microcosm of the tale of the Jewish people.

A simple, G-d-fearing man gave up his rabbinic position to move to an area of this country which had never had Jewish residents in order to assist his father in providing affordable kosher meat to the citizens of this land. Successful beyond anyone's imagination, he aroused the ire of unions and radical vegetarians who marked him for destruction. Though he was an exemplary citizen, providing employment for an entire town, dispensing charity to people from all walks of life, supporting religious and educational institutions, and contributing im-

measurably to the betterment of mankind, once the fix was in and the word from the bosses came down, he could do no right. The man who was regarded as a heroic figure and revered by people of all religions in town was vilified to such an extent that representatives of a country known for its pursuit of justice and fairness dedicated themselves to locking him in jail for the remainder of his life.

A nationwide media storm convicted him of crimes against humanity and cruelty to animals long before he even went to trial. In fact, those charges were never heard in a court of law. They didn't have to be. He was convicted in the court of public opinion. Charges unrelated to what had caused his downfall were brought, and he was convicted in a case which will be pointed to for years to come as a travesty. Deemed a flight risk, because he would flee to that far off country of the Jews which embraces all Jewish crooks and swindlers, he sits in a country lockup dressed in a bright orange uniform, is housed in a small room with a pillow-less bed fit for a murderer, and is treated like one of the worst predators to ever walk the lily white streets of Iowa.

Yet, he maintains his belief and refuses to be broken. His relationship with G-d remains steadfast and he prays and studies holy books from that awful place as he awaits his redemption.

My friends, that is the story of the Jewish people in exile. His story is our story. His tale is our tale. His pain is our pain. And it's no exaggeration. Wherever we have gone, we have been buffeted about. In whichever country we have found ourselves over the past two thousand years, we have done our best to be model citizens, to support ourselves and to help others. We have sought to cause no harm to anyone and we have brought wealth, education and health to whichever exile we landed in. Yet, we have been accused of poisoning the wells, murdering babies, demanding pounds of Christian flesh as loan repayment, and every other crime imaginable.

Without comprehension, we were pushed beyond the pale of settlement, crucified, imprisoned, and taxed into poverty. We were unable to work or go to school. Our sin? We were Jews. We believed in a Higher Authority. We hewed to an ancient honor code and moral system. We looked different. We acted different. We spoke different. We dressed different. Yes, we were different.

It made no difference to anyone how much we paid in taxes. It was never enough. We were never patriotic enough. Never clean enough. Never good enough. We were always suspect. We were always despised. We were always, dare I say, dirty Jews.

We have risen to unprecedented levels in this country and thought that here it would be different. Here we would always be accepted. Here we would always be tolerated. In this land of opportunity, anti-Semitism wouldn't rear its ugly head so obviously. In this *malchus shel chessed*, we thought that we would forever be given a fair chance.

This week, many Jews will celebrate *Yom Ha'atzmaut*, the holiday

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*In fact, those charges were never heard in a court of law.*

*They didn't have to be.*

## He was convicted in the court of public opinion.

of Israel's independence. Zionists believed that if there would be a Jewish state which would act as a civilized, honorable country, the scourge of anti-Semitism would come to an end. No longer would we be treated as a pariah nation. No longer would we be judged by a double standard.

The Jewish state would herald the dawning of a new era in which all of mankind would once and for all recognize that all Jews want is to be treated like everyone else - no better, no worse. Having a Jewish state would demonstrate to the world that Jews really are capable of belonging to the brotherhood of nations. Yidden would be welcomed to the group and never again would we fear pogroms, blood libels, trumped-up legal cases, and mass annihilation.

This past Sunday, most of the Jewish world commemorated the awful Holocaust that took place during the period of World War II. Yom Hashoah speakers in synagogues, schools, and various public gatherings, who believe that we are in control, all thundered that "never again" will Jewish people stand defenseless, waiting in vain for an apathetic world to rise to their defense. Never again will Jews be marched off like sheep to death camps. Never again will desperate Jews go begging at the shores of foreign nations to be let in. Now that the Jewish people have a state and armed forces at their disposal, they will stand proud and tall and defend themselves against all comers. As if it's up to them.

Yet, at the same times as they uttered their slogans, the enlightened nations of the world played word games with the militant Islamic regime of Iran. The Iranians continue with impunity in their mad rush towards procuring nuclear weapons with which it promises to wipe Israel and the people living there off the face of the earth. At the same time as Yom Hashoah gatherings take place, Jews were taught once again that as many times as they scream never again, they are still powerless to stem the rising tide of international state-sponsored anti-Semitism. Jews are impotent as they flail about in a desperate losing battle to stop the Iranian nuclear march.

As Israel celebrates its Independence Day, it is confronted by an American president who makes no secret of his animosity towards the state. The posture of the administration towards its strongest ally in the volatile Mid-East is troubling to lovers of peace and democracy the world over. The Israeli head of state just recently suffered unprecedented humiliation at the hands of the American president over Israel's right to build homes for civilian Jews in the eternal capital of the Jewish people. Enemies are coddled, friends are threatened, and Jews wonder what is going on.

"What have we done to bring this upon us?" they ask. "What does he want from Israel?" they wonder. "How can this be taking place in the modern era?" they ponder.

It is an age-old question, as old as the anti-Jewish canards we all thought were things of the past. Apparently not. What can we do about it? Where do we go from here?

In this, as well, the Rubashkin saga has a lesson for us. Sholom Mordechai maintains his *bitachon*. As a true *eved Hashem*, he knows that all that transpires is for a greater purpose, which we do not yet understand. *Yidden* of all types demonstrate true *achdus* as they stand by him. Our appeal to write letters to him brings him writings from Jews of all ages from around the world, who pen letters of *chizuk* which warm the heart and move the people who read them to tears. The mail delivers checks of all amounts for the Pidyon Shvuyim Fund, from Jews rich and poor, with nothing more in common than Jewish compassion.

People who will never meet him, who *daven* a different *nusach* than he does, pour their hearts out in *tefillah* for Sholom Mordechai *ben Rivkah*.

Thus, not only does all this assist him in ways we can perceive and feel, but the *achdus* generated by the care and compassion rises above and evokes Heavenly mercy on behalf of a righteous man who spent his life helping others prior to his legal battles. It will no doubt lead to his eventual freedom.

This is the secret of Jewish survival throughout the ages. The way we cling to *emunas avoseinu*, the fact that we stubbornly refused to surrender in the face of overwhelming adversity, the fact that we maintained our *emunah* and *bitachon* in the darkest days of *golus* - all this is our lifeblood.

The *Chofetz Chaim* writes that if the *mitzvah* of *gemilus chassodim* would spread among our people, the world would fill with *chessed* and all tragedy would disappear from the world. He says that while in *Mitzrayim*, all of *Klal Yisroel*, rich and poor, looked for ways in which they could do *chessed* with each other and this was one of the things that led to their redemption from slavery.

It is comforting to see how even in a shaky economy, people continue to contribute to institutions of Torah and *chessed*. Untold amounts were distributed by *maos chittim* funds in every town and city where Jews reside to those unable to afford the myriad expenses of *Yom Tov*.

The forces of Torah strengthen from day to day as *yeshivos* burst at their seams and more *bochurim* and *yungeleit* than ever before in Jewish history dedicate their lives to *aliyah* in Torah.

The Rubashkin case portrays our tribulations in *golus*, but it also hints that we may very well be on our way out of here. The way *Yidden* have risen to the challenge and performed so many acts of *chessed* and *achdus* has created major *zechuyos* for all of us and has hastened the day of our redemption.

May it happen speedily, in our day. *Amen*.

# Life? How Can They?

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BY DEBBIE MAIMON

Capping almost a half century of what is colloquially referred to as the golden years of American Jewry, a Jew in this country is about to be figuratively burned at the stake.

As the saga of the United States vs. Sholom Rubashkin enters the sentencing phase, it's become apparent that this grotesque parody of justice is about to culminate in an outcome that sends shudders through anyone familiar with the case. The government is poised to lock up Sholom Mordechai for life - *for life* - for the "paper" crimes for which he was convicted.

The actual sentence will be formally handed down on April 28 by Judge Linda Reade, after pre-sentencing recommendations have been forwarded by the prosecutor and probation officer. These government officers have already clearly staked out their positions.

The prosecutor recommended 22-27 years imprisonment, which the probation officer, whose job is to arrive at an appropriate sentence by reviewing the total picture, jacked up to the most extreme sentence possible short of the death penalty: life imprisonment.

*Virtual* life imprisonment has thus been ratcheted up to *actual* life imprisonment, absolutely unheard of in this country for a first-time, white collar offense.

Hearing about the government's sinister plans for Sholom Mordechai left most people dumbfounded. "This is a modern-day lynching of a good man while covering up the atrocity with shallow legalities," one person wrote in a petition to U.S. District Attorney Stephanie Rose that carried over 21,000 signatures.

Sholom Mordechai's attorney agreed. "This case has never been about actual federal crimes committed with intent," said Guy Cook in a phone interview with *Yated*. "This is a case of people buying into intense prejudice against someone wrongly viewed as a crafty Jewish businessman from New York who made his fortune on the backs of exploited Hondurans and Guatemalans. That image couldn't be further from the truth, but such is the power of prejudice."

Cook, who previously functioned in the role of U.S. attorney, said that most people don't understand how the federal criminal system works. He said that prosecutors have enormous power, surpassing that of judges and juries, and the way prosecutors craft the indictment determines the final sentence.

Even in cases where a defendant is acquitted of most of the charges, the court, based on the prosecutor's original indictment, can hand down a stiff sentence based on what it perceives as the "total offense picture."

That picture can include a host of negative allegations that the defendant was never convicted of in court - or even charged with. As long as it is part of some government memo somewhere - perhaps some rumor mentioned in an FBI report or in front of a grand jury, it can be used to legitimize whatever jail sentence or monetary fine the prosecutor and probation officer want to impose.

"To seek a life sentence for the crimes he was charged with is absolutely unprecedented and ridiculous," Cook said. "The absurdity of the federal sentencing guidelines is on full display in the Rubashkin case."

Federal sentencing guidelines are not meant to be binding and mandatory, but the prosecutor and probation officer in this case are using the system to run up the highest number of "points" possible, he explained. "They are using every trick available to multiply and increase the number of years of incarceration."

What is so disturbing is the way outright lies have been referenced in the probation officer's report and used to justify draconian sentence recommendations based on the "total offense picture."

One of these lies concerns testimony - never given in court - by a Hispanic worker that he "overheard" two Agriprocessors managers discussing their orders to rehire a number of employees who had been fired due to lack of valid papers but who now had been helped to acquire better false papers. [The allegation that Sholom Mordechai called for the financing of false papers and the rehiring of illegal immigrants holding these papers was one of the most destructive libels circulated by the government against him in the pre-trial period.]

As it turns out, the two managers were Hosam Amara, an Israeli Arab, and an Israeli Jew named Levi. Both men's grasp of English is poor. They conversed with each other in the language in which they were both fluent - Hebrew. The Hispanic worker who claimed to have overheard them could not possibly have known what they were saying.

Yet this false testimony, along with scores of other false allegations and insinuations, were cited in the probation report as justification for recommending that Sholom Mordechai be subjected to the most severe punishment possible. Although the defense team submitted memorandums totaling over a hundred pages disputing and disproving these allegations, Guy Cook and other members of the defense team say they do not believe their arguments will be weighed objectively.

"I am convinced that the extremist-minded prosecution is infected by Sholom Rubashkin's differentness," said a member of the defense team. "The strangeness of a kosher plant and its Jewish bearded owners was to these intolerant men like gasoline to the arsonist. The religious and cultural uniqueness has warped their ethics."

The growing awareness that the relentless and vindictive treatment of Sholom Mordechai is about to culminate in a life sentence should alarm every American Jew. Sholom Mordechai's case reflects the proverbial "canary-in-the-coal mine," an unofficial barometer for gauging the presence of anti-Semitism.

When the canary in the coal mine sickens, that is a sure sign that the atmosphere in the coal mine has turned toxic.

# The Fight Against a Life Sentence

BY DEBBIE MAIMON

In the final days before Sholom Mordechai Rubashkin's sentencing, public outcry against the government's recommendation of life imprisonment, capped by sharp criticism from distinguished legal experts, has rattled the composure of Iowa prosecutors in the case.

An *ABC News* report cited a flood of letters, phone calls and emails to the Justice Department and to Judge Linda Reade, as well as numerous op-ed articles slamming prosecutors for an extremist position denounced as "grotesque," "deeply flawed," "absurd" and "draconian."

A spokesman for the U.S. Attorney's office in Northern Iowa told *ABC News* his office is concerned about the unexpected campaign in defense of Sholom Mordechai. "We're seeing thousands of emails, we've seen recent letters by a former congressman and others," he said, calling the protests "an orchestrated effort to spread misinformation and raise people's concerns falsely."

A two-day sentencing hearing is set to begin April 28 in the courtroom of Judge Reade, whose reputation as one of the harshest judges in the federal judiciary is of obvious concern.

## AMERICA'S MOST PROMINENT LEGAL EXPERTS WEIGH IN

Some of America's most prominent legal experts and former Justice Department officials are urging Reade not to follow the federal sentencing guidelines in this case, and to ignore the outlandish recommendations of the prosecutor and probation officer.

Among the leading voices deriding the prosecution for its overzealousness are Attorneys General Nicholas de B. Katzenbach (under President Johnson), Ramsey Clark (under President Johnson), Edwin Meese III (under President Reagan), Dick Thornburgh (under President Reagan), Janet Reno (under President Clinton) and William Barr (under George H.W. Bush).

One letter authored by Katzenbach and Meese and endorsed with the signatures of eight more former justice department officials was outspoken in its description of a life sentence for Sholom Mordechai as severely disproportionate and draconian.

## "A BLACK STAIN ON COMMON SENSE"

The letter quoted distinguished legal expert Professor Frank Bowman of University of Missouri Law School that "the sentencing guidelines for white-collar crime can produce a black stain on common sense." Life imprisonment for Sholom Mordechai would fall into this category, the authors noted.

They compared the Rubashkin case to that of Mark Turkcan, the president of First Bank Mortgage of St. Louis, who misapplied \$35 million in loans, resulting in a loss of approximately \$25 million. Turkcan was recently sentenced by a federal judge in Missouri to one year and one day in prison.

Another letter to Judge Reade from former federal prosecutor Brett Tollman and former judge Paul Cassell underscored the inequity of punishing a first-time white-collar offender with a sentence appropriate for first-degree murder.

"Shockingly, even if the judge were to sentence Mr. Rubashkin to 25 years, his sentence would still be considerably higher than for second-degree murder, aircraft hijacking, terrorist attacks, assault with intent to kill, kidnapping, or arming a terrorist organization," Mr. Tollman wrote in a separate article on *The Law Journal*.

Alan Dershowitz, a Harvard Law professor who helped develop the sentencing guidelines, wrote to U.S. District Judge Linda R. Reade on April 20 to express "distress" with the prosecutor's "misuse of the guidelines to try and secure a sentence well in excess of what Mr. Rubashkin's actions, as well as his personal background, deserve."

In view of the many mitigating circumstances, including the lack of any prior criminal history, the absence of intent to defraud or hurt anyone, a family of ten children and Sholom Mordechai's extraordinary lifelong record of charity and community service, many have called on Judge Reade to show exceptional leniency in this case.

## PUBLIC TRUST AND CONFIDENCE AT STAKE

"The Rubashkin case has been marred by so many abuses and excesses that close scrutiny by the Department of Justice is required to avoid a result that will be a permanent stain on American Justice," attorney Nathan Lewin wrote on April 11 to Assistant Attorney General Lanny Breuer of the Criminal Division. Lewin asked Breuer to appoint attorneys to review the case.

With the growing chorus of distinguished experts challenging the zealotry of the Iowa prosecutors, many hoped that Breuer would order a judicial review of the case, consistent with his expressed concern in the past over the increasing disparity in white-collar sentencing.

Breuer had said publicly in a February speech in Miami that the justice department is "especially concerned" about such inequity. "Public trust and confidence are essential elements of an effective criminal justice system," Breuer said. "Our laws and their enforcement must not only be fair, they also must be perceived as fair."

Presented with an opportunity to apply these convictions by reviewing a case that is gaining notoriety for prosecutorial injustice, Breuer declined to get involved. Instead, he advised Mr. Lewin to raise his concerns "with the presiding judge or with the prosecutors in the case."

## GOVERNMENT SUBTERFUGE COMES TO LIGHT IN RUBASHKIN MEMORANDUM

In documents that recently surfaced during pre-sentence hearings, startling revelations came to light about the actions of prosecutors in bringing about the destruction of Agriprocessors.

The documents tell the story of prosecutors' efforts to prevent potential buyers from rescuing Agriprocessors as the company slid into bankruptcy, when it was still a viable and valuable enterprise worth \$85 million.

The mechanisms employed by the government to block the purchase of the company virtually guaranteed the failure of FBBC's \$26 million loan, for which Sholom Mordechai had been making timely payments for years. This loan had netted the bank \$21 million profit in just a few years.

The papers show that prosecutors threatened prospective purchasers with any family connection with the Rubashkins that they would feel the full weight of the law through a government forfeiture (confiscation) of the company should they seek to buy Agriprocessors," Rubashkin attorney Guy Cook said in a telephone interview with *Yated*.

#### GOVERNMENT MISCONDUCT

In response to the obvious question of whether this was legal, the defense memorandum minces no words. "Government interference of this kind amounted to misconduct," the memorandum charges.

Prosecutors continued to block prospective buyers until the company's stock plunged, and in its devalued state it was worth only pennies on the dollar. The lender bank at that point had no prospect of recouping their money, Cook said.

At this point, all of Sholom Mordechai's resources had been depleted in a vain effort to stave off bankruptcy. A forfeiture order had been imposed on his all property and business assets. He was financially ruined. Agriprocessors at that point would have been able to regain solvency under new ownership, but the Iowa prosecutors made certain that would not happen.

What was the purpose behind the government's actions? There seemed to be no logic or rationale to the destructive measures that caused massive losses to FBBC and other innocent parties that had stock in Agriprocessors.

Now, with the release of trial documents, the answer stares one right in the face. The opening paragraphs of prosecutors' pre-sentencing memorandum couldn't make it more clear:

*"This case is extraordinary in the uncommon means that were used to cheat a bank and others out of a staggering amount of money - more than \$26 million,"* lead prosecutor Peter Deegan wrote.

Wait. Wasn't this case about Agriprocessors receivables being inflated in order for the company to qualify for more money from a credit line? The highest figures attributed to the inflated receivables - the alleged "fraud" for which Sholom Mordechai stood trial - was \$10 million, according to court papers.

#### THE MANUFACTURING OF A FRAUD CASE

How strange. How does \$10 million turn into \$26 million? And given the recent discoveries of the forfeiture threats by which prosecutors chased off buyers, who in fact was responsible for the loss of the \$26 million if not the government itself?

Prosecutors were apparently in need of better ammunition against Sholom Mordechai than a \$10 million fraud. Prison time for a \$26 million fraud, enhanced by a host of other alleged "crimes," is a different story. That can be pumped up to twenty, thirty years - maybe even life. That changes the whole chessboard.

With charges against Sholom Mordechai for a \$26 million fraud in hand, prosecutors were now in business.

Wait. There's more from the prosecutors on the subject of fraud. The memorandum asks us to believe that Agriprocessors itself was nothing but a big scam.

*"When the truth behind defendant's lies was finally made known, Agriprocessors was revealed to be all but worthless to the bank and others as a going concern. No one wanted to buy it." - Page 4 of Government Pre-sentencing Memorandum*

Agriprocessors was worthless? No one wanted to buy it? Really?

The record shows that in addition to Rubashkin relatives who sought to redeem the company before being threatened by the government, at least one individual was so interested in acquiring Agriprocessors prior to its bankruptcy that he was ready to put down \$22 million in cash.

The following evidence offered by the Defense Memorandum exposes some of lies in the Memorandum, based on which the prosecutors have called for a life sentence.

#### From the Defense Pre-sentencing Memorandum, page 33-34:

*In November, 2008, Mordechai Korf offered the bank between \$21.5 and \$22 million to purchase Agriprocessors. Despite presenting his qualifications to the bank, Korf had a very difficult time getting FBBC personnel to meet with him. The bank inexplicably and strangely seemed uninterested in selling.*

*Eventually Korf met with Phil Lykens and FBBC's Chairman Dennis Herstein. Lykens told Korf before the meeting that FBBC wanted to get the full amount of their loan, and absent such an offer, there was no point in meeting.*

*In the meeting, Lykens and Herstein acknowledged that between \$27M and \$29M of bank money was at risk due to Agriprocessors' legal troubles. Nonetheless, they rejected outright Korf's offer of between \$21.5M and \$22M in cash.*

*Korf even offered to put money into escrow while the details of the deal were arranged, and made clear that the Rubashkins would not have any ownership interest in the business.*

*Korf emphasized to the bank that if the company went into bankruptcy and a trustee was appointed, the value of the plant would decrease. One of the things that made Agriprocessors attractive was the company's very strong position in the kosher meat market.*

*The bank rejected Korf's offer outright, without countering, and closed negotiations. The bank insisted that it would not take anything less than full payment of its loan. Days later [after bankruptcy could no longer be avoided], the Trustee was appointed.*

#### WHO IS FEEDING MISINFORMATION TO WHOM?

In response to the protests flooding the Justice Department and the U.S. Attorney's office in Northern Iowa, a government spokesman told ABC News that "a campaign of misinformation is being waged by influential friends of Sholom Rubashkin."

The government wants people to believe that scholars and experts who have denounced calls for a life sentence, and are calling instead for fair and judicious treatment for Sholom Rubashkin, are feeding us misinformation.

With the Government Pre-sentencing Memorandum riddled with fraudulent statements, the question is, who is feeding misinformation to whom? Only a few of the lies in this document have been exposed. They are too numerous to address in one column. Should such falsifications as fill this 75-page document, and on the basis of which a man is to be torn from his family and locked up for years, be allowed to pass with impunity?

Perhaps an impartial panel or a senate hearing, where the truth can finally emerge, is in order. More than the fate of one family is at stake here. As Mr. Lanny Breuer has said, "Public trust and confidence are essential elements of an effective criminal justice system." At stake is our trust in our nation's ability to provide justice for all.

# Lid Blown off Rubashkin Case

BY DEBBIE MAIMON

Disclosures that emerged at Sholom Rubashkin's sentencing hearing in Cedar Rapids, Iowa, last week blew the lid off a case riddled with false charges and distortions of the truth. A pattern of malicious misconduct by the U.S. attorney's office in the prosecution of the case emerged from witness testimony.

Taking advantage of a final opportunity to make the truth part of the court record, a number of witnesses dismantled lies that had been told about AgriProcessors under Sholom Mordechai's management. Although these lies were not aired at the trial, they were part of the indictment and can thus be used to ramp up a prison sentence.

The government's sentencing memorandum had attacked the meat-packing plant as a corporation surviving off the labor of an underpaid workforce. Witnesses such as Mr. Aaron Goldsmith, former city councilman, who was intimately familiar with AgriProcessors, easily overturned these fabrications, testifying that safety, cleanliness and working conditions at Agri surpassed those in most other slaughterhouses in the country.

Employee salaries were above the minimum wage at Agri, testified another long-time company worker, and for skilled workers, could rise twice as high as the minimum wage. Periodic raises, health insurance benefits, paid vacations, and discounted prices on all meat and poultry products were extended to employees who successfully passed a training period.

## THE MYTH OF THE \$26 MILLION

Other damaging falsehoods were punctured during the two-day hearing. Among the most destructive of these were the government's claims that Sholom Mordechai had caused FB lending bank \$26 million in losses. As the sentencing guidelines base themselves on the amount of loss caused by the alleged fraud, the amount of loss cited by prosecutors is crucial.

Based on the rigid sentencing guidelines that many have said make a mockery of justice, the \$26 million in losses drives up the sentencing guidelines to the twenty-years-imprisonment range.

But prosecutors were not satisfied with locking up Sholom Mordechai for anything less than a life sentence. Smarting from the harsh public criticism that called the prosecutions recommendations "absurd," "grotesque" and "deeply flawed," lead prosecutor Deegan railed against Sholom Mordechai and his supporters for organizing public protests.

Slamming the 40,000-signature petition calling for fair and equal treatment, with its "Disparity Memo" that outlines the discriminatory treatment meted out to Sholom Mordechai, Deegan complained to the judge that the defendant's supporters were "misrepresenting" the facts to the public.

How ironic. With the vultures circling overhead, the predator's at-

tack is halted by a defensive strike, eliciting a snarl of rage from the attacker. The victim has dared to fight back. What audacity!

## SERIOUS MISCALCULATIONS

A powerful rebuttal of the \$26 million figure came from financial accountant Abe Roth, who traveled from Brooklyn to the Iowa hearing, to share the results of weeks of analysis of Agri's financial data. Roth testified that prosecutors miscalculated the amount of loss by almost 18 million.

Prosecutors "made everyone believe that number of \$26 million is G-d-given, and it isn't," Roth said. "Where did they get this number from? It's an arbitrary number supplied by the bank. No one has produced the details and reasoning behind it."

He made the striking observation that much of the bank's loss was a product of AgriProcessors going bankrupt, not fraud. "Bankruptcy isn't a crime, unless it's a fraudulent bankruptcy," he noted. "Sholom Rubashkin was convicted of bank fraud, not bankruptcy fraud; the two crimes are separate and unrelated, but they're being confused here."

In an interview with Yated, Mr. Roth elaborated. "The bank fraud consisted of inflating receivables in the amount of about \$10 million—not \$26 million. But let's also remember when using the term crime, Sholom Rubashkin had a willing "partner in crime"—the bank itself. The bank chose to stay blinder than a bat in regard to AgriProcessors way of managing its finances."

Roth said that even if one accepts the bank's premise of a loss of \$26 million, Sholom Rubashkin can't be held responsible for that amount, for the following reasons:

a) The \$26 million doesn't factor in the \$4 million the bank made in interest from the fraudulently inflated invoices. That should rightfully be deducted from the total loss figure.

b) After AgriProcessors declared bankruptcy, FB bank continued to pump cash into the plant to keep it running. The cash infusions totaled about \$5 million. Roth said Sholom Rubashkin cannot be held responsible for that money either, because knowing how precarious AgriProcessors' situation was; common sense should have restrained the bank from pumping more money into it.

"But FB was not aware of the fraud until a month after the bankruptcy. Are you claiming it's their fault they were cheated?" the prosecutor challenged.

"Had they done the slightest bit of checking, they would have found out everything they needed to know. Typical of their sloppiness all along, they failed to perform "due diligence," Roth said. "That \$5 million should be subtracted from the total loss Sholom Rubashkin is being held accountable for."

c.) Roth noted that after the bankruptcy, when AgriProcessors was being run by a court-appointed trustee, the company's inventory which

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, ) No. 08-CR-1324-LRR  
 )  
 vs. )  
 )  
 SHOLOM RUBASHKIN, )  
 )  
 Defendant. )

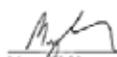
**AFFIRMATION OF MEYER EICHLER**

I, Meyer Eichler, affirm the following under penalty of perjury:

1. I have worked in the retail industry for over 30 years. For the last six years I worked in the banking sector and served as Vice Chairman of LibertyPointe Bank. I am currently a Senior Vice President and Group Leader of Signature Bank.
2. In late 2008 and the beginning of 2009, I was very interested in organizing a group of investors to purchase Agriprocessors. As part of the exploratory process, I traveled to Postville twice during the first half of 2009 to review the plant and to meet with the bankruptcy trustee, officials from First Bank Business Capital, Inc. ("FBBC") and representatives from the US Attorney's office for the Northern District of Iowa.
3. In March 2009, I traveled to Cedar Rapids, Iowa, together with a member of LibertyPointe Bank's Board of Directors and LibertyPointe Bank's outside counsel. We met with Mr. Richard Murphy, the First Assistant United States Attorney for the Northern District of Iowa. We told Mr. Murphy that a group of investors was interested in purchasing Agriprocessors.
4. Mr. Murphy forewarned us in no uncertain terms that if he (or members of his office) were to discover that any member of the Rubashkin family had either an equity interest or a management role in the company after we purchased it, the US Attorney's Office would not allow this. Mr. Murphy made it clear that this exclusion applied to all members of the Rubashkin family, not just to Mr. Sholom Rubashkin. We understood from Mr. Murphy's statement that if any member of the Rubashkin family were to have an ownership interest or a management role in the company after we purchased Agriprocessors, the Department of Justice would pursue this and we would be subject to prosecution.
5. I asked Mr. Murphy whether the prohibition extended to regular employees. Could we, for example, hire Mr. Heshy Rubashkin as an employee? Mr. Murphy told us it would be permissible to hire Mr. Heshy Rubashkin as an ordinary employee, but not as a manager.
6. In the months following my meeting with Mr. Murphy, I had several conversations with Mr. Joe Sarachck, the bankruptcy trustee. During that time, we were in discussions with parties who were interested in purchasing Agriprocessors.
7. Ultimately, however, the exclusion of Rubashkin family members pronounced by the US Attorney's Office prevented the group of investors from making a formal offer for the company. While the parties that we were in discussions with had the financial wherewithal to consummate a deal that we believed would be acceptable to the bank and the trustee, due to the admonition from the US Attorney's office the investors were unable to put together a management team that they felt had sufficient experience in the kosher meat-processing industry.
8. Agriprocessors was the largest kosher meat-processing plant in the country. The Rubashkin family's extensive experience and knowledge of the industry were extremely difficult to replicate. By forbidding all members of the Rubashkin family from having any type of management role in the company, the US Attorney's Office made it virtually impossible for us to put together a management team with the experience and knowledge necessary (a) to satisfy our investors and (b) to successfully operate such a business.

Pursuant to 28 U.S.C. 1746 I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

April 9, 2010

  
Meyer Eichler

consisted of millions of dollars of poultry and beef stored in freezers, was supposed to be sold by the trustee. The proceeds would then be used to pay back the lender bank. Due to inaction by both the bank and the court-appointed trustee, however, almost none of the inventory was sold.

"In addition, millions of dollars in accounts receivable were supposed to be collected and applied the same way," Roth said. "Yet nowhere in the bank's paperwork is there an assessment of how much it was trying to recover from Agri's inventory and accounts receivable. If the bank neglected to liquidate these assets for their own use, the loss is their own fault. These millions should rightfully be subtracted from the total loss Sholom is being held accountable for."

**REPORTERS SNAP TO ATTENTION**

In the final analysis, said Roth, "after subtracting the amounts for which the bank itself is liable, you're left with \$8.5 million in losses supposedly caused by Sholom. That's a far cry from \$26 million. It drastically lowers the level of the sentencing guidelines."

With the prosecution's mantra of "\$26 million in fraud" unraveling, Deegan tried to shake Roth's testimony. Unable to refute the logic, he tried to undermine Roth's credibility. "You're taking this position because you're a friend of the defendant," he shot at the accountant.

"I'm taking this position because I'm a professional accountant and I know what I'm talking about," Roth shot back.

The tense exchange snapped dozing reporters to attention. An AP article on the hearing released the following day opened with Roth's testimony as its centerpiece.

**Seeking AgriProcessors's Financial Ruin**

In one of the most disturbing disclosures to surface at the hearing, defense witnesses uncovered the government's role in driving AgriProcessors to complete financial ruin, after it had declared bankruptcy but was still valuable enough to command a good price from potential buyers.

The revelations came toward the end of the hearings held over two days in Cedar Rapids, Iowa. Defense counsel had told the court that that the government's actions, in excluding all Rubashkins from the business under threat of forfeiture, had scared off potential buyers. De-

**THE "NO-RUBASHKIN" EDICT  
REPORTED IN THE PRESS**

"The issue of possible ties to the Rubashkins would be crucial to the new company negotiating the purchase of AgriProcessors. Federal prosecutors, who have threatened to seize the business as part of their criminal case, reportedly have agreed to drop that effort if a new owner proves it has no links to the old owners." WCF Courier, June, 2009

A federal bankruptcy judge Monday approved the sale of a troubled Postville meatpacking plant to a Canadian businessman and his partners.

The buyer, SHF Industries, filed papers Monday swearing that it had no connection to the previous owners. Des Moines, Register, July, 2009

A Montreal businessman poised to buy the Agriprocessors meatpacking plant vowed Friday that the former owners would have no roles in ownership or in upper management.

Hershey Friedman said a few members of the Rubashkin family might continue to work at the Postville plant, but he said they would not be investors, and they would have no say in the plant's direction. "They are not part of it, and they never will be part of it," he said.

Friedman had been quiet since his name surfaced a few weeks ago as a likely buyer of the plant. But he recently told an Israeli news magazine that the Rubashkins are "wonderful people" who were "victims of a massive witch hunt." Des Moines Register, July 2009

prived of the know-how and expertise the Rubashkin family possessed, no buyer felt capable of undertaking the business.

By blocking the sale of AgriProcessors in this way, the government caused its value to plunge until it was worth only pennies on the dollar. At that point, funds from its sale could no longer repay its debts to the bank or to creditors.

This caused the bank to lose the collateral it had invested in the plant. Those losses, pegged in government papers at \$26 million, were then laid at Sholom Mordechai's doorstep in a falsified sentencing memorandum that accused him of extraordinary "massive fraud"—one of the largest in Iowa history!

### THE COVER-UP

In response to defense claims in court papers that the government had orchestrated the ruin of AgriProcessors, prosecutors called attorney Roby who represented the court-appointed trustee. Roby denied the existence of any "edict" to prevent a new buyer from hiring anyone linked to Rubashkin.

"The government was only concerned that Sholom Rubashkin himself would not re-acquire ownership in the plant," Roby stated. "Having Rubashkins in the business was not at all a 'deal-breaker.'"

Under cross-examination by defense counsel Montgomery Brown, Roby insisted there was no prohibition leveled by U.S. attorneys to exclude from employment at AgriProcessors anyone linked to Sholom Rubashkin.

One could see jaws drop in the gallery where scores of observers—most of them Iowa residents—sat listening. People clearly recalled a slew of press reports quoting officials that no one from the Rubashkin family would be permitted to serve in the new AgriProcessors management. [See Sidebar] And here was official confirmation of this edict being denied under oath!

Astonishment in the gallery grew as Mr. Brown highlighted on a large screen in the courtroom a sworn affidavit from a Brooklyn businessman. Mr. Meyer Eichler affirmed that in his negotiations as an interested purchaser, he had been informed by government authorities that he would be subject to prosecution were he to employ a Rubashkin in management after buying the plant. [See Affidavit at Sidebar]

In an interview with Yated, Mr. Eichler affirmed that he had been scared off by the warnings made to him by U.S. attorneys. "Despite being very interested in purchasing AgriProcessors, I didn't feel confident we could operate the plant successfully without input from the Rubashkins," he said. "These people are the experts in the kosher slaughter industry. In addition, the no-Rubashkins policy would kill the whole appeal to investors."

Shown the affidavit that collapsed her testimony that there existed no edit against employing Rubashkins, the government witness representing trustee Joe Sarachek squirmed in discomfort. She left the witness stand, followed by a defense witness whose testimony further exposed her false testimony.

### WITNESS EXPOSES GOVERNMENT'S ATTEMPT TO HIDE TRACKS

Steve Cohen, owner of Twin City Poultry, testified that in his negotiations to purchase AgriProcessors in January 2009, he had been informed by trustee Joe Sarachek that he had to deal with federal authorities.

He and his lawyers conferenced with U.S. attorney Murphy and Sarachek, who confirmed that there was no prospect of allowing Steve Cohen to buy the plant unless he promised not to include anyone from the Rubashkin family in management. (This although no Rubashkin except for Sholom Mordechai had been charged or even implicated in any criminal activity.)

Only then would the government drop its forfeiture claims against the company, the U.S. attorney said.

Had a buyer purchased the company when it was still a running \$80

million operation, all of AgriProcessors loans would have been repaid. New ownership of the plant would have satisfied the banks and the creditors. It would have been especially hailed by Postville residents whose town had been so eviscerated by the ICE raid.

"When the beleaguered Agriprocessors meatpacking plant first filed for Chapter 11 bankruptcy protection, a small glimmer of hope emerged in Postville," wrote the Iowa Independent. "There was an opportunity for another company to take over operations at the plant, for production to continue and for the community not to lose its largest employer."

But it was not to be. The survival of AgriProcessors, cause for celebration for the Postville population, would not have pleased the federal attorneys who were counting on this high-profile case to win them national recognition. It would also displease certain parties who were determined, for their own private agendas, to drive the AgriProcessors and the Rubashkin to complete financial ruin.

### THE STRATEGY: CAST AGRIPROCESSORS AS CRIMINAL ENTERPRISE

Some strategy had to be devised that would keep Sholom Mordechai in the government's crosshairs and legitimize the harshest possible action against both him and AgriProcessors. Casting the meat-packing plant as nothing more than a criminal enterprise, whose owners were not entitled to its ill-gotten gains, armed U.S. attorneys with a near-perfect strategy.

Not only did they use this strategy to seize of all of AgriProcessors assets, they exploited it to impose forfeiture claims—whose legality is highly questionable—on all Sholom Rubashkin-owned assets, including a chicken farm, a real estate corporation and even life insurance policies.

Their strategy achieved an important aim: It brought about the total destruction of AgriProcessors and Sholom Rubashkin's complete financial ruin. In the process, it caused vast losses to the company's lender bank from which Agri had borrowed millions. This too, was used to advance the government's agenda.

The bank's losses, pegged in government papers at \$26 million, were then laid at Sholom Mordechai's doorstep in a trumped-up fraud case. Additional phony charges rigged by prosecutors were used to "enhance" the sentencing guidelines so that prosecutors could demand a life sentence.

### KANGAROO COURT PROCEEDINGS

Anyone who doubts the government's singular malice and vindictiveness against Sholom Rubashkin should take note that it is far from over. Although he stands to be sentenced on May 27, beginning this week he is being made to stand trial again, this time on state charges of having violated child-labor laws.

The alleged witnesses to these crimes are a group of child-age Guatemalans who were jailed and deported to their native country after the raid. These are the alleged "child-laborers." To win their cooperation after treating them so brutally, the government has bribed them to come back to Iowa to testify against their former employer.

Sholom Mordechai's attorney has requested a delay in the trial for at least thirty days. "Any conviction on the state labor violations could also have an effect on Rubashkin's federal sentence, which is supposed to be announced May 27," Brown said.

"It puts Mr. Sholom Rubashkin in a horrible quandary," Brown told the court this morning. The judge in the case, Judge Callahan, denied the request.

The emerging story of an ongoing, ruthless miscarriage of justice, and the corruption in government offices that continues to engineer it, cries out for investigation. The Jewish community as well as all people of conscience cannot afford to remain silent.

In the meantime, stay tuned for the next installment of kangaroo court proceedings in Iowa.

# Tefillah Rallies Across the Country

FOR REB SHOLOM MORDECHAI RUBASHKIN

BY YITZCHOK SINGER

This past week, the *achdus* of *Klal Yisroel* was on clear display as numerous gatherings were held at various locations across the United States, with *Yidden* joining together to say *Tehillim* and hear *divrei hisorerus* as *zechuyos* for Reb Sholom Mordechai *ben Rivkah* Rubashkin, whose sentencing hearings were held at the end of last week in Cedar Rapids, Iowa.

Jews of all stripes and affiliations - most who do not know Reb Sholom Mordechai at all - gathered for the sole purpose of beseeching *Hakadosh Boruch Hu* to grant this tremendous *baal chessed* and *yirei Shomayim* a personal *geulah v'yeshuah* following a travesty of justice and the most trying period of his life, during which he has been incarcerated and forced to spend his days behind bars unjustly.

Last Tuesday night, a community *kinnus* for men and women was held in Monsey, NY, at Yeshiva Ohr Somayach. Rav Chaim Shabbes led the assemblage in the recital of *Tehillim* and opening remarks were delivered by Rav Yisroel Rokowsky, *rosh yeshiva* of Yeshiva Ohr Sameach. The gathering was addressed by Rav Pinchos Lipschutz, publisher of *Yated Ne'eman* who has spearheaded the global effort to assist Reb Sholom Mordechai during this ordeal.

Hakhel, in conjunction with Agudas Yisroel Bais Binyomin, held a major community-wide *kinnus* in Flatbush. Over 1,000 men and women filled Agudas Yisroel Bais Binyomin in Flatbush where messages from Rav Chaim Dovid Zwiebel, Executive Vice President of Agudas Yisroel of America, and Rav Moshe Tuvia Lieff, *rov* of Agudas Yisroel Bais Binyomin, were delivered. *Tehillim* was led by Rav Shloima Mandel, *rosh yeshiva* of Yeshiva of Brooklyn.

In Chicago, a community-wide *atzeres tefillah* for men and women was held at Congregation Adas Yeshurun. *Divrei hisorerus* were delivered by Rav Dovid Zucker, *rosh kollel* of Zichron Shneur; Rav Zev Cohen, *rov* of Congregation Adas Yeshurun; and Rav Boruch Hertz, *rov* of Congregation Bnei Reuven.

Also last Tuesday night, for those who couldn't attend a gathering in person, a telephone conference was held to discuss the case of Reb Shalom Mordechai, with speakers including Mrs. Nissi Streicher, publisher of *Be Simcha*; Mrs. Debbie Maimon, reporter for *Yated Ne'eman* and expert on the Rubashkin case; and Mrs. N. D. Zwiebel, renowned women's lecturer, who offered practical actions that can be undertaken by *Yidden* all over the world.

Also, following the call of the *gedolim*, many people took time

out last Tuesday at 1 p.m. to say the same three *kapitlach* of *Tehillim*.

Last Wednesday night, over 1,000 people attended a massive *atzeres tefillah* at Bais Faiga Hall in Lakewood, NJ. *Divrei hisorerus* were delivered by Rav Aryeh Malkiel Kotler, *rosh yeshiva* of Bais Medrash Govoah, and the main address was given by Rav Pinchos Lipschutz. The heartfelt recital of *Tehillim* was led by Rav Moshe Shimon Luria, *rov* of Bais Medrash Ohr Yechezkel and *menahel* of Mesivta Torah Temimah of Lakewood.

Thursday night, a community-wide *kinnus* for men and women of the Boro Park community was held at Agudas Yisroel Zichron Moshe of Boro Park, which is led by Rav Eliezer Horowitz. The program featured remarks from **the Novominsker Rebbe**, Rav Yaakov Perlow; **Rav Avrohom Schorr**, *rov* of Kehal Tiferes Yaakov of Flatbush; **Rav Chaim Dovid Zweibel** and **Rav Pinchos Lipschutz**.

In addition, throughout the last week, dozens of shuls and *yeshivos* across America recited *Tehillim* and davened for Reb Sholom Mordechai *ben Rivkah*.

Also last week, in a bold new campaign titled "Counter the Prosecution," the Chofetz Chaim Heritage Foundation (CCHF) launched a new *machsom lefi* specifically for the *zechus* of Reb Sholom Mordechai. A *machsom lefi* is a program in which participants undertake, *bli neder*, to make an extra, concerted effort to be careful with their words at a designated time each day as a means of fulfilling the *mitzvah* of *shemiras halashon*. The Chofetz Chaim Heritage Foundation's morning *machsom lefi* is the joint effort of Jewish men, women and children across the globe each day from 9 to 10 a.m. for the *zechus* of Reb Sholom Mordechai.

Meanwhile, *Yidden* all over the world have been donating funds towards the defense of Reb Sholom Mordechai. Hundreds of thousands of dollars have poured into the Pidyon Shvuyim Fund from Jews in cities across the globe. The \$10, \$20, \$50, and \$100 contributions - and some larger than that - have added up and are ensuring that Reb Sholom Mordechai has a team of legal experts who can continue to labor on his behalf.

It was a week of unity and *chizuk*, a week of selflessness and *nosei be'ol*. May the displays of *achdus* and *ahavas Yisroel* serve as merits for Reb Sholom Mordechai *ben Rivkah*.



## RUBASHKIN RALLY



# SOLITARY CONFINEMENT IN BLACK HAWK COUNTY:

## The Never-Ending Persecution of Sholom Mordechai Rubashkin

In the latest chapter of a bitter, never-ending persecution, Sholom Mordechai was brought to court in Waterloo, Iowa, Tuesday for the preliminary proceedings in a state trial on child-labor charges, not having eaten for 24 hours.

Arriving at the jail in Black Hawk County, where he was supposed to be incarcerated for the duration of 3-week trial, he was forced through a repetition of what he endured immediately at the close of his November-December trial in North Dakota. No provisions had been made for kosher food; his *yarmulka*, *tzitzis* were removed for being outside “regulations,” and his *talis*, *tefillin* and *seforim* were confiscated.

He was handcuffed and led into an elevator, where he was pushed, or fell, and refused to get up and walk with his head uncovered. Guards carried him to his cell. In response to what jail authorities called “argumentative” behavior for asking calmly that his religious rights be honored, he was forced into solitary confinement, in a dirty seven-by-ten cell.

The next morning, in the Waterloo courtroom, his lawyer, Montgomery Brown, explained to Judge Nathan Callahan about his client’s religious dietary restrictions and other religious obligations. He was finally allowed kosher food brought from Postville. But Callahan refused to render any decisions on the matter of Sholom Mordechai’s religious rights to his ritual garments, items and books.

Callahan had already denied Brown’s request for a trial

delay. Brown said pre-trial publicity from Rubashkin’s sentencing hearing last week on federal financial fraud crimes, as well as an article in Monday’s *Des Moines Register*, could prejudice the jury.

Brown also argued he needed more time to investigate several videotaped interviews because they were just provided to him by prosecutors last Friday. The tapes show three potential witnesses, despite repeated questioning, telling investigators they do not know if Rubashkin knew underage workers were at the plant, Brown said.

Callahan said jury selection would continue this week and the trial will begin on Monday, May 10.

Judge Callahan said Iowa law does not require Rubashkin to be present during the trial, so it will proceed without him, if necessary. “I’m not trying to be disrespectful of anybody’s religious traditions or beliefs,” he said. “But I’m not derailing this proceeding because of [the prisoner’s] choice.

Legal experts have noted that “choice” is not the operative word when speaking of matters of religious obligations and conscience. The requests made by Sholom Mordechai fall well within the purview of prisoner’s religious rights, they said.

Finally, thankfully, on Tuesday evening, Sholom Mordechai ben Rivka was returned to Linn County jail, where he has been incarcerated since November.

# Behind the Scenes at Waterloo

BY DEBBIE MAIMON

As the state trial on child-labor violations prepared to open this week in Waterloo, Iowa, Sholom Mordechai entered the courtroom dressed in a suit, flashing a warm smile toward his family and friends. His bearing radiated faith and hope.

It was impossible to detect any signs of the ordeal he had endured the week before in Black Hawk County prison. Sholom Mordechai has not spoken out about the incident. But a blistering letter to Sheriff Thompson by Rabbi Avrohom Blesofsky of Iowa City, tells the story.

The letter calls on Thompson to apologize to Sholom Mordechai for trampling on his religious and constitutional rights during a temporary incarceration there last week.

Federal marshals had moved Sholom Mordechai to the Black Hawk County prison to have him closer to the Waterloo courthouse where his state trial is taking place. Although he had been assured that kosher food would be provided and accommodations would be made for his religious needs, upon his arrival he found just the opposite.

In a nightmarish replay of the outrageous treatment by Sioux City prison authorities after his federal trial, prison guards stripped Sholom Mordechai of his *yarmulka* and *tzitzis*. His *tallis*, *teffilin*, *siddur* and other *seforim* were confiscated. Although he repeatedly asked for his *yarmulka* and *tzitzis* to be returned, explaining that according to religious dictates, he could no walk more than a few feet without them, the guards adamantly refused.

Prison authorities claimed in court papers that since the inmate refused to walk, “staff had no choice but to carry Rubashkin around the jail before eventually providing his religious attire.”

But the *Des Moines Register* quoted family members as saying that Sholom Mordechai had told them that prison staff “dragged him on the floor about 40 feet to his cell.” Authorities refused to return his *yarmulka* and *tzitzis* for two hours, he said.

Family members and Rabbi Blesofsky confirm that he was handcuffed and roughed up. “It’s inexcusable,” the rabbi told the *Des Moines Register*. “Before you rough someone up, make a few calls to find out his religious needs,” he said.

He said that his efforts to explain that Sholom Mordechai’s requests pertained to religious obligations fell on deaf ears. “The captain might overrule me, but I’m not going to allow [these items],” the lieutenant in charge of the booking process said. “They’re not coming into his cell.”

“I wasn’t even given a chance to cite the federal laws protecting the religious rights of inmates,” Rabbi Blesofsky told *Yated* in a phone interview. Unwilling to give up and go away, the rabbi suggested to the captain that he send Sholom Mordechai back to the Linn County jail where authorities accommodated his religious obligations.

“He’s not going to budge on the kosher food, he’s not going to budge on his religious needs. He knows he’s within his rights. You’ll

have no end of trouble from him. Why do you need this hassle? Send him back to Linn County where they’re willing to accommodate him,” he urged.

To his surprise, Sholom Mordechai was in fact sent back to Linn County prison the next day. Sheriff Thompson later admitted to Blesofsky that he handled the matter incorrectly. “I failed in this case, I’ll admit that,” the sheriff told the rabbi.

## SHERIFF SPINS THE STORY

Thompson evidently regretted his moment of honesty and hastily backpedaled. Blesofsky said he was shocked when, in an interview that same day with a local TV station, the sheriff completely twisted the story around.

From the WHO TV news transcript:

“Sheriff Tony Thompson says he spent weeks preparing for Rubashkin’s stay, but that wasn’t good enough for Rubashkin. Besides rejecting the so-called kosher food they gave him, Rubashkin’s “demands went on an on. He had to be carried everywhere he went because he refused to walk without his sacred undergarments.”

Thompson said he “refused to allow a chest full of robes [Sholom Mordechai’s *tallis*] and leather straps [*teffilin*] that were potentially dangerous.” He said he would not “kowtow” to this inmate’s demands.

As a prison chaplain who has made dozens of visits to jails on the East Coast and in eastern Iowa, Rabbi Blesofsky said this is the first time he has encountered so much resistance to religious requests. In a letter to Thompson, the rabbi registered his shock at the defamatory and untrue comments Thompson made publicly about the incident.

“As Chaplain to the Linn County Jail and Mr. Rubashkin’s rabbi, I was stunned to hear of your recent remarks made to a local television station concerning Mr. Rubashkin’s religious observances,” Blesofsky wrote.

“There is no prison anywhere else in the United States where a Jewish inmate is denied the opportunity to wear a skull cap (“*yarmulka*”) and a fringed undergarment (“*tzitzit*”) or to don phylacteries in daily prayer,” the letter continued. “Denial of these fundamental non-threatening religious rights is patently illegal.”

The letter, a copy of which was sent to the U.S. Department of Justice, noted the additional injustice done to Sholom Mordechai by Thompson’s act of “publicly denigrating a Jewish inmate on television for seeking to exercise these fundamental rights, days before his trial is set to begin.”

“The poisoning of public opinion against a defendant’s right when the trial is about to start is no small matter,” Rabbi Blesofsky told *Yated*.

He said he had asked Sholom Mordechai’s attorneys to request a copy of the videotape that recorded the entire booking process, in-

cluding the manner in which the prisoner was handcuffed and then dragged to an elevator and on to his maximum security dungeon-like cell, “for his own protection.”

### A CHARADE-IN-PROGRESS

Sholom Mordechai is presently standing trial on misdemeanor charges of knowingly employing minors at AgriProcessors while he was a top executive at the plant. The trial’s proceedings, in its very first week, put on full display the government’s *win-at-all-costs* campaign.

Setting the stage for this charade-in-progress were news reports about the state’s special grant of \$35,000 to be used by the prosecutor’s office to fly in eight government witnesses from Guatemala.

The *Des Moines Register* called the grant “unusual,” noting the current “severe budget cuts in Iowa that have forced the government to eliminate many employee positions, and has forced many employees to take unpaid furloughs.”

Imagine: here is a state government so strapped for funds, it cannot pay its employees’ salaries. Yet tens of thousands of dollars of taxpayer money has gone to induce a handful of deported people to return to the United States to help the government carry out an agenda devoid of any benefit to the majority of Iowans.

Such is the relentlessness of the action against Sholom Rubashkin that the child-labor trial has been allowed to trump any number of higher priorities on the state’s agenda.

Why would flying in eight witnesses for the trial cost over \$4300 per person, you’re probably wondering. But much more puzzling is this: Why would individuals who were dragged away in chains and incarcerated before being kicked out of the country, be willing to go out of their way to lend their services to anyone who treated them so callously?

Obviously, some hefty inducements have been offered to sweeten the deal. In addition to other bonuses, one of the inducements is a work permit or the coveted U-visa, a special legal arrangement enabling people who were abused at their workplace to qualify for a green card, leading to permanent residence in the United States.

### PLAYING ON THE IMAGERY OF THE WORKERS AS ‘CHILDREN’

As evidenced from trial testimony on the first two days in court, prosecutors are trying to prove that their witnesses fall into the “abused workers” category. They cite 16-hour work days, including shifts that

last until the middle of the night, six days a week.

Prosecutors tried to play on the jury’s sympathies by referring to the workers as “children,” which conjured up disturbing imagery of very young boys and girls pressed into backbreaking labor by a cruel management.

On the job, the workers sliced beef carcasses in half with electric saws, ripped open the gizzards and pulled the feathers from chickens, the prosecutor noted. Those in the sanitation department sometimes became sick with the flu from exposure to chlorine and bleach used to kill E coli bacteria on the meat.

“This did not happen in a third-world country. It happened in Iowa,” the prosecutor fumed. “This man is guilty of the crimes he is charged with because we say, “Not in Iowa! Not here.”

In opening statements to the court, defense attorney Montgomery Brown argued that Sholom Rubashkin had no way to know about or any reason to employ minors at his kosher meat plant. He said a vast array of forces converged against Agriprocessors – including the government, union organizers and the local Catholic Church – that made it impossible to conceal unlawful activities.

The company was under such meticulous scrutiny, he said, there was no way to violate the law on the sly, even had the management



AP PHOTO

Sholom Mordechai with his lawyer, Mark Weinhart, in court on Tuesday.



AP PHOTO

Reb Avrohom Aaron and his son, Sholom Mordechai, during a pretrial hearing.



Saying *Tehillim* as the day got underway.

wanted to. In addition, it's been well established, said Brown, that the Rubashkin family and its lawyers knew a raid was imminent. On May 8, 2008, company attorneys sent a letter to the federal government volunteering to cooperate with its investigation.

"I want you to think about this simple proposition," Brown said. "If Sholom Rubashkin knew there were any minors in the plant, would he not have told somebody to get them out of there before ICE arrived? Isn't that what any reasonable person would have done?"

#### POSTVILLE CHURCH PLAYED A HARMFUL ROLE

Brown accused Postville's Catholic Church, St. Bridget, whose ministers came to the trial in support of the Guatemalan witnesses, of not only coaching, but essentially blackmailing the Hispanic families caught up in the May 2008 raid on the plant.

"As much as it pains me to say it, this Catholic church was a long-term adversary of Agriprocessors," said Brown. He cited the church's method of coercing immigrants to badmouth the company; all those who told federal agents that they were mistreated by the company would continue receiving the church's financial help.

"This was a mantra within the church's walls," said Brown. "Voice complaints and charges against AgriProcessors, give the government ammunition against Sholom Rubashkin, and you'll be rewarded."

Judging from the performance of the first two witnesses who testified (through a translator), they had been well coached. Yet contradictions in their testimony continually tripped them up.

#### FATHER ENCOURAGED HIM TO HIDE TRUE AGE

Rony Capir, who gave his age as 20, said he obtained work at age 16 with false documents, and that his job was to cut meat six days a week, from 4 a.m. to 4 p.m.

Besides a 12 minute break, he only stopped cutting meat when he sprayed down the conveyer belt with chlorine and bleach, he said. It made his eyes water and his throat scratchy. Capir pantomimed his dangerous work; thrusting a hook into an imaginary 40-pound rib with his left hand, and slashing at it with a knife.

Under cross-examination, the witnesses admitted that he wore protective equipment while he worked, such as a steel gown, steel-toed boots and a meal glove while slicing.

He also admitted that his father, who worked at AgriProcessors, had arranged for him to join him in Postville and obtain work at the plant. His testimony revealed a father's schemes to get all the family members jobs at the meat plant, minors or not.

**Brown:** Who else from your family worked at AgriProcessors?

**Capir:** My uncle. My brothers and sisters.

**Brown:** Did you apply for the job voluntarily?

**Capir:** Yes.

**Brown:** Is it true you lied about your age to get the job?

**Capir:** Yes.

**Brown:** Did your father and uncle know that you lied?

**Capir:** Yes.

**Brown:** Did they approve of it?

**Capir:** Yes. They wanted me to be able to work.

**Brown:** At any time, could you have left the plant had you wanted to?

**Capir:** Yes.

Defense attorney Mark Weinhardt held up a government transcript that said Ordonez Capir told a government ICE official at the time of the raid that he did not know of any minors working at the plant. In another statement, Capir told investigators that USDA inspectors likely saw his [young-looking] face when they walked around the plant.

Confronted with these statements, Capir retreated into what appeared to be a well-rehearsed litany of one-line answers consisting of "I don't know," "I don't understand," and "I don't remember." Asked whether he had been coached by church ministers after the raid to make negative statements about AgriProcessor, he predictably "could not remember."

#### "CHILD-LABORER" WAS EXPECTING SECOND CHILD

Here's a glimpse into the courtroom as a second witnesses, Yesenia Cordero Mendoza, who gave her age as 18, took the stand. Mendoza said she was 16 when she dropped out of a Postville public school to start working at Agriprocessors, a few months before the raid. She said she took the job to support her daughter.

Asked to describe her job she said she worked with dry ice and disinfected meat thermometers with industrial cleaners, which caused her skin to peel.

On cross-examination, Mendoza tripped herself up in a web of lies and contradictions. She claimed not to remember being interviewed by a government agent at St. Bridget's Catholic Church in Postville, in which she told agents she was over 18.

She admitted under cross-examination that she had lied about her age and presented false documents to work at Agriprocessors. The only people who knew her true age, she said, were her family.

Mendoza admitted that when she applied for work, she was five months pregnant with her second child. One could hear the unvoiced question hang in the courtroom: How surprising is it that no one suspected you of being a minor?

#### CREDIBILITY UP IN SMOKE

An even stronger question began to gnaw at observers watching this charade: What proof was there that any of the witnesses, with their past record of having lied their way into the country and into AgriProcessors, were now telling the truth about their age?

Perhaps none were minors while at Agri, and are only now pretending to have been under age in order to qualify for work permits or U-visas in this country! The first witness, Capir, admitted to being rewarded for his cooperation; he has been granted a work permit in exchange for testifying against Rubashkin, and has been working at an egg packaging plant in West Union for several months.

Isn't it possible that Mendoza was telling the truth about her age to federal agents in 2008—that she was over 18, and is *now* pretending she was actually underage at the time? In this way she will qualify for the rewards the government is holding out to those who help them win the case.

One can pose the same question about all the witnesses. Who can say if any of them were truly underage at the time of the raid? None have a shred of credibility. Quite possibly, they are lying now for the same reasons they lied earlier about their legal status and produced false papers in order to get work. Given the incentives being offered by the government, who in their place would not do so?

#### IMMIGRANTS USED AS PAWNS

The records show that officials knew about many of the minors at AgriProcessors long before the raid, but refused to share this information with the company. A list was produced by investigators early in 2008, bearing the names and addresses of those deemed to be underage, former employees have testified.

When the company's management requested help in identifying these underage workers, however, they were ignored. State officials allowed these minors, about whom they are now so righteously indignant, to continue working in so-called dangerous circumstances until the government was ready to mount the raid.

How ironic. The horror of exposing children to allegedly abusive, life-threatening conditions failed to arouse anyone's outrage or sympathy at the time. Why not? Could it be the minors were too useful as pawns in a broader scheme?

Referring to the feeble evidence propping up the charges, defense attorney Brown summed up the strategy against Sholom Mordechai in his opening statements: "The state has no case. But they know how to build one. Shoot an arrow into this man's chest, then paint around it and proclaim, "Bull's eye!"

# 88<sup>th</sup> Annual Agudah Dinner Highlights The Rubashkin Saga

## *Rabbi Chaim Dovid Zwiebel Addresses the Agudah Dinner*

Two weeks ago, I had occasion to speak at two gatherings, one in Flatbush and one in Boro Park, at which we said *Tehillim* as a *zechus* for Sholom Mordechai Halevi Ben Rivka.

The mere fact that I can simply mention his Hebrew name, and virtually every single one of you in the audience knows exactly who I am talking about, and why we were *davening* for him, says a lot about how the Rubashkin case has galvanized our community over the past weeks and months.

At the risk of stating the obvious, none of us who have been *davening* for Mr. Rubashkin, or who have been involved in the *shtadlonus* efforts on his behalf, condone in any way any of the criminal activity for which he has been convicted. *Aderaba v'Aderaba*.

I don't mean to be *melamed chova, chas v'Sholom*, but we need to do all in our power to eradicate, once and for all, the shady dealings, the unethical conduct, the casual attitude toward the law of the land, that is all too often exhibited by members of our very own community.

It is for this reason that Agudas Yisroel is taking numerous concrete steps to bring about improvements in this area. At this year's convention, the Thursday night plenary program, attended by over a thousand *Yidden* and addressed by our leading gedolim, was devoted exclusively to this topic. Since this past summer, we have sponsored approximately ten seminars devoted to the concept of *dina d'malchusa dina*, with specific programs developed for yeshivos, shuls, gemachs, businesses and individuals, in the greater New York area, on the West Coast, in the Midwest, all over.

But distancing ourselves from criminal activity does not mean distancing ourselves from the plight of a precious member of Klal Yisroel – our brother! – who has been pursued by the government in this particular case with a zealotry that borders on vindictiveness, with a harshness that borders on viciousness.

Should we simply look the other way when federal prosecutors insist that a Jewish defendant be denied bail on the grounds that, as a Jew, he is entitled to automatic citizenship in the State of Israel? Or that he should be deemed a flight risk even if he wears an ankle bracelet which tracks his every move, surveillance cameras are posted outside his residence, his passport and other legal documents are confiscated and a 24-hour security guard is stationed outside his house?

Should we stand aloof when the federal government conducts an unprecedented raid on a kosher slaughterhouse in the heartland of

Iowa, unleashing a veritable army of 600 federal agents in heavy riot gear supported by Blackhawk military helicopters hovering menacingly overhead?

Should we just go on with our daily business when federal prosecutors ask the judge to impose a life sentence on a Jewish man with no prior criminal record, convicted of a non-violent white-collar crime, a man with ten children including a sixteen-year old autistic son, a man whose charitable activities on behalf of not only his own Jewish community but the larger society are legendary?

In an unprecedented display of across-the-board revulsion at the government's demand for a life sentence, no fewer than seven former Attorneys General of the United States, from left to right and all points in between, have written a letter to the judge expressing their horror at the prospect that Sholom Rubashkin would be sentenced to life in prison.

If they can speak out, can't we?

Shouldn't we?

Mustn't we?

Dear friends, these are extraordinary times. One gets the sense that things are changing, in a dangerous direction. Even here in this benevolent *malchus shel chesed*, dark clouds are beginning to hover on the horizon.

When the New York Times reports on page 1 that the statements and actions of the president of the United States signal a clear shift in U.S. policy toward Israel, that is cause for concern.

When our governmental leaders, at the highest levels, make an international incident out of a mid-level bureaucratic approval of plans to proceed with building housing units in Ramat Shlomo, an almost exclusively Chareidi stronghold, there's something troubling afoot.

And when the U.S. Justice Department pursues a *Chassidische yid* with an unprecedented barrage of prosecutorial artillery, it should cause all of us to shiver.

As I said at the *Tehilim asifos* in Brooklyn, *Va'yar Yaakov es p'nei Lavan v'hinei einenu imo kismol shilshom*. Things are changing. We need to recognize that when we *daven* for Sholom Mordechai Ben Rivka, we are really *davening* for ourselves.

And if things are changing in the society around us, we need to change too. Not only in the intensity of our *tefilla*, but also in the intensity of our *shtadlonus*.

A few months ago, after one of our local Brooklyn Congressmembers signed on to a letter endorsing the infamous Goldstone report and its criticism of Israel, a number of Agudas Yisroel *askonim* met with that Congressman and made it clear that this was totally unacceptable. A day later, she retracted her signature.

A small victory perhaps, but an instructive one. We need to make our voices heard in the halls of government, more clearly and more

powerfully than ever before. We have already started and will be continuing the process of organizing lobbying missions to Washington to speak to our elected officials about these vital issues.

We at Agudas Yisroel recognize that we have to step up to the plate in these extraordinary times. Join us. Support us. Get involved. We need you.

We must do ours – and the rest is in the hands of Hashem.

It now gives me great pleasure to introduce our guest speaker tonight, Mr. Guy Cook. I first got to know Guy over a year ago when I traveled to Iowa together with a number of other Orthodox Jewish organizational representatives to visit Sholom Rubashkin in the Dubuque County Jail, where he was imprisoned awaiting trial. Since then I have had the privilege of working closely with Mr. Cook and other attorneys involved in the Rubashkin case – most notably Nat and Aliza Lewin of Washington D.C., who are not able to be here tonight but are well-known to all of us, and who have played an extraordinary role in organizing the advocacy efforts on Mr. Rubashkin's behalf.

What has struck me especially about Guy Cook is that this man, a native Midwesterner, with little exposure to the Orthodox Jewish community, has not only lived up to everything we had heard about him as one of Iowa's top criminal defense lawyers, but has also displayed a remarkable sensitivity to the special nature of this case and the needs of a Chasidic Jew caught up in a merciless criminal prosecution.

Mr. Cook is a partner in the firm of Grefe and Sidney in Des Moines, and has previously served as an Assistant U.S. Attorney for the Southern District of Iowa. He is a past president of the Polk County Bar Association and is a member of the Board of Governors of the Iowa State Bar Association.

Ladies and Gentlemen, it is my privilege to call upon Mr. Guy Cook.

## *Following is a transcript of the speech delivered by Mr. Guy Cook, attorney for Sholom Mordechai*

Thank you for inviting me to this dinner. It is an honor to be here, and to experience firsthand the strength and determination of the Orthodox community. I represented Sholom Mordechai Rubashkin in the case of the United States of America vs. Sholom Mordechai Rubashkin. It has been my privilege to be his advocate in the struggle that he has endured, a struggle he has been able to confront because of the immense support of this group and others in the Orthodox community.

Please allow me to describe Sholom Mordechai. He is of course married, with 10 children. As you have heard, one child with special needs. A beautiful wife, Leah. He has lived in Postville, Iowa, for the past 15 years. He's been involved in the community, extending beyond the business his father started, Agriprocessors, to local religious and educational institutions. He has either founded or been instrumental in the development of these institutions.

Hundreds - thousands - of letters of support for this man have come to the government and the court. He has a history of leadership and charity that is immense. Support for Sholom Mordechai Rubashkin is unprecedented.

These words I have just read to you are not my words as an advocate. These are the words spoken by the Chief Judge of the Northern District of Iowa, which released him on bail.

These are true words. This is who this man is. I have come to know Sholom Rubashkin; I have come to know his family. As you heard, I have spent more than a year in this community working with his family and other Orthodox members of the community. I have spent hundreds of hours with them in all types of circumstances. I've come

to know his wife and his family. I've been to the family's home in Brooklyn. I've eaten in his mother's soup kitchen in Borough Park. I've spent many hours with the committee of rabbis - Rabbi Hecht, Rabbi Brennan, and others - who have supported him. I have read each and every letter and email supporting him for fair treatment. I have come to know this man.

He's a good person. He's forthright. He's well-intentioned. He's hardworking. He's dedicated. He's confident. He's sincere. He's good to his workers. He's a problem solver. He's honorable. He's honest. He's religious, extremely observant.

Again, these are not the words of an advocate speaking to you. These are not the words of Sholom Mordechai's attorney. These are the words of witnesses, spoken under oath, called by the government, in the case against Sholom Mordechai.

He now awaits sentencing, having been convicted of 86 counts, multiple counts of the same conduct, which the government sliced many ways to "shock and awe" the jury.

At the core of what he stands convicted of is borrowing more money than his father's company was entitled to borrow, yet paying it back with interest. That is the core of what he stands convicted of, for which the government seeks a life sentence. Borrowing more money than his father's company was entitled to borrow and paying it back with interest.

Let me share with you some of the true facts, the real facts, of this case. Many of you are acquainted with it, from the fine reporting of many organizations, and my friend Pinny, and other groups. You heard about this raid. Unbelievable. In the small town of Postville, Iowa, where there are no stoplights, where people don't lock their doors, a good community, where Agriprocessors was located, where Aaron Rubashkin, twenty years ago, opened a closed plant and built with his bare hands a \$300 million business producing kosher meat and poultry, distributed far and wide. A true immigrant success story. And two years ago this week, it was all destroyed in less than three hours.

You've heard about the Black Hawk helicopters circling above. There were indeed 600 agents, law enforcement, in black, military-style riot gear. Setting upon a plant where people were at work.

What you haven't heard is that before this raid, before this military-style invasion, the Rubashkins engaged the services of a national law firm, to work through the difficult issues of undocumented workers. Undocumented workers who made use of fake identification, undocumented workers who took advantage of other undocumented workers. The Rubashkin family, specifically Sholom Mordechai, was working with these lawyers to try to work through these problems of no matched letter, and problems with identification. A very difficult issue. And just days before this raid, a letter was delivered to the United States Attorney, to the regional director of Homeland Security, to the top ICE [Immigration and Customs Enforcement] agent who conducted this raid, telling them, "We stand ready to work with you. We wish to cooperate. This is a large plant, two shifts, many knives, machinery. There's no need for a raid. There's no need for a raid. Let's work together to solve this problem."

The government ignored the letter. In fact, in testimony at the trial, when presented with the letter, they said, "We ignored it." One can only draw the conclusion that they wanted the raid, for whatever reason.

The raid comes. The plant...is a difficult plant to run. The meat business has low margins and requires significant capital. It is a fragile business. Once the raid came, it was difficult to stay afloat. Eventually, the bank calls in the loan, and the loan cannot be paid. The business turmoil is at its height, and it tumbles into bankruptcy.

Thereafter, the government charges Sholom Mordechai with bank fraud, claiming that this loan, this borrowing, was a crime. This case was never bank robbery. There was never any stealing or theft, never any intent to cause a loss to anyone. Nevertheless, they charged him with bank fraud and, as you heard, he was denied bail. Incredibly,

denied bail premised on the theory that because he is a Jew, he could make use of the Law of Return and return to Israel and escape justice. False. And inconsistent with the man I know. This is when Rabbi Zwiebel and others came to our aid and protested this outside the jail in Dubuque, Iowa, at 770 Iowa Avenue. We were successful, through the efforts of people who supported us, the rabbis who came, the letters to the court and other evidence. And Sholom Mordechai was granted bail. As I explained to him, "You'll need all the support you can get. This is a case brought by the United States of America. And Sholom was optimistic, good-natured. But I said, "Remember, Sholom, these are the folks who print the money. We'll need a lot of resources."

And as we prepared the case for trial, the government continued with their efforts. Not just one or two or three indictments. but four, five, six, seven... Unprecedented.

I've been a lawyer for more than 30 years. I've been a federal prosecutor. I've taught at the Department of Justice. Never, never have I seen a case taken to a grand jury seven times. You can imagine the press and the coverage of this case; it was quite considerable in the jurisdiction where the case was pending. We sought a change of ven-

ue, three times, and the government resisted. Eventually, the judge granted our change of venue. We also sought to sever this case from the immigration charges that had been brought, knowing that no jury could give anyone a fair shake with so much coming at them. The government resisted. Fortunately, the judge granted it, and we proceeded to trial in a change of venue on the financial case.

Then, at the trial, once again, the government objected to evidence we thought was clearly material to the issues the jury had to decide: Was a crime committed here? Not whether there was a breach of contract, not whether a loan had failed, but was there an intent to commit a crime?

Repeatedly, they objected to the evidence. And much of the evidence we wanted to present to the court the jury was not allowed to hear. The government also violated the severance ruling. We moved for a mistrial, three times. But the conclusion of the case - it went on for more than a month - was that the jury returned a guilty verdict. And at that time the government again - again! - requested that Sholom Mordechai be denied bail. This was a man who had been on bail for ten months, who had reported for every court appearance, who had garnered the support of this community - hundreds, thousands of people. He would never turn his back on them. Nor would he ever turn his back on his family.

Nevertheless, the government persisted, and he remains in jail as we speak, awaiting sentencing. A sentencing where the government sought a life sentence!

The Orthodox community's support has nevertheless permitted Sholom Mordechai to fight back to obtain the bail he had throughout the course of the defense of the case, to marshal the evidence, to ask for a fair and just result and conclusion at the sentencing. A committee for the redemption of captives [*pidyon shvuyim*] has provided us great support. The Orthodox support has kept Sholom Mordechai strong, true to his beliefs. The support has kept him family strong. The support - *your* support - has also permitted others, outside the Orthodox community, outside the Jewish community, to come forward. You heard about a letter to the judge. This was a letter from six former Attorneys General: Nicholas Katzenbach, Ramsey Clark, Ed Meese, Richard Thornburgh, William Barr, Janet Reno - like many others - writing to the judge to say we feel compelled to express our concern in this case. We feel compelled to bring your attention to Mr. Rubashkin's unique personal circumstances. We feel compelled to bring your attention to the absurdity of the sentence the government is seeking for a 51-year-old first-time, nonviolent offender whose case involves many mitigating factors.

Unprecedented.

I submit to you that never in the history of the Department of Justice has a letter contained the signatures of people of such politically varied viewpoints, who have come together, like this group has come together, to fight against injustice for a man with no criminal record, for a nonviolent crime, where no loss was intended, who sought no personal gain.

It is not well publicized that the jury in this case returned a special verdict that said we found no personal gain, that he was motivated by the desire to keep the plant running, to produce kosher meat and poultry, to honor his father, to honor the people who had invested in this business.

I leave you with this. As you know, one must not stand by when another's life blood is shed. We can only protect true liberties in this world by protecting another man's freedom. The scales of justice must measure out justice equally to all. With your support and help, we will strive for that success.



# Government Fumbles in Rubashkin State Trial

BY DEBBIE MAIMON

As Sholom Mordechai Rubashkin's trial over child-labor charges enters its third week, the spectacle of Mexican and Guatemalan immigrants stammering fictitious stories before a jury continues to evoke astonishment that such a charade could pass for legitimate proceedings in an American court of law.

Taken together, their sad and ludicrous testimonies paint a picture of people so desperate to work in the United States that lying about their age and legal status to employers is a way of life. On the witness stand, the lies and contradictions in their testimony continually trip them up, making it all but impossible to take the proceedings seriously.

"We're watching a comedy," said Meir Simcha Rubashkin, son of Sholom Mordechai. In court, almost every day, he says, the testimonies of the Guatemalan witnesses whom the government has paid tens of thousands of dollars to bring to the United States quickly fall apart under cross-examination.

"Here's the pattern," he noted. "They were brought to the United States to help the government's case, so they need to show that they were minors when they worked at Agri, whether they were or not. To be really helpful, they need to show that they were injured on the job. Often, that testimony flatly contradicts something they told federal investigators in the days following the raid. No problem. They simply deny it or say they 'don't remember.'"

In addition to falsified testimony, the government's case suffers from lack of any evidence that Sholom Mordechai had any direct contact with any of the witnesses. All of them acknowledged that they saw him not more than once or twice and would not have recognized him in the street. Yet, he is being charged with knowing that these particular individuals worked at the plant and were exposed to dangerous chemicals and machinery.

In the following scenes excerpted from trial testimony, the disparity between fact and fiction is so glaring that it is almost comic. Two witnesses can't get their age straight and another admits to having received a birth certificate from his mother in Guatemala which was "bought on the street."

**First Witness:**

**Defense Attorney Montgomery Brown:** When you were arrested by immigration, you were how old?

**Roman Candido:** About 18.

**Brown:** You were 18 at the time of the raid?

**Candido:** No, I was 17.

**Brown:** Why did you say 18?

**Candido:** (silence)

**Brown:** Are you sure you know how old you were on May 2008?

**Candido:** Yes.

**Brown:** So you got false documents to work, and nobody at Agri, except your supervisor, suspected you were younger?

**Candido:** Yes.

**Brown:** You told immigration [at the time of the raid] you were 21?

**Candido:** Yes.

**Brown:** What is your immigration status?

**Candido:** I have a visa to work in the United States, a U-visa.

**Second Witness:**

**Brown:** What documents did you present at Agriprocessors to prove your age?

**Gerardo Perez:** They asked for a birth certificate, so I got one and showed it to them.

**Brown:** Was it your real birth certificate?

**Perez:** No. I got it from Guatemala. My parents had to help me.

**Brown:** Did they purchase it on the street?

**Perez:** Yes.

**Third Witness:**

**Brown:** Did you testify that you were 17 when you began work at Agriprocessors in March 2008?

**Luis Nava:** Yeah.

**Brown:** Let me show you this April 2008 document. It says here that you told inspectors you are 19 with your date of birth in 1987.

**Nava:** That don't make sense. How could that be?

**Brown:** That's what I'm wondering.

**Nava:** I probably was confused about... about how old I was supposed to be. They probably thought I was dumb.

## ANTI-DISCRIMINATION LAWS THWARTED THE DISCOVERY OF MINORS

The government's claim is that Agriprocessors had a system in place that enabled underage employees to be hired without being scrutinized by top management during the application process. However, defense counsel highlighted the catch-22 employers faced in complying with civil rights laws that often conflicted with the laws governing the hiring of minors.

Civil rights laws prohibit discriminating against or firing anyone on the basis of appearance. Rejecting an applicant based purely on his or her facial features is grounds for a civil lawsuit. Employers are also prohibited by law from requesting excessive corroboration of age and legal status. Demanding to see a driver's license, for example, is not permitted.

Despite the conflict between different sets of laws, attorney Montgomery Brown showed the jury that regulations were in place at Agriprocessors that required young-looking applicants to

corroborate their birth date with additional records.

In addition, supervisors were required to post the names of all workers who looked “underage” and to certify that, to the best of their knowledge, there were no minors under their supervision.

These methods admittedly failed to screen all minors, since those under 18, determined to keep their jobs, often produced bogus birth certificates that could fool employers. In many instances, these documents were procured by a parent working at Agriprocessors. In fact, according to witness testimony, over 90 percent of the youngest-looking workers worked alongside a parent or sibling who would readily corroborate the (false) age of the worker in question.

#### KEY GOVERNMENT WITNESS DISCREDITED

Prosecutors brought three former supervisors at Agri who testified to the presence of minors. Of the three, two carried grudges against the company management. Mark Spangler was fired from his post in 2007 for being unproductive and unreliable. Cross-examination revealed his history of larceny convictions and that he was brought to the courtroom from jail where he is serving time for contempt of court.

Another supervisor, Matt Derrick, insisted that over half of the 40-50 workers under his supervision were children, a claim that stood in stark contrast to other government testimony that identified not more than two or three on a floor, at most.

Under defense cross-examination, the jury learned that Derrick left Agriprocessors under a cloud of suspicion in 2008 after complaints were brought by workers of physical harassment and emotionally abusive treatment. One government witness identified him from a photograph as the person who had harassed her and whom she had complained about.

Derrick was so hated that hearing him promote himself in the witness stand as a benevolent overseer who took a kindly interest in his workers prompted several observers to come forward with stories that exposed him as unscrupulous and cruel.

“One person recalled how Derrick had taken sport in humiliating new workers who had not yet learned the ropes,” related Meir Simcha Rubashkin. “He would dock them and penalize them unfairly. He would talk about packing up all the Mexicans at the plant like a bunch of sardines and sending them over the border.”

The government also called supervisor Brian Griffith, who testified that prior to an imminent visit from a child-labor inspector at Agri a few years ago, he had received orders from his superior, Jeff Heasley, to have all minors hide for the duration of the visit.

Under cross-examination, however, Griffith acknowledged that he had signed a document a month before the 2008 raid, stating that, to his knowledge, there were no workers under 18 under his supervision. He acknowledged hiding one employee in the basement at the time of the inspection only because “he looked younger than he was.”

#### “SAFETY WAS A PRIORITY”

Under expert cross-examination, defense attorney Montgomery Brown drew from Griffith a picture of a well-run, disciplined meat-packing plant, where employee safety was a priority. Whoever worked with knives and dangerous machinery wore protective gear, including hard hats, steel-toed boots, metal gloves and metal aprons, Griffith said. Many of the witnesses corroborated this and said that they had been trained to operate the machinery.

Although the government had not rested its case last week, the defense was allowed to call a witness who would not be available when the defense begins its presentation. Toby Bensasson, a key government witness who testified against Sholom Mordechai in the bank fraud trial, came to his defense in the child-labor case.

“Sholom was against having underage workers at the Postville

facility,” testified Bensasson, a former controller at Agriprocessors. He said minors weren’t covered by the company’s insurance policy. If a youth got hurt, the insurance company wouldn’t pay the claim, and the insurance company would likely cancel Agriprocessors’ policy.

The witness also recounted an occasion where a human resources employee had discovered an underage worker. Bensasson ordered the teenager out of the plant. When he later told Sholom Mordechai about the incident, the latter replied “Very good. We can’t have minors.”

Bensasson said the company once hired a 17-year-old girl to do clerical work in the sales area. He said a security guard escorted her in and out of the plant until she turned 18.

#### DESPERATE FOR U-VISAS

In the current trial, in which the government is charging Sholom Mordechai with knowingly hiring underage workers, the only way to prove his guilt is to have the so-called underage witnesses themselves testify that the defendant knew they were minors. The problem for the government was that most of the illegal workers had been deported in the months following the raid. How, then, was the government to win its case?

The answer lay in the coveted U-visas, which are awarded only to victims of abuse who can aid authorities in the investigation or prosecution of a crime. The visas allow recipients to work legally in the United States for four years and apply for permanent-resident status.

One can imagine the glittering appeal of such an opportunity to an impoverished citizen of a third-world country.

The *Des Moines Register* interviewed some of these witnesses, who grabbed at the offer from the American agents. The opportunity seemed too good to be true. To begin with, the promise of being flown free of charge to America and having their food and lodging paid for was tremendously enticing.

These people knew from firsthand experience that getting into the United States was virtually impossible, unless they paid a guide between five to ten thousand dollars to smuggle them across the border and to help them buy false documents. It took years to pay off this debt.

“Several of the young men said in interviews last week in Postville that they hope to stay in the United States long enough to pay off their debts and thereby save their family’s land from “coyotes” - guides who help immigrants cross illegally into the United States for an exorbitant price,” the article said.

“Alfredo Argueta, one of the people recruited by the American agents, and his former co-workers said their spirits lifted when they were offered the opportunity to return to America. Their families smiled and hugged.”

#### INJURIES NEEDED FOR U-VISAS

With everything to gain, who among them, regardless of their true age, would not readily claim they were minors when hired by Agriprocessors? Testifying that one was hired as a minor, however, is not sufficient to qualify for a U-visa. The immigrant would have to show that he or she was a victim of abuse at the workplace.

The problem was that few, if any, had reported injuries or abuse at Agriprocessors when interrogated at the time of the raid. For the gift of a U-visa, however, who would not grab at the opportunity to assist the government by inventing a story?

And so, the public has been treated to an extravaganza of witness perjury and false testimony about so-called injuries, to all appearances sanctioned by the government.

Take just one example, for which the “victim” will almost surely be richly rewarded. Hernandez Gonzales, a Mexican na-

*Rejecting an applicant based purely on his or her facial features  
is grounds for a civil lawsuit.*

**Employers are also prohibited by law from requesting  
excessive corroboration of age and legal status.**

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tive, testified last week that she had been injured when the sleeve of her frock became caught in a conveyor belt, dragging her down the line.

The defense questioned Hernandez about prior statements she had given to investigators in several earlier interviews in which she said that she had never been injured on the job.

**Brown:** Did you give this testimony to federal officials in May 2008?

**Gonzales:** I don't remember saying that.

**Brown:** But you admit that this is your signature?

**Gonzales:** Yes.

**Brown:** And you don't remember telling investigators you were never injured?

**Gonzales:** I've always told people the same thing I'm saying now.

**Brown:** You've told the jury it was obvious there were minors at Agriprocessors. Is that correct?

**Gonzales:** Yeah, it was obvious.

**Brown:** But in an interview with investigators in May 2008, you say it was not apparent there were minors at the plant.

**Gonzales:** I don't remember saying that.

**Brown:** Is this your signature?

**Gonzales:** Yes. But I don't remember that.

And so it has gone, witness after witness. The presiding judge, Nathan Callahan, last week finally identified the "white elephant in the room": the lack of credibility in witness testimony that is making a mockery of the government's case.

In a discussion with defense counsel and prosecutors, quoted in the *Des Moines Register*, Callahan said, "When you've got somebody who gets on the stand and says, 'I don't remember ever talking to anybody [in previous interviews],' it's a credibility problem if you can show they have in fact given a bunch of interviews."

But none of this seems to matter to the government. Indeed, as reported by the *Des Moines Register*, Sonia Parras Konrad, a Des Moines immigration lawyer who has won dozens of the visas for other former Agriprocessors workers, "said she has started the visa application process for the group of witnesses who are assisting the government."

#### IN THE HOSPITAL OVER SHAVUOS

The state rested its case Tuesday, and jurors have been dismissed until next week, when the defense will begin its presentation.

That leaves lots of time for people to ponder the larger question about what might be driving the state to pursue a case so lacking in foundation and so riddled with falsehood.

"There's an outrageous farce playing out here," said Sholom Rubashkin, a nephew of Sholom Mordechai, who worked at

Agriprocessors and is now employed under the new management at AgriStar. "No one can watch this without cringing at the dishonesty."

"You have to wonder how all this can fail to erode respect for the criminal justice system in this state," Sholom Mordechai's wife, Leah, said in a phone interview with the *Yated*.

Leah is still deeply upset by last week's bizarre episode in which Sholom Mordechai was taken to the hospital for an infection on his arm and kept there for a few days, while his family was kept in the dark about his whereabouts.

#### BLACKOUT

Prison regulations forbid divulging where an inmate is being taken when he leaves the prison, to protect the deputies accompanying him, it was later explained to Leah Rubashkin. Sholom Mordechai was therefore not permitted to contact his family. When questioned as to whether he was a patient in the local hospital, the hospital said he was not. There was a complete information blackout regarding him.

"It took a special judge's order before one of our attorneys finally found out where he was, but we were told nothing about his condition and we were very anxious," Leah said. "We wanted our doctor to be involved in his care. They guards wouldn't allow it. They wouldn't allow me to talk to him. I think they would treat an animal with more compassion."

"He was in the hospital over *Shavuos*," she said. "The guards at first denied him his *siddur* and his *tallis* and *tefillin*. He explained that he couldn't eat without first praying and needed his *tallis* and *tefillin*. 'So starve,' one of the guards said."

Sholom Mordechai did just that until late that evening. Then, seeing he wasn't budging, the guards yielded and brought him his *siddur*, *tallis* and *tefillin*. One of the *shlichim* brought him some food for *Yom Tov* and his family over-nighted him a *Tikkun Leil Shavuos*. The hospital never gave it to him.

"The hospital hooked him up to an IV and put him on a strong dose of antibiotics for a staff infection," said Leah. "He was treated like a dangerous prisoner, forced to sleep with shackles on his legs. The infection had started from cuts he sustained on his arm when he was dragged on the floor to his cell in Black Hawk County Prison and left in a filthy room overnight. The wound was neglected and the infection started to spread. By the time he was able to persuade a nurse at the prison to look at his arm, his whole body was aching."

Sholom Mordechai has been back in court since Friday. His family says that considering everything, his spirits are good and, despite some lingering weakness from the infection, he feels well.

"That fact that we can see him and talk to him each day in court, before the trial continues, is the highlight of the day," Leah said.

# Watching a Case Crumble

BY DEBBIE MAIMON

As three days of strong defense testimony hammered away at the child-labor charges in the Rubashkin state trial, the flow of information emerging from competent witnesses has begun to dispel a cloud of misinformation about the case.

It's difficult for some to accept that a case so sensationalized could have so little foundation. Yet, indications that the child-labor charges were trumped up began surfacing even before the trial began, when the government drastically pared down its original 9,000 counts to 83.

Even this number is highly misleading. It does not reflect 83 child-laborers, as many assume. Rather, a separate count was rung up *for each day* the 30 so-called minors were said to have worked.

In response to defense arguments, 83 counts were further reduced to 67 by Judge Callahan, due to five of the "child-laborers" never having shown up for the trial. Callahan tossed out those charges Tuesday, shortly after the defense rested its case.

## WERE MINORS EMPLOYED AT AGRIPROCESSORS?

Regarding the key charges that the defendant deliberately hired minors and exposed them to dangerous chemicals and machinery without protective gear, these allegations were overturned by nearly a dozen witnesses.

They included top-tier plant managers, an immigration attorney, a former Postville city councilman, Agri's former *rav hamachshir*, various individuals who had been given comprehensive tours of the plant, and a professional interpreter who had access to Postville's immigrant community.

Top management personnel Gary Norris, Chaim Abrams and Toby Bensasson testified that regulations about not hiring minors were strictly enforced at Agriprocessors. Abrams said that the plant had so many applicants that they turned away dozens each week; the applicant pool was so abundant that there was no need for underage workers.

In addition, he said, the risks involved in employing minors made it impractical to do so. Their performance would be inferior, causing productivity to suffer. An injured minor would not qualify for insurance. His being discovered could result in the plant losing its insurance. There was nothing to be gained and much to lose in hiring underage workers.

[Two of the government's witnesses had inadvertently boosted the defense's arguments with their own testimony, admitting under cross-examination that they had been refused employment when they could not produce reliable documents confirming they were over 18. One witness said he was repeatedly turned away until he procured more legitimate-looking fake documents.]

## CHRONOLOGICAL AGE HARD TO MEASURE

Gary Norris said that the Guatemalan immigrants, especially women, were typically of short stature and often looked far younger than their chronological age. Conversely, some Guatemalan teenage boys had mustaches and facial hair that made them appear to be much older than their years. "As a supervisor who came into daily contact with them, there was no way I could assess their ages based on appearance," Norris said.

Some government witnesses said that Sholom Mordechai occasionally walked through the plant and "had looked their way." Prosecutors seem to think that this is enough to persuade the jury that the defendant could "facially" detect who was underage at such times.

But Norris said that anyone who, like Sholom Mordechai, only occasionally walked through the floor generally did not encounter workers face to face. Using a map of the plant displayed on a large screen, he showed how the rooms were structured in such a way that workers faced their assembly line or equipment, with the walkway behind them.

In addition, Norris said, workers were usually bundled in sweaters due to the refrigerated temperatures. They were cloaked in steel hats, large frocks or aprons, and gloves and boots, making it difficult to get an accurate reading of their size and features.

Abrams recalled that on a rare instance, when a minor who had lied his way into employment was discovered, the Human Resources director summarily fired him. Bensasson testified to a similar instance of uncovering an underage worker - a girl under 18 - and immediately firing her.

Rabbi Zvi Bass, another former plant manager, said that the testimony of former supervisor Matthew Derrick, who said that he had told Bass that "youngsters worked at the plant," was untrue. He said Derrick had never talked to him about children at the slaughterhouse or about working conditions there.

Derrick's testimony was so fraught with obvious falsification that Judge Callahan himself commented for the record that he did not find his testimony credible.

In response to questions about minors and whether he observed workers in safety equipment, Rabbi Menachem Meir Weissmandel, the former *rav hamachshir* at Agriprocessors, said he walked every area of the plant once a month for seven years and routinely observed workers fully attired in safety equipment. "Never did I see a worker that I could identify as a minor," he said.

## SMEAR CAMPAIGN

Rabbi Weissmandel used the opportunity on the witness stand to explain the origin, in his view, of the widespread prejudice

against Agriprocessors and Sholom Mordechai Rubashkin. He cited the relentless smear campaign of PETA, aided by UFCW union leaders, liberal Jewish activists at the *Forward*, and Conservative Jews pushing a new kind of kosher certification. The new “*hechsher*” is based not on *halacha*, but on arbitrary ethical standards, determined by a committee led by Morris Allen of Minneapolis.

Allen has come under scrutiny for using the plight of Postville’s Hispanic community to promote his agenda. He was photographed on the anniversary of the ICE raid taking part in religious services in St. Bridget, a Catholic church in Postville that has fomented animosity and ill will toward Agriprocessors and Sholom Mordechai. During a march afterward from the church to the site of Agriprocessors, Allen scooped up a Guatemalan youngster, hugging him in front of the cameras.

[In remarks quoted in *JTA* after the November federal trial, Allen praised the guilty verdict against Sholom Mordechai and later disgraced himself by insisting, in the face of an uproar over the recommended life sentence, that the punishment was not “unfair.”]

#### ADVOCACY WORKER: RUBASHKIN A “FILTHY JEW”

The church’s destructive role in encouraging Hispanic workers to badmouth Sholom Mordechai was highlighted by the testimony of Ana McCarthy, a Panamanian-Jewish native who is a Spanish language translator now living in Illinois. Outside the presence of the jury, McCarthy said she traveled to Postville in August 2008 after encountering a shortage of kosher meat in Chicago and hearing about the ICE raid.

She described waiting at St. Bridget Church for a meeting with a community leader and being startled to overhear someone in authority telling former Agriprocessors employees that they could get U-visas to remain in the country. All they had to do was report that they were abused by Sholom Mordechai.

She said the man, Tom Walsh, a non-Jew who represents the Chicago-based Jewish Council for Urban Affairs, coached people to make claims against their former boss, saying that Sholom Mordechai was a “filthy Jew” who got rich at their expense.

In an interview with *Yated*, Ms. McCarthy said that when Walsh saw that she had overheard his remarks, he accused her of snooping and, towering over her, ordered her to leave the building. She appealed for help to a priest and nun in the room, but they merely stood by chuckling as she was aggressively ushered out.

Later, McCarthy found out that the Jewish Council for Urban Affairs had donated about \$100,000 to the Hispanic community of Postville, entrusting it to St. Bridget’s Rev. Paul Ouder Kirk (now retired) to distribute to the immigrants. Earlier in the trial, defense attorney Brown had accused St. Bridget for not only coaching, but essentially blackmailing the Hispanic families affected by the raid.

“As much as it pains me to say it, this Catholic church was a long-term adversary of Agriprocessors,” said Brown. “There was a mantra within the church’s walls,” said Brown. “Voice complaints against Sholom Rubashkin, and you’ll be financially rewarded.”

McCarthy, who spent hours interviewing many Hispanic workers, told the *Yated* that she knew of a number of people who refused to fabricate stories of abuse. “They were in great need but received no financial help from the church,” she said. “It seems money from the Jewish Council of Urban Affairs was used very selectively by the church.”

#### NO CUTBACKS ON SAFETY

Testimony from a number of witnesses established that safety

training and safety equipment at the plant were a foremost priority. Plant manager Chaim Abrams testified that \$100,000 a year was invested in safety equipment, protective safeguards and training.

Regardless of budget cuts at various times throughout the plant, he said, no cutbacks were ever made in the area of safety. Allegations had been raised that workers were forced to pay for their protective equipment, but no witnesses brought this complaint in court. It turned out to be one of many unsubstantiated libels spread by opponents.

Other myths were punctured on the witness stand. Claims that no medical insurance was available to the workers were shredded. The truth was brought home most eloquently by the testimony of a government witness who chose to remain at Agriprocessors due to the medical treatment he was afforded by the plant’s insurance plan for an ear-related ailment.

#### WORKPLACE INJURIES LOWER THAN NATIONAL AVERAGE

Plant manager Chaim Abrams testified to an affirmation from the plan’s insurance carrier that Agriprocessors’ record of workplace injuries fell below the national average at slaughterhouses. This was borne out by the fact that after a five-year period, insurance premiums paid by Agriprocessors for its workers so exceeded the amount of claims filed that the company received a refund - virtually unheard of in the slaughterhouse industry.

Aaron Goldsmith, a Postville resident and former city councilman, testified that his own research had confirmed Abrams’ testimony. In addition, Goldsmith testified that he had once asked Senator Tom Harkin - no great friend of Agriprocessors - how Postville’s meat-packing plant compared with others across the country in terms of safety and cleanliness.

“Aaron, I’ve visited meat-packing plants across the country. Agriprocessors is one of the cleanest and most well-run,” Harkin told him.

#### POISONOUS CHEMICALS?

The “poisonous chemicals” the workers were exposed to turned out to be nothing more than dry ice and chlorine bleach, present in concentrations similar to those used every day in households. A third “chemical,” anhydrous ammonia, posed no danger because it ran in enclosed pipes and workers were not exposed to it, defense expert Rodney Heston explained.

A touch of comic relief - as well as a window into the overblown hype being parlayed by the prosecution - was introduced when a government witness complained about chemicals that made him cough, his throat burn and his eyes smart.

“Were you given a protective mask?” the prosecutor asked through a translator.

“No, nothing,” the witness said.

“And you were exposed to these chemicals every day?”

“Yes, every day.”

Under cross-examination, defense attorney Monty Brown asked the witness what department he worked in.

“Making ready-made meat burgers.”

“Those chemicals that made your eyes sting... Weren’t those actually spices like pepper that you mixed into the meat?”

“Ah...yeah... spices. I ..ah... got mixed up between chemicals and spices.”

#### LABOR DEPARTMENT KEPT AGRIPROCESSORS IN DARK ABOUT MINORS

One of the most troubling disclosures that emerged from the defense testimony concerned an April 2008 onsite inspection of the plant by the Labor Department. Mary Funk, an immigration

attorney from Des Moines, testified that following that inspection, Agri was sent a subpoena asking for over 100 personnel files.

Aware that the inspection team had included a Hispanic woman trained as a “facial expert,” Funk surmised that underage workers may have been discovered. Funk sent a letter to Sheridan Lucht, one of the labor officials, asking her to specify the names of any employees she believed to be minors, so that Agriprocessors could fire them.

“She wouldn’t give us any names,” testified Funk in court. She went on to describe how she repeatedly pressed Lucht at the Labor Department for the names of the suspected minors and was continually rebuffed.

“Why wouldn’t Ms. Lucht give the names?” defense attorney Brown asked.

“She said the investigation was ongoing.”

“So labor [officials] let minors remain there for many weeks until the raid?”

“I don’t know what they did. I only know we were not told who these minors were - if in fact they were minors.

“Is it fair to say Ms. Lucht was playing games by withholding this information?”

“All I know is she did not give us the names.”

### TROUBLING QUESTIONS

Apparently in no particular hurry, the Labor Department scheduled a June 2008 onsite inspection of documents at Agri to complete its investigation. That inspection never took place due to the May ICE raid, at which point all documents and records were seized by ICE officials.

One can’t help but ask the obvious question: Is it not bizarre that government officials took no action to stop minors from working long hours around supposedly poisonous chemicals and dangerous machinery?

Shouldn’t they have been concerned enough about child-laborers to respond to the attorney’s repeated inquiries? After all, would the state of Iowa be prepared to spend close to half a million dollars to prosecute Sholom Mordechai if they did not consider child-labor laws of paramount importance?

One cannot avoid the implication that if, in fact, minors had been discovered, these were being used as pawns in a more important cause - and that is why officials stonewalled on the names.

Here was a chance to stage a high-profile case in the name of a humanitarian cause. Here was an opportunity to advance careers by bringing down someone who had come to epitomize worker abuse and exploitation of the poor. Sholom Mordechai by this time had been so demonized in the public mind - including a broad spectrum of the Jewish community - that he would be an easy target. The lack of evidence notwithstanding, he would be a cinch to convict. No one would rally to his defense.

### DEFENSE HIGHLIGHT: MOTION FOR ACQUITTAL

After the government rested its case last week, the defense team argued persuasively that the judge should throw out all 83 misdemeanor child labor charges and grant a “directed acquittal” [without the case going to the jury].

“The State failed to produce the slightest evidence that Sholom Mordechai committed a criminal offense,” attorney Mark Weinhardt told Judge Callahan. “The operative word here is the verb *employ*. The State did not show proof of the slightest action on the defendant’s part to employ minors. The evidence in this case is that Mr. Rubashkin did absolutely nothing.”

### NO PROOF OF AGES

Weinhardt argued that proof of the actual ages of the workers

who testified is “the very lynchpin of the State’s case.” Yet, prosecutors offered no proof of the ages, such as bringing in parents or a verifiable birth certificate. The prosecution is asking the jury to accept the workers’ “uncorroborated claims in matters where they have demonstrated powerful motives to lie about their ages and extensive histories of doing so.”

“Mr. Rubashkin should receive a judgment of acquittal on every count of the Amended Complaint based on this deficiency, Weinhardt argued.

Weinhardt elaborated on the overwhelming temptation for witnesses to lie in order to qualify for a U-visa, awarded by the government to victims who aid the government in the prosecution of a crime. The victims must testify to having been injured or abused at the worksite.

These visas not only grant the witness permission to work in the United States, but enable his family to join him if the visa’s holder is under 21. The U-visa offers the easiest and surest path to permanent residency in the United States. For many impoverished natives of Guatemala and Mexico, the glittering allure of a U-visa is irresistible. It trumps all other considerations.

The immigration attorney for all the States’ witnesses, Sonia Parras Konrad, has made a career of obtaining visas for Hispanic immigrants. Her coaching is evident in the “carbon copy” nature of their testimonies - the transparent sameness of the responses and their quick retreat into selective amnesia - “I don’t know,” “I don’t understand,” “I don’t remember” - when confronted with evidence contradicting their claims.

### PROSECUTION TRIED “BAIT AND SWITCH”

In another cogent argument for “directed acquittal,” the defense pointed out the inherent inapplicability of the 83 specific counts, noting that the government did not even try to pursue them.

That would require proving that the defendant knew each witness and personally hired him or her - an absurdity. Instead, the prosecution came up with a more practical approach, an attempt to prove a single count of having allowed a *general scheme* to employ minors.

Switching courses in midstream is devious and should not be permitted, Weinhardt said. To win a conviction, the State should be required to go back to the Complaint and prove each specific item on the list of 83 counts. The prosecution’s veering off course to prove a different charge not spelled out in the Complaint raises the question of the trial’s validity.

While he did not as yet rule on the defense’s motion, Judge Callahan acknowledged that the argument was “compelling.” A ruling must be handed down within the next day or two, before the case goes to the jury.

As the final day of defense testimony played out in court, one thing was certain. Regardless of the outcome, the state trial has opened up a wide window on an unknown side of the Agriprocessors saga, which cannot fail to change public discourse about the case.

Given an opportunity to air before a jury the most incriminating allegations about worker abuse, unsafe conditions and child-laborers, prosecutors were reduced to complaining about spices, dry ice and bleach. Whether any minors worked at Agriprocessors is highly doubtful, and to suggest they did so at Sholom Mordechai’s behest - or even with his knowledge - is stretching credulity past reason.

The defamation of Sholom Mordechai Rubashkin in the media has been so relentless and thorough, however, that his guilt has been accepted in many circles almost as an article of faith. Thus, for many, the jarring effect of the trial’s revelations as hard-to-uproot prejudice wrestles with the emerging truths.

# Not Guilty

BY DEBBIE MAIMON



Sholom Mordechai Rubashkin's sweeping acquittal in the state child-labor trial this week was hailed by throngs of supporters across the world who had been closely monitoring the case. Jurors pronounced him innocent of all 67 charges of willfully hiring minors and exposing them to poisonous chemicals and dangerous machinery.

"On behalf of my family and Sholom's supporters around the world, we are deeply grateful to the Iowa state jury for their verdict," said an overjoyed Leah Rubashkin. "We have maintained from the very beginning that Sholom is innocent, and are heartened that the jury unanimously agreed."

Defense attorney Montgomery Brown said that the jury's verdict "vindicated Sholom Rubashkin as a human being."

Sholom Mordechai himself says simply, "Thank you, Hashem."

The victory has special significance for him. The child-labor trial gave him a long-overdue opportunity to challenge a torrent of allegations that have demonized him in the public mind,

eventually culminating in the military-style 2008 ICE raid on Agriprocessors and the destruction of the plant.

## GOVERNMENT TRIES LAST-MINUTE PLEA BARGAIN

The vast majority of the allegations, concocted out of thin air, were wisely forgotten by the government when the trial opened last month. Even the original 9,311 counts of child-labor were reduced to a fraction of that number, but not before they were used as a tool by the Attorney General's office to try to extract a confession from Sholom Mordechai.

The prosecutor offered him a plea bargain: plead guilty to just 30 counts and we'll dismiss 9,270. Could he dare refuse? Hadn't he seen and experienced enough to know the government gets its way?

Sholom Mordechai wouldn't yield. "I won't plead guilty to something I didn't do," he said through his lawyers. Realizing the absurdity of trying to prove almost a thousand fabricated child-labor charges, prosecutors hastily dropped over 9,200 of them - minutes before the trial began. With only 83, they might just have a chance.

## JURY FOREMAN: NO WITNESS CREDIBILITY

The lack of evidence and witness credibility doomed the government's case. Jury foreman Quentin Hart afterwards said that a major influence on the jurors' deliberations was the testimony of the alleged child laborers.

"They all testified to lying about their ages to law enforcement officials, and presenting false documents to Agriprocessors," he said. "It was hard to believe their testimony."

In addition, the defense counsel had sowed doubt about the true ages of the alleged minors. "Seven of these witnesses were flown over from Guatemala," Mark Weindhardt, Sholom Mordechai's attorney, pointed out. "They were each given a passport. That's proof of date of birth. Why hasn't the State produced these passports to establish the ages of these witnesses?"

"Instead, the jury is being asked to simply accept their word, when they've been shown to be practiced liars about their ages and identities."

## EVIDENCE DIDN'T HOLD UP

In an interview with a local Iowa paper, the jury foreman also said that the evidence never showed a clear line from Sholom Mordechai to the 26 alleged "children" named in the case.

Prosecutors failed to produce testimony from a single witness

*Many expected a different tone from the judge, who during the trial had raised doubt about the credibility of many of the government's witnesses, particularly those who admitted to having lied about their identities and ages.*

who had told investigators that Sholom Mordechai had been informed that minors worked in the plant, he said.

"You have a government investigation covering 2,700 pages... 17 boxes were seized during the raid... And they've had two years to come up with evidence that Sholom Rubashkin was told about children working in the plant. Where's the witness? Where's the evidence?" Mark Weinhardt asked the jury.

These questions apparently hit home.

In addition, evidence that the company fired some minors when they were discovered, and that some minors were turned away due to suspicions that they were underage, was compelling. That showed there were policies in place, said the jury foreman. "That helped sway the jury."

Prosecutor Tom Miller, smarting from his defeat, tried to persuade the public that the jury's verdict had missed the mark.

"In addition to child-labor laws violations...we presented abundant evidence to support the claim that there was extortion, physical abuse and forced labor committed against the workers at Agriprocessors," Miller defended himself in a press release.

Abundant evidence? What trial was Tom Miller at? In the one we're talking about, a single mention of physical abuse was made - against the government's own key witness, Matt Derrick. Miller himself succeeded in barring this testimony from the jury.

As far as forced labor or extortion, not a single charge was brought up at the state trial. So much for the "abundant evidence."

#### **JUDGE TRIES TO SHORE UP GOVERNMENT'S IMAGE**

Sholom Mordechai's family members, while thrilled with the acquittal, expressed disappointment in Judge Callahan's comments to the press after the verdict was announced.

Apparently aiming at quieting apprehensions that the government had wasted taxpayer money on a frivolous case, Callahan asserted the prosecution "was worth every penny," since it drove home the message that "child-labor won't be tolerated in Iowa."

Many expected a different tone from the judge, who during the trial had raised doubt about the credibility of many of the government's witnesses, particularly those who admitted to having lied about their identities and ages.

At one point, Callahan commented on the testimony of key government witness Matt Derrick, stating, "It has a funny smell."

"I expected the judge to say that he believed justice was served with this verdict," a family member said. "After dragging a person through the mud, putting him and his family through such an ordeal without any grounds... you'd think he would reprimand the prosecution for wasting so much time and money on a case no one found credible."

Sholom Mordechai himself asked the most obvious question of all.

"The government knew who was guilty of sneaking minors into the plant," he said in an interview with the *Yated*. "They knew that in almost every case, the minor's parent who worked at Agriprocessors either got their child the phony birth certificate or vouched for their son or daughter being over 18.

"Instead of concocting a case against me, based on 'ifs' and 'maybes,' why didn't the government focus on the parties they *knew* were responsible for putting minors into a slaughterhouse? Isn't this a prime example of overzealous, selective prosecution?"

#### **"MOBY JEW"**

Defense attorney Montgomery Brown suggested that the State's case was driven by hostility toward Sholom Mordechai as "the outsider." He referenced a literary American classic, "Moby Dick," in which a strange ferocious whale, proclaimed to be evil, is relentlessly hunted down by a sailor.

He called Sholom Mordechai "a stranger in a strange land, in which the state rushed to judgment against him. When problems arose, they rushed to the conclusion that he was responsible, this 'white whale.' They rushed to harpoon him - the stranger, a Moby Jew."

Prosecutor Tom Miller reprimanded Brown for injecting religion into the trial. Almost in the same breath, Miller then turned around and proceeded to try to fuel an anti-Semitic reaction from the jury with his own closing remarks. He took a swipe against Sholom Mordechai for being indifferent to Hispanic minors while showing concern for Jewish youth.

He cited the testimony of a defense witness who testified that she accompanied her son when he applied for a job at Agriprocessors and that "Sholom turned him away because he was under 18."

Conjuring up stereotypes of Jewish callousness toward non-Jews, Miller called it "less than coincidence that no minors from the *yeshiva* were employed at Agriprocessors. And yet, the 8<sup>th</sup> and 9<sup>th</sup> grade public school classes in Postville were a feeder to that plant."

He insinuated that Sholom Mordechai was careful to endanger only Hispanic minors by permitting them to do adult work and exposing them to poison and dangerous machinery, while screening out Jewish minors who applied.

The jury, to its credit, didn't buy it.

#### **COLLUSION BETWEEN FOES**

The child-labor trial, coming two years after the massive 2008 raid, put on display for the world the bankruptcy of the state's trumped up case against Sholom Mordechai.

Equally important, it began to unveil the collusion between several hostile parties who made common cause with one another in order to promote a corrupt agenda: the destruction of



Agriprocessors and the ruination of the Rubashkin family.

The story of how these forces came together to destroy not only a flourishing company and an entire family but the economic stability of an important region in Northeastern Iowa has yet to be told in full. While it lies outside the scope of a single article, an outline of this bitter saga is in order here.

Most of the accusations sprang from a systematic mudslinging campaign orchestrated by the powerful UFCW (workers union) with ample support from PETA, a Catholic church in Postville and the secular Jewish publishers of the *Forward* newspaper.

The Minneapolis-based Morris Allen, after secret talks with UFCW, fueled the flames, hoping to use the controversy to promote a new form of Conservative certification based not on *halacha* but the ethical treatment of workers.

Encouraging the smear campaign, ten Jewish congressmen repeated the outrageous and unfounded claims in a widely publicized letter to Agriprocessors' management.

Iowa's Governor Chet Culver played a vicious role in ratcheting up popular anger at Agriprocessors. Culver castigated the plant for inhumane treatment of workers and for "taking the low road" in running the plant under jungle-like conditions.

[Culver himself is now under investigation by a special prosecutor for accepting bribes of \$25,000 for influencing the granting of licenses for gambling casinos. What was that about the low road, Governor Culver?]

The multi-pronged character assassination campaign took just a few years to achieve its desired end. A toxic stream of inflammatory news reports and op-eds poisoned Sholom Mordechai's name and drove many fair-weather friends to desert him in his hour of need.

"Whereas the final judgment about [Sholom Mordechai] will be rendered in the courts, his trial in the media has already changed minds," a 2008 *Forward* editorial proclaimed, no doubt proud of its own significant role in inciting the "media trial."

So widespread has been the prejudice against him that even a broad section of the Orthodox Jewish community, who should have known better, were infected with it. Only recently, as disclosures emerge from both the sentencing hearing and the state

trial, has there been an awakening to the truth. As hidden facts begin to surface, some of the hunters may become the hunted.

#### LYNCHING STILL IN PROGRESS

"This man is the face of Agriprocessors," said prosecutor Laura Roan, jabbing her finger in Sholom Mordechai's direction during closing arguments. Whatever violations occurred in the plant should be laid at his doorstep, she said.

However fallacious her argument, in one sense she was correct. The assault against Sholom Mordechai brought about the collapse of Agriprocessors, as if the two were indeed one. Yet, while Agriprocessors might be history, the government is not yet finished with Sholom Mordechai.

While the state trial has gone a long way in puncturing the libels surrounding the fall of Agriprocessors, the lynching of Sholom Mordechai by the federal government is still in process.

Attorney Nathan Lewin notes that "the verdict in the child-labor case raises serious questions about the validity of the federal bank fraud conviction, for which Sholom Mordechai is to be sentenced on June 22 by Judge Linda Reade.

"Sholom intends to appeal that conviction on various grounds," says Lewin. "That includes Reade's ruling that permitted federal prosecutors to introduce evidence about illegal immigrants working at the plant, while refusing to allow the defense to present evidence refuting it," Lewin said.

"Sholom was irrefutably harmed during the federal trial by being falsely portrayed as responsible for the employment of illegal workers," added attorney Guy Cook. "We believe this had a profound impact on the jury and tainted the federal trial."

People familiar with the legal issues are convinced that had jurors been permitted to hear both sides of the issue, they would have determined that Sholom Mordechai was not responsible for the employment of illegal workers.

Those findings would have very likely changed the outcome of the federal trial.

While supporters rejoice with Sholom Mordechai and his family over his acquittal this week, awareness of the serious hurdles still facing him – and, in a deeper sense, all of us – are sobering. Whoever speaks to Sholom Mordechai says his faith sustains him. Let that knowledge inspire and rally us as well.

# Rubashkin Acquittal: Behind the Smoke and Mirrors

BY DEBBIE MAIMON

The dramatic vindication of Sholom Mordechai Rubashkin in the state child-labor trial last week has wreaked havoc with the public's view of him. Given his media-battered reputation, no one expected him to be acquitted of the state charges. Bias against him, especially in Iowa, was rampant. Many described their shocked reaction to the verdict.

The government had promised that they had a solid case and there was no reason to doubt it.

The public had long been convinced that Sholom Mordechai presided over a crime-ridden plant where, in addition to minors being forced to work with dangerous chemicals and machinery, workers were subjected to forced labor and other outrages.

Yet, the jury tossed out every single one of child-labor charges, finding no credence in the government's case. The sweeping verdict confirmed that the public has been grossly misled.

One is reminded of how the disastrous 2008 ICE raid itself grew out of lurid charges that later evaporated into thin air. Remember how Agriprocessors was said to house a meth lab, an extortion ring, and a hideout where bombs and explosive devices were sold?

After exploiting these wild claims in a federal affidavit to justify a blitzkrieg-like raid on the plant, the government never brought them up again. Like a cyclone that wrecks everything in its path, the affidavit's grotesque claims paved the way for an onslaught against Agriprocessors that inflicted massive damage against the entire economic region. The meth lab/weapons stockpiling/extortion ring claims then vanished from the radar screen.

## THE REAL FRAUDSTERS

Vicious overkill by the federal government apparently inspired state officials to follow suit. Witness the grandiose action in the 9,311 child-labor counts that threw Sholom Mordechai on the ropes, before the charges mysteriously melted away on the eve of the state trial.

In this long, ugly saga full of smoke and mirrors, it's becoming increasingly apparent who the real fraudsters are: federal and state officials who have disgraced their office by their rampant abuse of power.

How heartening that in such a climate of obfuscation, a jury in the state trial found the moral courage to decide the child-labor case based on its merits. Perhaps jurors smelled something funny about the government's disappearing-ink trick, with an astounding number of charges being wiped off the chart without explanation. Perhaps they sensed the dishonesty behind the prosecutors' moral posturing.

Whatever factors most influenced their decision, the verdict signified an unwillingness to rubberstamp a shabby case clearly

driven by an agenda other than justice. It filled Sholom Mordechai and his family and supporters with hope that his bitter ordeal is finally turning the corner.

## URGENCY GRIPS COMMUNITY

With Judge Reade set to hand down the federal sentence on June 22, a wave of urgency has gripped the community. A recent *asifa* at the Atrium in Monsey, NY, last week drew about 15,000 people - 3,000 who attended in person and over 10,000 who participated via teleconference on the Chazak Hotline and the Kol Mevaser News Hotline.

The event began at nine in the evening and continued past midnight in an outpouring of *tefillah* and *achdus*. A host of speakers intimately familiar with the case outlined it for the audience and shared the most recent developments.

From Mr. Yerachmiel Simmins, a lawyer of note, thousands of people learned for the first time how the wrenching Rubashkin saga began and the ruthless tactics used by PETA and the unions to demonize Agriprocessors and incite the federal government against the plant.

"So many elements of this case shake the foundations of fairness and fundamental rights embedded in the American constitution," Mr. Simmins told his listeners. He went on to describe the trampling of civil liberties and the betrayal of the principles of democracy by unscrupulous government officials.

## HOW HE WAS FRAMED

Even those informed about the case were shocked to discover the extent of the abuse of power on both the federal and state levels.

The audience learned how, discovering that Agriprocessors had correct policies in place to screen out illegal aliens, government officials nevertheless concocted a twisted scheme to frame Sholom Mordechai for knowingly hiring and harboring them. They learned how officials unlawfully stripped Sholom Mordechai of his business, livelihood and assets so that he could not fund his own defense.

They discovered the story behind the "myth of the \$26 million," which was used as the basis for the government's recommended life sentence. This myth - the falsified claim that Sholom Mordechai had caused a lender bank \$26 million in losses - was exposed at the sentencing hearing in April.

## NO-RUBASHKIN EDICT DROVE OFF BIDDERS

Witnesses disclosed that prosecutors had invoked what has been called the "No-Rubashkin Edict" to intimidate buyers from

purchasing the post-bankruptcy Agriprocessors when it was still a valuable, going concern, valued at more than \$80 million. Prosecutors threatened forfeiture of all of the assets of the company if any relatives of Sholom Mordechai were involved in the purchase or management of the plant.

This intimidation worked, forcing bidders to drop out until the company was so devalued that it was sold for a tiny fraction of its worth, rendering it impossible for the bank to recover its collateral.

Government officials who had directly precipitated the bank's massive loss of money then laid it at Sholom Mordechai's doorstep, charging him in court papers with orchestrating a massive fraud of \$26 million.

Mr. Simmins drove home the disturbing reality of justice run amok. "The law in this case is being used not to uphold the social order, but to destroy a town; not to defend religious freedom, but to lock up a true *yirei Shomayim* for close to life, *chas veshalom*. This is less a case than an actual *lynching*...of one of *acheinu bnei Yisroel*."

#### DEFENSE LAWYER SHARES CASE'S HIGHLIGHTS

The audience in Monsey heard some of the fascinating details behind Sholom Mordechai's dramatic acquittal in the recent child-labor trial from one of the defense attorneys, Mr. Mark Weinhardt, who traveled from Iowa to participate in the gathering.

Weinhardt shared some riveting inside glimpses in a case marked by the daunting frustrations and challenges of battling the government, and a case that carried such high stakes for his client.

He recounted that at crucial moments in the trial, one "could feel the presence of G-d in the courtroom." One instance was when the case was about to go to the six-member jury. In a highly unusual move, an individual named Quentin Hart, who the defense had tried to empanel during jury selection but who was selected only as an alternate, was instructed to join the jury as a seventh member.

One juror had been disqualified and another was suffering health problems. To guarantee the case would not end in a mistrial due to the jury losing a member to illness, a last-minute decision by the judge brought Quentin Hart on board. He ended up becoming the jury foreman and leading deliberations to the much-prayed-for acquittal.

#### BRUSHSTROKES TELL THE STORY

So much ink has been spilled, and so much time and effort expended, in explaining the legalities of the case and the harrowing plot twists in the legal and human drama. Often, missing from this avalanche of words is a sense of who this extravaganza is all about.

We know so much about what Sholom Mordechai *Haleivi ben Rivka* did or did not do. We are beginning to discover the full extent of what was done to him. But aside from the generally known facts, people wonder, who is he? How does he remain sane?

In a few brushstrokes, Rabbi Pinchos Lipschutz, his *yedid nefesh*, opened a window into the reality of life in an Iowa prison, where a religious Jew is viewed as utterly alien. Guards are posted at Sholom Mordechai's cell each morning, as he wraps himself in his *tallis* and *tefillin* which the guards keep under custody. They monitor him as he *davens*, making sure he doesn't do anything dangerous with these suspicious items, and quickly take them back when he's done.

*Davening* lifts Sholom Mordechai out of the wretchedness of his situation and lets him soar beyond the nerve-shattering loneliness and uncertainty. Every second is so precious. But while time flies for him under his *tallis*, the minutes are dragging by for the guards. They become impatient.

He has just barely begun when they start growling about him taking too long to pray. He longs for the privacy and space to pour out his heart, but he is a prisoner in dangerous attire who must be

kept under surveillance while he *davens*... So off come the *tallis* and *tefillin*. He slowly, lovingly wraps them up... *Every second is so precious*. The guard takes them, locks the prisoner in his cell, and leaves.

"Stories of *Yidden* thrown into prison for years on trumped-up charges are the stuff of bedtime stories we tell our children," Rabbi Lipschutz told his audience. "These are the *moser nefesh Yidden* of yesteryear. These stories happened long ago in Poland, in Lita, in Germany...but don't worry, not today, not where *we* live, we tell our children. Those things don't happen in America, *boruch Hashem*."

#### "YOU DON'T NEED 67 NUMBERS..."

Try to visualize another scenario, the speaker says. Sholom Mordechai has been called to the courtroom to hear the verdict on the child-labor charges. His heart is pounding. He feels numb. So much fear and emotion for a *bosor vodom*, he reprimands himself. The *Ribono Shel Olam* is in charge. Whatever He wants, we'll accept with love.

He picks up the *kittel* his family has sent to the prison and wraps himself in it. His heartbeat slows. He whispers a *tefillah* and some *Tehillim*. The tension begins to drain. He is calm when they come for him. He puts on his coat over the *kittel* as guards escort him out.

He enters the courtroom, flashing his family a warm, encouraging smile. He glances at a sheet in front of his lawyer, Mr. Mark Weinhardt, numbering from 1 to 67. The lawyer will jot down the jury's breakdown of the verdict alongside each one of the sixty-seven counts with which his client is charged.

"You don't need 67 numbers," Sholom Mordechai whispers to Weinhardt. "You just need one - not guilty on all counts."

"You seem quite confident," the lawyer smiles, surprised.

"I have a feeling it will be good news," Sholom Mordechai smiles back.

The jury enters. The foreman hands the judge a thick pad of papers, which spells out the jury's verdict to each of the respective charges. The judge glances through the papers for a few minutes and looks up. "I'll make this fast and easy for everyone," he tells the court. "Not guilty on all counts."

#### THE HEADLINES THAT NEVER MADE IT

Having the child-labor trial follow so soon after the April sentencing hearing diverted public attention from revelations that surfaced throughout the two-day event. As the media rode the wave of public interest in the May trial, the hearing and some of its striking disclosures were quickly forgotten.

With the trial over, let's turn the pages back for a moment to some of those "headlines," in particular the testimony of a strong defense witness at the sentencing hearing. Aaron Goldsmith's eye-opening comments not only strongly rebutted pernicious claims by the government, but offered an intimate view into the defendant's character.

Sholom Mordechai had been accused in government filings of bribing a public official, Robert Penrod, Postville's former mayor. This allegation was one of a number of serious charges the prosecution introduced in its sentencing report - never before mentioned in trial - in a last ditch attempt to ramp up the recommended sentence as high as possible.

Goldsmith, a Postville businessman and former city council member who testified that he had extensive dealings with Sholom Mordechai on both a business and personal level, shredded the prosecution's allegations.

"In the course of your work in city council, did you come to know a fellow named Robert Penrod?" he was asked by defense counsel.

*Enough time has been served, Judge Reade, by Sholom Mordechai.*

*More than enough time has been served.*

*Time served, Judge Reade, time served.*

Goldsmith went on to describe Penrod as the Director of Public Works for Postville, who had been asked to resign after it was discovered that he was buying goods on the City's account for his personal use.

Penrod made a political comeback, however, becoming elected as the mayor of Postville in 2008. His penchant for helping himself to the City's money persisted, and he was once again forced to resign public office in disgrace.

This is the man Sholom Mordechai is accused of paying tens of thousands of dollars in bribes. Asked about what he knew regarding payments Sholom Mordechai had made to Penrod, Goldsmith had the following to say.

"I heard from Sholom that Penrod - it was quite a while ago - came to him for loans. Penrod was hitting him up for loans. Sholom was livid, very frustrated."

"And what did Sholom say to you?" asked attorney Guy Cook.

"He asked me, 'How do I get rid of him?' He said, 'He's asked me for money before, and it puts me in a terrible spot.'"

Asked about this episode, Sholom Mordechai testified that at a meeting with Penrod, the former mayor had played a secret recording of a city meeting at which officials had spoken of plans to take measures that would cause major trouble for Agriprocessors. Penrod said that if he, Sholom Mordechai, did not loan him the money he requested, he would do nothing to stop the hostile action.

When asked by investigators what he remembered about any of this, Penrod claimed not to remember the meeting, receiving the money, or any aspect of the episode.

#### IT'S CRIMINAL TO CALL HIM A CRIMINAL

Goldsmith's testimony became emotional when he was asked about Sholom Mordechai's character, whether what he knew of the defendant matched the prosecution's description of him as a greedy criminal who defrauded a bank.

**Cook:** The government in their filings in this case has described Sholom Rubashkin as an ordinary criminal, essentially motivated by greed -

**Goldsmith:** [breaking down in tears, trying to regain control] That's why I'm crying -

**Cook:** And my question to you, sir, is, based on your dealings with him and interactions, did you make any observation about whether this man is motivated by greed?

**Goldsmith:** It's criminal to call *him* a criminal. He made mistakes, but anything he did, he tried to do it for the benefit of the community, for the benefit of the people around him. He was always eager to please. He was not looking to undermine, to deceive or to cheat. He's a decent, kind-hearted man. He's generous without measure. Maybe he was in over his head, maybe he made mistakes, but the concept of him stealing and having criminal intent

- is way beyond the pale. It has nothing to do with his character.

In an interview with the *Yated*, Goldsmith described his reaction upon seeing Sholom Mordechai in prison clothes, shackled and chained. "It's like the story of the Emperor's clothes... The emperor is walking around totally unclothed and no one says anything; everyone treats the outrageous as if it's normal. That's what's going on here. A good, kind decent man is locked up, shackled like a violent criminal, maybe for life. It's criminal. It's obscene. But everyone is like it's ho-hum, business as usual. Where's the outcry?"

Let's turn back now to the Atrium rally and Mr. Simmins' closing remarks that echo the thoughts and prayers in the hearts of so many.

"I doubt Judge Reade is listening to this via the hookup for non-Monsey residents, but if you are... I pray that when it comes time for you to sentence Sholom Mordechai on June 22, the Al-mighty turns your heart to see all that has happened to him here. How they've taken away his business, his assets, and trashed his name. I pray you come to the conclusion that enough is enough, that with all the months he's already spent in prison, his sentence should be time served."

*Enough time has been served, Judge Reade, by Sholom Mordechai. More than enough time has been served. Time served, Judge Reade, time served.*

During the days leading up to the state trial, Sholom Mordechai made a point of asking *mechilah* from certain individuals he was afraid he may have hurt, and trying to make amends in any way he could. Now, before the federal sentencing, he would like to reach out and ask anyone he may have hurt or offended in any way to please be *mochel* him. He is deeply grateful for everyone's *tefillos* and asks us to continue to remember him when we *daven*, and to ask Hashem to inspire the judge to show leniency and free him.

# Massive Monsey Rubashkin Event Draws 3,000 People

THOUSANDS LISTEN IN ON TELECONFERENCE

The largest gathering anyone can remember in the town of Monsey, NY, took place last Thursday night. Some 3,000 people packed The Atrium for an *asifa* on behalf of Reb Sholom Mordechai *ben* Rivka Rubashkin. The Atrium parking lot was quickly filled, as were several others in the area, as people kept on coming in waves to pack the huge hall.

“There is no way to describe what we were feeling,” one attendee remarked following the event. “It was an incredible display of *achdus*, as thousands - *Chassidim*, *Litvishe*, *bnei Torah*, *baalei batim*, all types - gathered to give *chizuk* and get *chizuk*. What a gathering! What a display of unity.”

The event began at about 9:15 p.m. with *Tehillim* led by 11-year-old Mendy Rubashkin, son of Reb Sholom Mordechai. The program chairman was Rabbi Shlomo Eliezer Meisels.

The first speaker was Rav Menachem Meir Weissmandel, *rov* of Nitra in Monsey, former *rav hamachshir* at Agriprocessors, and a defense witness in the recent trial. Rav Weissmandel used the story of Mendel Beilis and Rav Meir Shapiro’s famous explanation of why *Klal Yisroel* is referred to with the singular term of “*adam*” to highlight that when one Jew is suffering, all of *Klal Yisroel* suffers along with him. We have observed the true *sheleimus* of *Klal Yisroel*, he said, as all streams of *Klal Yisroel*

join together to help a person they don’t even know. Rav Weissmandel also discussed his personal experiences in this case, both as a former *rav hamachshir* of the Rubashkin company and as a witness in the trial.

Yerachmiel Simins, a pro-bono legal advisor in the Rubashkin case, gave a thorough yet succinct description of the various injustices and misapplications of the law throughout the Rubashkin case. R’ Yerachmiel described the campaign to destroy a *Yiddishe* family, a prosperous company, and ultimately an entire town, Postville, Iowa, which has never recovered from the after-effects of the raid on Agriprocessors. The bias and double standard in this case is clear, he said, with the defense team of Reb Sholom Mordechai being seriously hampered during the federal trial.

Rabbi Pinchos Lipschutz, publisher of *Yated Ne’eman*, in a heartfelt address, shared with the assemblage poignant reflections as well as personal stories about Reb Sholom Mordechai, painting a picture for the audience of the person for whom they all continue to *daven* and the heroic manner in which Reb Sholom Mordechai has been responding to his frightening ordeal.

Rabbi Lipschutz, on behalf of the committee involved in this case, then presented Mr. Mark Weinhardt, one of Reb Sholom



Mordechai's attorneys, with an award for his efforts.

Attorney Weinhardt related some fascinating details of the Rubashkin case and his involvement. The tremendous crowd sat riveted as Weinhardt shared the ups and downs, and the frustrations and day-to-day challenges, experienced during the recent month-long state trial. He expressed his belief in the justice system, and said that just as justice was served in the state trial, he believes that, ultimately, justice will be served, perhaps via appeal, in the federal trial, with sentencing slated for June 22 by Judge Linda Reade. He ended his remarks by reading for the audience the closing statement that he had delivered just days before at the conclusion of the state trial.

Rav Shimon Zev Meisels, *rov* of Bais Medrash Beirach Moshe in Monroe, was the keynote speaker. Rav Meisels said that the Rubashkin family, which had been renowned for *tzedakah* and *chessed* to all segments of *Klal Yisroel*, fell victim to a campaign by labor unions and others. We must feel the family's pain, he said, and be sure to expend the proper efforts for *pidyon shvuyim*. He shared a *bracha* that we should be *zoche* to witness the *Leviim beduchonom* - including Reb Sholom Mordechai Haleivi - with the coming of the *geulah*. Just as Yehudah stated, "Ki lonu avodim laadoni" when Binyomin was apprehended in Mitzrayim, he said, *Yidden* do not allow an individual to suffer on his own. All the *shevatim*, all members of our holy nation, band together and cry out in pain. We don't watch a brother suffering by himself. We suffer along.

The final speaker was Reb Sholom Mordechai's son, Reb Meir Simcha Rubashkin of Postville, Iowa, who shared the personal and familial trials and tribulations of the Rubashkin family during this ordeal. He mentioned how much the outpouring of support means to his father, and he highlighted the unprecedented *achdus* and care demonstrated by *Klal Yisroel*, calling the wider

*frum* community "a family."

The event concluded at 12:45 a.m. As attendees exited the hall, uplifted and inspired, volunteers collected donations to be used directly to assist the Rubashkin family and pay for the exorbitant legal costs of the defense and appeal.

In addition to those who personally attended, thousands of people - estimates put it at over 10,000 - listened to a live teleconference of the event on the Chazak Hotline, as well as on the Kol Mevaser News Hotline. In fact, additional lines had to be set up at the last moment to handle the flood of phone calls from people all over the world who wished to hear the speeches.

As soon as the event ended, the organizers were busy at work planning the next Monsey-area event. The gathering will be held this Thursday night, June 17, at the main *bais medrash* in New Square. The *askonim* met on Monday night with the Skverer Rebbe and received his warm *brachos* and encouragement, as well as a donation.



# The Numbers Don't Add Up

BY DEBBIE MAIMON

A grotesque parody of justice has culminated with the sentencing of Sholom Mordechai Rubashkin on Monday to virtual life imprisonment.

The 27-year sentence came as a shattering epilogue to the November 2009 federal trial, in which Sholom Mordechai was wrongfully convicted of orchestrating a massive bank fraud. The trial was marked by what legal experts have called “erroneous, one-sided rulings” from Judge Reade that struck from the record compelling evidence of Sholom Mordechai’s innocence and lack of criminal intent.

Judge Linda Reade’s reputation as one of the harshest sentencing judges in the federal judiciary, and her pronounced lack of impartiality in the trial, had led many to expect a severe sentence. Yet even those familiar with her record and trial conduct were shocked at her cruel extremism.

The news prompted an outpouring of anguish and outrage. Over ten thousand people packed The Bais Yaakov of Boro Park hall Monday night, with crowds spilling into classrooms and overflowing the avenue and side streets, where they watched and listened on video screens. Thousands more called in through the Chazak and Kol Mevaseir hotlines and watched live on COL.

People wept openly, listening to passionate addresses calling the sentence a dark hour and a terrible blow for all of Klal Yisroel. The speakers urged the community to close ranks around Sholom Mordechai and his family with heartfelt *tefillos* for the annulment of the bitter decree, and with financial support for his legal defense.

In a moving testimony to the depth of compassion and pain Sholom Mordechai’s plight aroused, half a million dollars was raised by the rally’s end, to pay for the costs of the appeal now underway.

The appeal will focus on a range of prosecutorial and judicial errors that deprived Sholom Mordechai of a fair trial, lead appellate lawyer Nathan Lewin said in press teleconference. He and co-counsel Guy Cook called the conference to respond to questions about the just-announced prison sentence, and to notify the public of the appeal being immediately filed.

Offering a concise review of the case, the attorneys noted the government’s publicity stunts in the ICE raid, and the use of rampant exaggeration and fabricated charges in the affidavit, aimed at manipulating public opinion against Sholom Mordechai.

When the immigration case morphed into a bank fraud trial, the same strategy prevailed, with loaded terms such as “orchestrated a massive fraud,” “stealing” and “money-laundering” misrepresenting the facts and misleading the jury.

Separating fact from fantasy, Lewin explained that AgriProcessors borrowed more money than it was entitled to borrow by inflating its collateral. The credit line it took out from the lender

bank, however, was fully legal and legitimately obtained. The loan agreement paid off richly for the bank. Interest payments by the time of the ICE raid had already totaled \$21 million.

In five more years, the bank’s profit from the loan would have totaled \$35 million, noted Guy Cook, who was the lead attorney in the bank fraud trial and is working with Lewin on the appeal. Would someone out to defraud a bank have kept up a timely and full record of extravagant interest payments over so many years?

Cook assailed the dishonest tactics by which prosecutors artificially inflated the number of charges, making it easy to win a conviction. He described the government’s strategy as “pursuing publicity over justice.”

He told reporters on the conference line that the trial was tainted by its focus on immigration violations which were supposed to be inadmissible at the federal trial. Nevertheless, prosecutors were allowed to hijack the proceedings with immigration testimony for two days, while the defendant was prevented from defending himself.

Inundating the jury with barred, highly prejudicial testimony proved to be a winning strategy, all but guaranteeing a guilty verdict.

Money-laundering charges should have been dropped from the trial, Cook asserted, once it was established that no personal profit or gain accrued from the temporary detouring of funds. Yet the charges not only remained but were used by Judge Read to radically hike up the prison sentence.

Lewin noted that government conduct had forced Agriprocessors into bankruptcy and was therefore responsible for its default on the bank loan. Then, by threatening prospective buyers of the plant with forfeiture, the U.S. attorney’s office caused the devaluation of the slaughterhouse, at which point its sale could no longer recoup the bank’s collateral.

Serious bidders were forced out of the picture by the Assistant Iowa Attorney General’s injunction against the hiring of any Rubashkin as part of a new management. That injunction came to be called the “no-Rubashkin edict.” Barred from working with the experts in the kosher slaughter industry, investors withdrew their bids.

Although government witnesses on the stand, particularly the trustee attorney, Ms. Paula Roby, denied the “no-Rubashkin edict,” the would-be buyers themselves affirmed it under oath. One of them, Yechiel Cohen from Minneapolis, testified to being threatened by Assistant U.S. Attorney Richard Murphy with government forfeiture were her to retain a Rubashkin family member in the managerial structure after purchase.

Lewin said the exclusion of all Rubashkin family members

from the new management of the plant was unlawful. “It’s no different than if the government would have singled out for exclusion all African-Americans, or Catholics or any other group. It’s discriminatory and illegal.”

### A JUDGE’S AGENDA

Many have expressed concern that Reade had a specific agenda in Sholom Mordechai’s case, due to the prominent role she had played in the ICE raid by clearing judicial hurdles ahead of the law enforcement action.

According to a *New York Times* report, Reade had spent the winter of 2007 preparing the plea bargains and jail sentences for undocumented workers who would be arrested ten months later in the ICE raid. Such activities smack of collusion between the judicial branch and law enforcement, and should have disqualified Reade from presiding over the sentencing of these defendants.

The law allows a defendant to call for a judge’s recusal [self-disqualification], when there are grounds to suspect the judge has lost impartiality. But Reade had turned down a number of such recusal-requests by Agriprocessors defendants, saying that there was a difference between cooperation and collusion, and that she knew how to draw the line.

Her “cooperation” with law enforcement before and after the raid seemed to have given her a vested interest in presiding over Sholom Mordechai’s case. To call for her recusal would be fruitless—even counterproductive. At the time it was deemed prudent to avoid antagonizing this judge, renowned for her overbearing and highhanded treatment of lawyers and defendants she doesn’t like.

There must surely have been moments during the trial, and afterward, when bail was groundlessly denied Sholom Mordechai, when one might have wished to turn the clock back and file that motion for recusal. No doubt it would have been refused, but the request itself might have carried weight in an appeal.

In retrospect, Reade’s denial of bail foreshadowed the unconscionably harsh sentence handed down this week. But 27 years of imprisonment for “paper” crimes—victimless ones at that—is so beyond the pale, even those who expected the worst from her were shocked.

Prosecutors had backed off from seeking a life sentence after being assailed by six former attorneys general, two former solicitor generals and a host of distinguished law professors. These legal experts had written letters to Judge Reade, expressing harsh criticism of what they viewed as a grossly disproportionate sentence that undermined the fundamental principles of American justice.

Undeterred, Reade thumbed her nose at these eminent legal authorities, justifying her outrageous decision in a memorandum conspicuous for its disregard for the truth.

What kind of mentality defends the locking up of a kindhearted human being for life for comparatively minor offenses”? Perhaps Reade’s 52-page Sentencing Order can enlighten us.

The document opens a window into a shuttered mind governed by rigid fealty to the Federal Sentencing Guidelines, and undiscovered bias toward the defendant.

Although the Guidelines are meant to be used as an advisory framework for working out a fair sentence, for Reade they carry near-biblical authority. Her Sentencing Order is filled with copious quotes from her “bible”, in which she attempts to justify the outrageous ramping up Sholom Mordechai’s prison sentence by referencing this or that “chapter and verse”.

Tellingly, the only instances where Reade deviates from this framework are when the Guidelines call for leniency due to mitigating factors, such as a defendant’s record of community service, or a sick or disabled family member who deeply needs him.

Although both of these mitigating factors clearly apply in Sho-

lom Mordechai’s case, Reade refused to consider them in the Sentencing Order.

Perhaps most disturbing is this judge’s heavy-handed and blatant siding with the government’s position over charges that were never brought up at trial, and are often nothing more than rumor or hearsay. Like a bull in a china shop, Reade rides roughshod over the very notion of balance, justice and fairness. Her animus against the defendant reeks from the document.

“The Court [meaning Reade, herself] chose to credit the government and discredit the defendant,” she repeatedly asserts, often brushing aside airtight evidence that overturns the government’s claims.

The most flagrant example of this willful denial of the truth comes in the following paragraphs:

*“Defendant argued that, in the Bankruptcy, the government took the position and presented testimony that no purchaser of Agriprocessors could have any involvement with Defendant or Defendants family, resulting in a depressed sale price of Agriprocessors.”*

*“However, the attorney for the Trustee in the Bankruptcy Action, Paula Roby, testified that there was no such condition attached to the sale of Agriprocessors. The court credits Roby’s testimony and discredits testimony from Defendant’s witnesses.”*

*“Accordingly, the court declines to consider this theory in arriving at an actual loss calculation.”*

### ON DANGEROUS GROUND

Anyone familiar with the case knows that Reade is on dangerous ground here. In order to prop up her 27 year sentence, Reade needs to hang onto the myth of the bank’s \$26 million loss, allegedly caused by Sholom Mordechai’s “massive fraud scheme.” Such a high loss ramps up the offense level according to the Guidelines, justifying an extraordinarily long prison sentence.

But as noted above, the government’s “no-Rubashkin edict” is what drastically devalued the plant, making it impossible for the bank to recoup its collateral. The sworn testimony from investors and would be purchasers establish this beyond any doubt.

According to the facts, Sholom Mordechai could not possibly have foreseen or orchestrated this bank’s \$26 million loss. How inconvenient for Reade. How inconvenient for the U.S. attorney. These disclosures, which first emerged at the sentencing hearing, threatened to collapse an important lynchpin to the government’s case.

Without the \$26 million bank loss to lay at Sholom Mordechai’s doorstep, the loss calculation plunges dramatically. Sholom Mordechai would face no more than a few years in jail under these revised numbers.

Well, not to worry folks. If you’re Judge Reade, it doesn’t matter if your thinking flies in the face of reason and sanity. It doesn’t matter if your decision turns justice on its head and disgraces your office. You can get away with it. Honorable Judge Reade will simply brazen it through.

*“The court credits Roby’s testimony and discredits testimony from Defendant’s witnesses. Accordingly, the court declines to consider this theory in arriving at an actual loss calculation.”*

And that’s that. Or is it?

### THE LIGHT AT THE END OF THE TUNNEL

In a thoughtful comment during an interview with *Yated*, Defense Attorney Montgomery Brown evoked the broader implications of Sholom Mordechai’s recent state acquittal. He referred to the child-labor case as “a morality play,” a term given to a type of drama that depicts man’s struggle against the forces of evil.

“Mr. Rubashkin’s management decisions were not really on trial,” said Brown. “His humanity was on trial. The not-guilty

verdicts vindicated him as human being. No one can take that away from him. While his detractors can roll around in institutional failures of Agriprocessors until the cows come home, no one can change the plays' ending."

Will Sholom Mordechai Rubashkin, scapegoated and tormented, sentenced by a human relic from the dark ages to rot in jail for 27 years, ever be truly vindicated?

Those who attended or listened in to the inspirational addresses at the Monday night rally heard a resounding answer. They heard Getzel Rubashkin giving voice to his family's unyielding faith that light and darkness, beauty and ugliness, pain and pleasantness, all come from a single source—Hashem.

They heard him talk about the plaguing questions, the searing pain of waiting for his father's release. The desperately-awaited homecoming. The end to the nightmare. And the inner voice that affirms the answer: *We have a great Father in Heaven whom we love and trust. And Who loves us even more than we love Him. He knows what is best.*

"There is real evil in the world and for those without faith, it's terribly frightening. But as painful as it is, we're not shaken. We're not frantic. We're not lost.

"The light is not at the end of the tunnel," Getzel said. "it's right here, it's in the eyes of those of you who are standing here tonight, shoulder to shoulder, in *achdus* and *ahavas Yisroel*. It's the sparkle and the beauty and the hope and the rock-bottom faith, in the midst of the pain."

# Outrage

By Chaim Bashevkin

I simply cannot  
Understand  
The justice in this  
upright land  
What next, I ask  
No, I demand  
The situation's out of  
hand

Will they put us  
All in chains  
The question truly  
Still remains

For what crime now  
Will us they chase  
A tag ripped from  
A pillow case?

More than a  
Quarter century  
For appraisal  
Discrepancy?

Is this so far  
From you and me?  
Are we above  
This perfidy?

A tax return  
That's filed late  
Will doom one to  
An untold fate  
To persecute  
Incarcerate?

An appraisal  
Done too high  
May now be  
The reason why  
A wife and children  
All must cry

The noose of  
Government's  
Strong hand  
In this "free  
And open land"

Can destroy  
What one has planned  
When made to him  
Undue demand  
Incarcerate  
With no remand?

And treat him with  
Ignominy  
With the excuse  
Perhaps He'll flee  
Is he different  
Than You or me?

It's strange, bizarre  
Terribly weird

Not just to those  
Who wear a beard

Or pray and pray,  
And pray again  
In misery  
Enduring pain

What repercussion  
Will soon spawn?  
When one day one  
Shall mow the lawn

Or use a sprinkler  
On a day  
When conserve water  
They do say

Or slaughter beef  
Without a shock  
Or circumcise  
Without a doc

Or build a shack  
'gainst zoning rules  
Or open up  
Religious schools

Indeed, crime should  
Get reprimand  
But this is cruel  
And out of hand  
And fairness we all  
Must demand

As murderers  
Simply walk free  
And every gross  
iniquity  
They turn their heads  
And they don't see

So why would sheer  
Inaccuracy  
Deserve such harsh  
Severity

With no thought of  
Some clemency  
Think of it  
It's you and me

What type of crime  
Did he commit?  
That for his whole life  
He shall sit  
While others get  
Away with it

And not too look  
At all the good  
Of care and love  
And brotherhood

To all who crossed

His humble path  
Is there no mercy  
To your wrath?

The years you mete  
To this poor soul  
With flippancy  
Sentence you dole  
Forever shall  
Your callous role  
Be long linked  
To lives you stole

Of children  
Crying mournfully  
A wife whose left  
In misery

Destroyed a whole  
Community  
As you rule with  
Impunity

When justice should  
be  
Evenhanded  
All we saw  
Is double standard

Did you want him  
To confess  
To lie and terminate  
Your mess

So a man  
You simply framed  
Would take the heat  
And you not blamed

For raids from ICE  
And agencies  
With thousands of  
Discrepancies

And when your  
shameful  
Hounding flopped  
And all the charges  
Simply dropped  
And what remained  
To you was sent  
With declarations  
Innocent

You asked yourself  
Was this well spent?

And thus you covered  
Up your track  
With everything  
Your case did lack

An outrageous  
Sentencing  
Which of bias

Sure does ring

For when Sholom  
Would not admit  
And say, "I'm guilty  
I did it!"  
You said that you  
Shall soon see fit  
To let him rot  
Inside the pit

"The truth," they said  
"Will set you free"  
That's what they said  
To you and me  
In Russia back  
In '53

And Spain and all  
The other lands  
Confess to all  
Our strange demands

And we will cut you  
A sweet deal  
For we refuse  
To seem to fail

And otherwise  
You'll rot in jail  
Not even a  
Chance for bail?  
Oh! How did our  
System fail

Oh Iowa!  
Well "that" is "there"  
Such justice cannot  
Happen here  
I'll look away  
Without a care

Has your tax  
Been filed late?  
Have you missed  
A license plate?  
Or sent a form  
Passed its due date?

I think for you  
They lie in wait  
While you hardly  
Anticipate  
A cruel and unjust  
Equal fate

I ask this of  
Both you and me  
For who is next  
I'm scared to see

For if these lines  
Continue on...  
I fear Bashevkin  
May be gone

# Rallies Across the Country for Reb Sholom Mordechai

BY YITZCHOK SINGER

Over the past week, on the eve of the sentencing of Reb Sholom Mordechai *ben* Rivka Rubashkin, the *achdus* of *Klal Yisroel* was on clear display once again as numerous gatherings were held at various locations across the United States, with *Yidden* joining together to say *Tehillim* and hear *divrei hisorerus*.

On Thursday, a *kinnus* for men and women was held in Flatbush, Brooklyn, at Mercaz Hasimcha. The program included *Tehillim* and remarks from Rav Zev Smith, noted *maggid shiur* for Irgun Shiurai Torah.

*The same night*, an inter-community *kinnus* for women and girls was held at Cong. Beth El in Boro Park, Brooklyn. The program featured remarks from Rav Moshe Tuvia Lieff, *rov* of Agudas Yisroel Bais Binyomin of Flatbush; Rav Lipa Brennan; Rav Moshe Snow; Rav Fishel Schachter, noted *maggid shiur* and *rebbe* at Yeshiva Torah Vodaas; Mrs. Miriam Swerdlov; and Mrs. Leah Rubashkin, wife of Reb Sholom Mordechai.

In New Square, over 1,000 people attended an impressive gathering at the main Skverer *bais medrash* there. The audience heard from Reb Yisroel Moshe Spitzer, deputy mayor of New Square; Rav Pinchos Lipschutz, publisher of *Yated Ne'eman*; Rav Yosef Horowitz, son-in-law of the Munkatcher Rebbe; Rav Avrohom Aharon Rubashkin, father of Reb Sholom Mordechai; Rav Tzvi Boyarsky of the Aleph Institute; and Reb Meir Simcha Rubashkin, son of Reb Shalom Mordechai. On Monday, several days before the Shikun Skver event, and Thursday night following the event, the committee of *askanim* working to assist Reb Sholom Mordechai met personally with the Skverer Rebbe and received his *bracha* and counsel.

Also on Thursday, a community *kinnus* for men and women was held in southern Florida at the Shul of Bal Harbor in Surfside. The event was chaired by Rabbi Pinny Andrusier and speakers included Rav Ephraim Eliyahu Schapiro, *rov* of Cong. Shaarei Tefillah of North Miami Beach; R' Yerachmiel Simmins, noted attorney from Monsey, NY, and legal advisor in the Rubashkin case; Rav Shalom Ber Lipskar, *rov* of the Shul of Bal Harbor; Rav Avrohom Korf; Rav Yaakov Gross, *rosh kollel* of the Miami Beach Kollel; and Shmuly Rubashkin, son of

Reb Sholom Mordechai.

Finally, Monday night, in addition to the massive Boro Park gathering reported about extensively this week, a rally was held at Moshe Ganz Hall on La Brea Avenue in Los Angeles. Speakers at that event included Rabbi Shlomo Yehuda Rechnitz, Rav Yaakov Krause of Toras Emes Academy; Rabbi Ezra Schochet; and Meir Simcha Rubashkin, son of Reb Sholom Mordechai.

At the various gatherings, Jews of all stripes and affiliations - most who do not know Reb Sholom Mordechai at all - gathered for the sole purpose of beseeching *Hakadosh Boruch Hu* to grant this tremendous *baal chessed* and *yirei Shomayim* a personal *geulah v'yeshuah* following a travesty of justice and the most trying period of his life.

Meanwhile, *Yidden* all over the world have been donating funds towards the defense of Reb Sholom Mordechai. Hundreds of thousands of dollars have poured into the Pidyon Shvuyim Fund from Jews in cities across the globe. The \$10, \$20, \$50, and \$100 contributions - and some quite larger than that - have added up and will ensure that Reb Sholom Mordechai's legal advocates can continue to labor on his behalf.

May the displays of *achdus* and *ahavas Yisroel* serve as merits for Reb Sholom Mordechai *ben* Rivka.



# 10,000 Attend Unprecedented Boro Park Rubashkin Rally

## Thousands Listen in On Teleconference

It was a rally the likes of which the Jewish world has not seen in a long time. An estimated 10,000 people gathered Monday night to express their pain over the sentencing of Sholom Mordechai Rubashkin. The thousands gathered at the Bais Yaakov of Boro Park to pour their hearts out in prayer that Sholom Mordechai *ben* Rivka be delivered from his awful plight.

The overflow assemblage heard stirring words of inspiration and sat mesmerized by the speakers. One could hear a pin drop in the multiple halls which were filled to capacity.

Traffic on the avenue was closed, as chairs were set up where trucks and cars usually drive along, with their occupants always in a rush to get somewhere. No one was in rush Monday night. Attendees sat and stood with their eyes transfixed on the screens, many wiping away tears streaming down their faces. They stopped only to offer a contribution the one of the many Klal Yisroel Fund volunteers collecting funds desperately needed in the ongoing effort to clear Sholom Mordechai's name in the courts of this land.

The *asifa* began at 9 p.m. with *Tehillim* led by the Belzer Dayan, and the event was chaired by Reb Shlomo Eliezer Meisels.

The first speaker was Rabbi Pinchos Lipschutz, publisher of *Yated Ne'eman*. He was followed by Rabbi Avrohom Schorr, *rov* of Khal Tiferes Yaakov and Rabbi Shimon Zev Meisels, *rov* of Bais Medrash Yismach Moshe in Kiryas Yoel.

The guest speaker was Mr. Nat Lewin, prominent Washington, DC, attorney who is heading the legal team formulating the Rubashkin appeal.

The final speaker was Getzel Rubashkin, son of Reb Sholom Mordechai.

The event did not end until after 12:30 a.m.

Tens of thousands watched live broadcasts of the event and listened to teleconferences on the Chazak Hotline and the Kol Mevasser News Hotline.

Mr. Lewin, renowned as a champion of justice and expert in human rights and constitutional law, presented a unique viewpoint on the travesty of justice taking place in Iowa.

Lewin related that he believes that the Rubashkin family was singled out for prosecution in part because of the campaign led against them by PETA, which he views as an assault on kosher *shechitah* in America.

The rally will be long remembered by all who were there in person and all who participated via webcasts and telephone hotlines.

The *achdus* was overwhelming. Jews of all stripes came together, on behalf of someone they don't know, who lived in a small town halfway across the country. A kind, generous, good person, who was sentenced to 27 years for crimes he didn't commit. A man who had just received a sentence even harsher than the sentence requested by overzealous prosecutors. A man who wasn't permitted to present a proper defense in front of a judge who threw neutrality out the window even before she began hearing the case.

Their hearts were broken and their faces sullen, but in their hearts they trust in Hashem that truth will be permitted to emerge and this terrible *gezeirah* will be history in the near future.





# Free Sholom Rubashkin!

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BY PROFESSOR WILLIAM L. ANDERSON

*Note: The following article was written prior to the sentencing of Reb Sholom Mordechai Rubashkin on Tuesday.*

This week, Sholom Rubashkin, who was the vice-president of what was once the largest kosher meat processing supplier in the world, will be sentenced to federal prison for “financial fraud.” Prosecutors will ask for essentially a life sentence, while a lot of other people, including a number of former U.S. attorneys general, are asking for leniency.

I will go against all of them. Sholom Rubashkin, in my view, does not need “leniency.” He needs to be freed, period, for the man is not a criminal, which is more than I can say for the people who hounded and prosecuted him and destroyed his business, *glatt* kosher Agriprocessors of Postville, Iowa. Let me begin.

Rubashkin is a Hasidic Jew, his family having fled the U.S.S.R. after the Nazi invasion. They came to the United States and set up a butcher shop in New York City. After marriage in 1981, he and his new bride moved to Atlanta on *shlichus* to do *kiruv* (Jewish outreach). That same year, Rubashkin’s father started a kosher meat processing business in Postville to better enable Jews living outside of main Jewish centers to be able to obtain kosher meat.

Before *glatt* kosher Agriprocessors began to expand its business, Jewish families could only purchase kosher meat from small butchers and specialty stores that catered to Jews. This made things more difficult for Jewish families who did not live near these kinds of stores, but by expanding the amount of kosher meat for sale, the firm was able to bring kosher meat to regular grocery stores, which was not a small development for Jewish families.

Soon, Rubashkin joined his father’s company and the family moved to Pottsville. As the Jewish daily *Forward* declared (more about the *Forward* later), the Rubashkins literally changed how Jewish people in the United States eat. Like many others who practice Hasidism, the Rubashkins were generous to people in the community, both Jews and non-Jews, and generated a lot of goodwill as a major employer in that area.

Unfortunately, being successful in the United States these days does not garner praise; it makes one a target of people who specialize in promoting strife and envy. In this age of envy and dominance by the state, it seems that the only entrepreneurship that is acceptable is political entrepreneurship, and the Rubashkins did not fall into that category. (Public choice economists call such political entrepreneurship “rent seeking.”) The Rubashkins made their



*The irony is that the feds are calling this a huge “fraud,”  
but the only people really being defrauded  
are the victims of this federal assault.*

living from processing meat, and that meant slaughtering animals according to Jewish dietary laws that are thousands of years old, and that attracted the attention of the People for the Ethical Treatment of Animals (PETA).

First, PETA charged in magazine articles that the Rubashkin plant was a veritable house of horrors, something out of an Upton Sinclair novel. (Notice, I say that *The Jungle* is a novel, since it was written as socialist propaganda and had as much veracity as did PETA's charges.) The organization charged that the place was a filthy place with unsanitary (at best) facilities where animals were tortured and worse, and filed a complaint with the U.S. Department of Agriculture.

Second, while it was clear that PETA's charges were false, nonetheless, the organization managed to put the kosher meat facility in the public eye, thus making it a bigger target for federal authorities. The next organization to go after Agriprocessors was the United Food and Commercial Workers Union, which had been unsuccessful in unionizing the plant. Part of the problem was its workforce, and anyone who has been near a meat or chicken processing plant will know that a lot of immigrants from Mexico and Central America, as well as Asian immigrants, work there.

Work in these plants is hard and low-paying, but low-skilled workers nonetheless are able to band together and make enough money to live in the United States and send money back home to relatives. However, they clearly were not candidates for union membership, which not only enraged the union leadership, but also caught the attention of liberal Jewish groups that don't much care for the ultra-Orthodox Hasidim, including the publishers of the Jewish daily *Forward*.

The *Forward* ran a number of articles (sourced by the UFCW, of course) that claimed Rubashkin was hiring not only illegal immigrants, but also exploiting child labor. At the same time, political conservatives such as Wesley Pruden of the Washington Times were mounting a huge campaign against illegal immigration, and the Bush administration decided to make an example out of Agriprocessors and staged an extremely public raid on the facilities in 2008.

Keep in mind that the government went full-scale paramilitary on its raid, complete with a Blackhawk helicopter and heavily-armed police carrying submachine guns and other weapons. The raid was no surprise. In fact, days earlier, Rubashkin knew the raid was coming and personally contacted the federal authorities and promised to cooperate with them.

Not surprisingly, the Bush administration did things its way, and its way was to be as brutal as possible. More than 300 workers were rounded up, denied legal representation, and forced to plead guilty to a number of charges. They were imprisoned for up to five months and then deported. The feds then seized all of the company's records and went on a fishing expedition.

Ultimately, the government charged Rubashkin with financial fraud, claiming that the company had faked invoices and other financial documents in order to inflate its financial assets in order to qualify for larger loan amounts from First Bank of St. Louis. In fact, Rubashkin's firm had overstated its revenues, but that is much more common than one might think and generally does not land one in a criminal trial.

I will give an example, a personal example, that most readers can understand. Last year, we refinanced our mortgage, and an appraiser came to our house to see if we would qualify for the best deals. There was a “magic” number for our house's value, and he asked me at least twice if I believed that our place qualified.

My answer was always the same: “I have no idea. That is up to you.” Now, I was hoping that he would see to it that our house met the so-called value threshold, although I had serious doubts that we actually could sell our house on the open market at that price, and I was not going to say anything that legally could get me into trouble later on. In fact, during the refinancing boom of the last decade, appraisers generally overstated the market value of houses so that the owners or perspective buyers could qualify for certain loans.

Was this fraud? Legally, it was. How far did the fraud go, and who perpetrated it? It would determine who the feds wished to target before that decision could be made. For example, if the feds wished to target the homeowner, they can get the appraiser to testify that the homeowner lied to them, and, no doubt, the bankers would testify that they never would have approved the jumbo-sized loan had not the homeowner or perspective buyer defrauded them.

That would be a lie, but federal prosecutors regularly suborn perjury, something I have documented in dozens of articles over the years. For that matter, if the feds wished to nail the bankers or the appraisers, they would “convince” the others in that chain to testify to whatever would be the most damning testimony. It would not matter as to what really happened, as federal prosecutors famously create their own reality, or at least a reality that the courts, the political classes, and the media will swallow.

In the case of Agriprocessors, the loan was a revolving \$35 million payout that enabled the company to keep a steady cash flow, meet payroll, and pay its bills. The firm was not in arrears in payment, and all indications were that the company would be able to meet its obligations to the bank.

Because the federal courts have eviscerated the ancient doctrine of *mens rea*, which means that prosecutors needed to prove that a person charged intended to commit a crime, intent to defraud no longer matters. In fact, one can argue that Agriprocessors did not “defraud” First Bank at all, and there are indications that the bank knew that Agriprocessors was overstating its revenues and underestimating its costs (something the federal government

does every year, but it never results in anyone's arrest), but did not care because its good customer paid its bills on time. The company was profitable, and so was the bank.

That was not all, according to the feds. Apparently, certain suppliers of cattle and other things are required by a little-known (and almost never enforced) law from the 1920s to be paid within 24 hours. No one had complained about the late payments, to my knowledge. Instead, it was yet another of those "legal technicalities" that federal prosecutors use when they want to convict someone on something.

I won't dwell on Sholom Rubashkin's trial, except to say that there were some highly-prejudicial aspects that should be mentioned. Certainly, Hasidim are to people in Iowa what Old Order Amish might be to people from New York City: alien creatures from outer space. Hasidic Jews live a separate life, although it is clear to many people in Postville that Rubashkin, his family, and his company were heroes and important to the community and its well-being.

None of that mattered to the jury located in Sioux Falls, South Dakota, where the trial was held, and federal jurors quickly returned guilty verdicts. According to the New York Times, the damning testimony came when former Agriprocessors employees testified that Mr. Rubashkin had personally directed them to create false invoices to show First Bank, which is based in St. Louis, that the plant had more money flowing in than it really did.

Knowing how federal prosecutors operate, I have no idea if any of those witnesses told the truth. Federal prosecutors are well-known for suborning perjury and are especially known to do it in high-profile cases, such as this one. One can be sure that the people who testified was told that if they did not testify according to a certain script, the feds would levy fraud charges against them, too. (If the reader wishes to gain some insight into how federal prosecutors lie in order to gain testimony they want, read what the feds did in the trial of Jeffrey Skilling of Enron. Because no federal prosecutor ever has to worry about being charged with suborning perjury, one can bet that this kind of behavior is the norm, not the exception, among U.S. attorneys.)

On another front, the State of Iowa originally charged Rubashkin with more than 9,000 counts of child labor law violations and he recently stood trial. Even after prosecutors amended the charges to just 83, they could not win a single conviction. (While state courts are known to be corrupt, unlike the federal courts, evidence generally matters in state trials.)

Unfortunately, there is more. After the feds originally charged Rubashkin with fraud charges, the prosecutors argued that he was a "flight risk" and should be imprisoned. Their reasoning? Rubashkin is a Jew and the nation of Israel grants expedited citizenship to Jews around the world. They further stretched the story by pointing out that Rubashkin kept about \$20,000 in cash, as well as his passports and other documents in a lockbox in his home.

(There are two aspects to that story. First, most of us keep some cash and papers in lockboxes, and we are among that "criminal" crowd that likes to keep these things in a single place just in case we need them. Second, one of the Rubashkin children is autistic, and the family knew they needed to keep certain papers secure in a place where that child would not be able to find and disturb or scatter them, not realizing what they were.) Obviously, this is something that would affect literally every Jew charged with a crime, given that the vast majority of them are considered to be "citizens" of Israel, even if very, very few of them actually would do such a thing. (For that matter, anyone with a passport and cash would be considered a "flight risk" to somewhere, given those standards.)

There is another, more troubling, aspect of this case to me, and it goes to the heart of federal criminal law and how it is enforced.

Bernie Madoff was guilty of fraud; he ran a Ponzi scheme, and no Ponzi scheme - including those run by the government - can survive over time. Madoff knew that sooner or later, his investors would lose their money, and that is exactly what happened.

Fraud goes to intent. One defrauds someone else if one purposely charts a course of action that will negatively affect the other party, while promising to give that party positive results. For example, if I borrow money in order to start a business, but then use those funds instead for a Caribbean cruise, that is fraud.

However, Sholom Rubashkin intended to pay back his loans, as he always had done, and he intended his business to continue to provide kosher meat to people who wanted to buy it. He had no plans to abscond with the money he borrowed, with people showing up to work one day and finding the place padlocked and Rubashkin and his family on a secret cruise to Israel.

There was no fraud in the historic sense of the word. If there was misrepresentation of his funds, that was a civil and contractual matter between Agriprocessors and First Bank, and, let's face it, had the feds not invaded his plant and shut down the operation, Agriprocessors still would be in operation today and most of us never would have heard of Sholom Rubashkin.

To understand federal criminal law today, one must remember that it is something far removed from the roots of what criminal law used to be in the United States. In the past, a crime designated real harm done by one party to another, whether it was robbery, murder, assault, or something in which it was obvious that one party clearly injured another.

Today, however, most federal criminal law falls into the "public welfare" category, in which a person charged has failed to perform a certain so-called public duty, or has failed to follow a set of rules which often are arbitrarily set up and even more arbitrarily administered. Not surprisingly, we have seen federal criminal law put to an increasing number of political applications. The legal language might be similar to what it was in the past, but now it is describing certain things that might have political meaning, but describe simple disobedience from the federally-prescribed way of doing things.

The irony is that the feds are calling this a huge "fraud," but the only people really being defrauded are the victims of this federal assault. Let us look at the real damage that the feds have inflicted upon people:

A thriving business has been shut down, and hundreds of people now are out of work, and a town is reeling economically and financially;

A woman will be deprived of her husband for many years, and a number of children will not have a father;

First Bank was heavily damaged by this action in a way that never would have been the case had the feds not decided to "rescue" the bank from its "fraudulent client;"

Kosher meat is more expensive and much less available than it was before the government destroyed Agriprocessors.

No doubt, federal authorities consider this whole affair to be a great victory, and they are telling the rest of us how they are protecting us from fraudsters and exploiters. In truth, the real fraudsters and exploiters here are the federal agencies that took part in this action, and the various groups that were cheerleaders for it.

Literally, thousands of people were harmed by what the government did. However, no one from the federal government lost a dime.

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# Perfidy in Iowa

## ACT II

BY DEBBIE MAIMON

In 2007, Agriprocessors was a flourishing family-owned business doing over \$300 million in annual sales, renowned for the quality and affordability of its kosher products and its largesse to the American Jewish community.

Just one year later, the Postville meat-packing plant that spurred the economic growth and prosperity of the entire neighboring region was in its death throes, its owners driven out of business and into financial ruin by federal officials.

Today, after two years of extraordinarily relentless prosecution, its most visible representative, Sholom Mordechai Rubashkin, is facing what amounts to a life sentence. Rank and file Americans and top legal opinions have decried the sentence as outrageous and grossly disproportionate. Hopes are strong that an appeal will overturn the conviction.

Still, the human wreckage caused by out-of-control prosecutors bolstered by biased rulings from a judge who appeared to have predetermined the verdict can never be fully reversed.

The complex story of how envy, prejudice, greed, politics and ambition steamrolled this perversion of justice will one day be told. But for now, the most incriminating chapters have been kept tightly off limits to the public. Media pronouncements by government officials continue to pump out a spin aimed at diverting the public's attention from a case of justice run amok.

### SHABBY EFFORT TO SPIN THE STORY

A recent guest essay in the *Des Moines Register* by Iowa U.S. attorney Stephanie Rose is characteristic of this effort to distract attention from the rampant injustice of Sholom Mordechai's sentence which began with the infamous ICE raid.

In a shabby attempt at rewriting a brutal assault that shattered a town and tore apart families, Rose asks readers to believe that the raid was really a benign action aimed at rescuing immigrants "who lived in fear," as the result of employers "who preyed on their workers."

The intimidating military helicopter hovering over the roofs of Postville homes was merely in charge of "medical evacuation," should that have been necessary, she writes. In her whitewash of events, the men and women who were arrested, denied legal representation, and forced to plead guilty to a number of charges, before being either jailed or deported, had no objection to the way they were treated.

After all, they were provided with "meals, TV, telephones and other recreational activities" during their detainment. Hence, all were "accepting and compliant," Rose wants us to believe.

### WHITEWASH FAILS TO COVER UP

As is often the case with whitewash, the underlying color shows through. The author goes on to explain why "the enforcement action

was critical to the successful prosecution of Rubashkin and other management employees at Agriprocessors."

"None of these cases could have been effectively prosecuted if the illegal workers had not been arrested and detained," she says. "Not a single illegal worker who wasn't arrested came forward to assist law enforcement."

An extraordinary admission. Rose is acknowledging that federal officials arrested and indicted people to force them into ratting on Agriprocessors' management.

But what of all those who were supposedly being abused, exploited and subjected to all kinds of indignities at Agriprocessors, as the government's affidavit claimed? How about all those living in fear of "those who preyed upon them," in Rose's words? With federal investigators falling over themselves in an effort to procure such testimony, even proffering incentives such as U-visas, wouldn't a victim of abuse naturally want to tell his or her story?

But no, not a single illegal worker who wasn't arrested came forward to assist law enforcement.

"If they had this right, the feds would not bother to try to reposition their 2008 fiasco, as the "Kinder and Gentler Ice Capades," said Mr. Aaron Goldsmith of Postville, a former city council member and co-author of the book, *Postville U.S.A.: Surviving Diversity in Small-Town America*.

Goldsmith was interviewed by an Iowa TV reporter last week. Reacting to the 27-year prison sentence, Goldsmith said, "This is the second raid on Postville. The first one destroyed a community. And now, by giving Sholom Rubashkin a sentence that has absolutely no relation to the truth, they've reopened the wounds. This second action devastated our perception of equal justice for all."

### "AS BRUTAL AS POSSIBLE..."

"Let's not cloud the facts," writes noted author and economist William Anderson in a recent column. "The Bush administration decided to make an example out of Agriprocessors... Keep in mind that the government went full-scale paramilitary on its raid, complete with a Blackhawk helicopter, and heavily-armed police carrying submachine guns and other weapons.

"The raid was no surprise; in fact, days earlier, Rubashkin knew the raid was coming and personally contacted the federal authorities and promised to cooperate with them.

"Not surprisingly, the Bush administration did things *its* way, and its way was to be as brutal as possible." After arresting more than 300, imprisoning them for up to five months and deporting them... the feds then seized all of the company's records and went on a fishing expedition."

## NAZIS, RACISTS AND ZEALOTS?

Perhaps the biggest giveaway that the government is taking heat from Judge Reade's imposition of a 27-year sentence is Stephanie Rose's effort to move that issue off center by lamenting the "concerted campaign that emerged to paint prosecutors as racists, Nazis and zealots."

As though the real issue is not that Sholom Mordechai's right to fair and equal treatment before the law has been trampled, but that Rubashkin supporters are fanatics out to brand law enforcement as Nazis for simply carrying out their duty.

## GEZTEL'S TESTIMONY EXPOSED LIES

The most outrageous of Rose's claims comes last. She accuses Sholom Mordechai of lining his pockets with over a million dollars of Agriprocessors funds that were non-payroll, over and above his salary. Rose repeats lies that the prosecutor incorporated into his sentencing memorandum and that Judge Linda Reade used to escalate Sholom Mordechai's sentence last week.

These lies were exposed earlier by Getzel Rubashkin, a son of Sholom Mordechai, during the April sentencing hearings. Getzel produced evidence in court that Sholom Mordechai had taken out various personal loans for Agriprocessors and had cashed in life insurance policies to help the company through financial crunches. These funds totaled almost a million dollars.

He exposed the shocking incompetence of government testimony that claimed to summarize the transactions in Sholom Mordechai's bank accounts, but offered the court only one side of the picture - Agriprocessors monies deposited *into* the Rubashkin account.

No record of transactions were offered by the government of the flip side: the funds at an earlier time frame being paid *out of* Sholom Mordechai's account *to* Agriprocessors - namely, the large loans he had made to the company during financial crises.

Getzel also collapsed the prosecutor's unfounded charges that the renovations and extension of the Rubashkin home had been paid for by Agriprocessors. He produced a notarized letter from bank officials documenting that the mortgage had come from a personal bank loan to Sholom Mordechai.

He also showed how large *tzedakah* donations accounted for other monies that traveled from Sholom Mordechai's personal accounts, many of them in the form of checks to *tzedakah* organizations that came from his and Agriprocessors' joint *tzedakah* account.

Countering claims that his father had improperly pocketed non-payroll funds for his own use, Getzel highlighted dozens of Sholom Mordechai's cancelled checks on a screen in the courtroom, one after another made out to various charities in large amounts of \$1,800 and more.

Observers couldn't help but take note of the extraordinary generosity of the check-writer who often added personal notes and wishes for "*bracha vehatzlacha*" to the recipients of the donations.

Yet, this comprehensive information was totally ignored by the court at the April sentencing hearing. Despite the corrected financial picture of Sholom Mordechai's personal accounts, backed by copious documentation, both the prosecutor and Judge Reade chose to totally dismiss the evidence.

Echoing the prosecutor's false charges in her sentencing order, she cast Sholom Mordechai as a common thief who helped himself illegally to the company's funds. Marching in lock-step with these ludicrous claims, US Attorney Rose outrageously parroted these accusations in her article:

"Evidence at trial showed that Rubashkin funneled about \$1.5 million from Agriprocessors' accounts to his personal bank accounts. Hundreds of thousands of those dollars paid his personal credit card bills, remodeled his home, paid his taxes, paid his personal mortgage, bought jewelry and silver, and made his car payments."

## CHALLENGING THE U.S. ATTORNEY TO A PUBLIC DEBATE

Noting that Rose used her guest column in the *Des Moines Register* to regurgitate old lies and invent new ones, appellate lawyer Nathan Lewin challenged her to a public debate.

"We now challenge US Attorney Rose to debate Mr. Lewin on the propriety of the prosecution in a public session, hopefully televised, in Des Moines at a mutually agreeable date with a mutually agreed moderator," Lewin and co-counsel Guy Cook wrote in an open letter.

Few expect Rose to rise to the challenge.

"A lot of people, including a number of former US attorneys general, called for leniency and are outraged by this sentence that was motivated more by politics and not by the law," wrote William Anderson, mentioned above.

"I will go against all of them. Sholom Rubashkin, in my view, does not need 'leniency.' He needs to be freed, period, for the man is not a criminal, which is more than I can say for the people who hounded and prosecuted him and destroyed his business and an entire community."



# Global Response to the Sentencing of Sholom Mordechai Rubashkin

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COMPILED BY YITZCHOK SINGER

**I am the judge, I am in charge, I can read.**

*U. S. District Court Judge Linda R. Reade in response to a former attorney general who called her personally and told her that he was involved in legislating the sentencing guideline and “did not have this sort of case in mind.”*

**This sentence is inconsistent with the overwhelming view of the legal community, including six former U.S. attorneys general, who have all said a first-time, non-violent offense does not warrant a multi-decade sentence. The court’s sentence today is even more than prosecutors asked for, which is a very disturbing development.**

*Defense attorney and former presidential candidate Bob Barr, June 22*

**I can’t stand before you today with pride (as a former US prosecutor), but with a broken heart. I stand before you with hope because this document will not stand. It is so excessive...that it cannot stand.**

*Ibid.*

**While this may appear to be the end of the case, it is not. It is indeed the beginning of the case. It’s round one, if you will.**

*Rubashkin attorney Guy Cook, June 22*

**A fresh set of judges with a fresh set of eyes will look at the case. Let me assure you that we will seek justice for Sholom.**

*Ibid.*

**I was the lawyer for the state case in Waterloo. I don’t think I need to tell you how that case came out. When Sholom Rubashkin received a fair trial...he was acquitted.**

*Rubashkin attorney Mark Weinhardt, June 22*

**Sholom’s faith in G-d is unshaken. Sholom has found over the last few months that he has hundreds of thousands of supporters who participated in various events all over the country.**

*Ibid.*

**[The sentence] is more than Jeffrey Skilling of Enron got, more than Bernard Evers of WorldCom got, and more than many other multimillion-dollar fraud cases...[where] the defendant received a lesser amount.**

*Ibid.*

**Don’t cry. They should be crying for what they’re doing to us.**

*Sholom Mordechai Rubashkin to his sister, Mrs. Gittel Goldman, who was crying when she saw her brother enter the courthouse last week wearing an orange jumpsuit, flanked by two deputies, June 22*

**The support you give us is the oxygen that we breathe.**

*Mrs. Leah Rubashkin, wife of Sholom Mordechai, at the press conference following the sentencing, addressing the tens of thousands of supporters who have attended Rubashki rallies across the country, June 22*

**He’s very calm and very focused.**

*Mrs. Leah Rubashkin describing her husband’s state of mind following the announcement of the sentence*

**Today a dagger was thrust into our hearts.**

*Rabbi Pinchos Lipschutz, publisher of Yated Ne'eman, at the recent Boro Park Rubashkin rally following the sentencing announcement, June 21*

**The unusually severe sentence of 27 years in prison for Sholom Rubashkin is a victory for a prosecution that pursued, from the outset, a win-at-all-costs strategy. But the success comes at a price, and not just to the 50-year-old man now facing a virtual life sentence, his wife and 10 children. The government's handling of this case has sullied our justice system.**

*Rabbi Menachem Genack, chief executive officer of OU Kosher, which provided kosher certification for the Agriprocessors plant in Postville, Gazette Online, June 25*

**One recalls the prosecution's opening salvo on the Agriprocessors kosher meatpacking plant in Postville in May 2008 - the shock-and-awe raid, replete with a Black Hawk helicopter, guns and wholesale arrests. The resources used were far disproportionate to what should have been necessary for an adequate pursuit of their investigation.**

*Ibid.*

**The prosecution remained punitive throughout the judicial process. A sale of the business, which the Rubashkin family sought after the indictment, would have alleviated much of the bank's losses. But the government took steps that effectively deterred any viable buyer... Further, the government took the remarkable position of threatening forfeiture and seizure of the company's assets. This action further diminished the value of the company and exacerbated the bank's loss. Since sentencing is informed, in part, by the magnitude of loss, one must conclude that the prosecution's entanglement in the sale served, ultimately, to increase length of Sholom Rubashkin's sentence.**

*Ibid.*

**The Iowa Attorney General and the U.S. attorney have destroyed a company, shattered the lives of hundreds of families and eviscerated the economy of a region. Justice has not been served. It has been diminished.**

*Ibid.*

**A sentence of 27 years is beyond excessive, it is patently offensive - especially for a nonviolent crime in a case where the defendant had no prior criminal record.**

*Noted criminal attorney Ben Brafman, The Jewish Week*

**[A judge is required to impose a] reasonable sentence that is not greater than necessary. My expectation is that this sentence will not pass appellate review and Mr. Rubashkin's case will be sent back for re-sentencing before a different judge.**

*Ibid.*

**There's a concept in sports known as "piling on." This situation could fairly be described as piling on.**

*James A. Cohen, associate professor of law at Fordham University School of Law, describing the 27-year sentence, The Jewish Week*

**[Judge Linda Reade is] the second-worst sentencer in the country, and lawyers who have appeared before her said she is cruel.**

*Rubashkin attorney Nathan Lewin*

**Tantamount to life.**

*Lewin describing the 27-year sentence for a man who turned 50 in October*

**...the sentencing of Sholom Rubashkin to 27 years in prison for bank fraud is troubling. The lengthy sentence with no chance of parole, handed down in federal court on June 22, is too harsh a punishment for a nonviolent crime committed by a man without a criminal record.**

*Editorial in The Forward, July 2. The newspaper, together with PETA and the unions, spent years besmirching the Rubashkins, leading to the downfall of Agriprocessors.*

**...it is difficult not to feel a twinge of sorrow for a man who faces a prison term longer than the one received by the chief executive who helped drive Enron into the ground, wiping out thousands of jobs, more than \$60 billion in market value and more than \$2 billion in pension plans.**

**This is a blatant imbalance of justice. The doctrine of proportionality in sentencing seeks to limit arbitrary and capricious punishment in order to ensure that offenders are punished according to their ‘just dessert,’ and this is light years away from proportional sentencing.**

*Rabbi Yisroel Yaakov Lichtenstein, Av Bais Din of the Federation of Synagogues in London and member of the Presidium of the Rabbinical Centre of Europe, June 23*

**Already at the bail stage we saw an outrageous bias against Rubashkin because he was a religious Jew. This sentence merely compounds our earlier fears and smacks of sinister intent and utterly undermines the very foundations of fair justice for all upon which the United States of America has always taken immense pride.**

*Rabbi Yitzchak Schochet, rabbi of the Mill Hill Synagogue in London*

**She finally revealed her cards. She has a different sense of justice. I don’t think she is an anti-Semite, I just think she’s a bad judge. And she’s now trying to vindicate her earlier bad judgments by imposing such a harsh sentence.**

*Rabbi Aaron Goldsmith on Judge Linda Reade*

[U.S. Attorney Stephanie] Rose claims the accusations against her office are “vicious and false” and “ill-informed.” But there are many critical accusations she has failed to answer.

- Was Rubashkin handcuffed and arrested in October 2008 only to generate publicity? The routine procedure is to tell the defendant’s lawyer to bring the client in to plead to the charge.

- Why was Rubashkin imprisoned for 76 days before trial on her office’s bogus claim he could flee to Israel and would be immune from extradition under Israel’s “Law of Return”?

- Were the charges against Rubashkin deliberately multiplied by the office through an unprecedented seven superseding indictments to 163 counts to overwhelm the media, the public and the jury?

- Why was a 1921 law that has never before in U.S. history been used for criminal prosecution invoked when the charges were based on full payments made by Rubashkin 10 days late?

- Did the office prevent sale of the business to any purchaser who might employ any member of the Rubashkin family in a managerial capacity, thereby making a sale of the business virtually impossible?

A consensus of the legal community, including six former U.S. attorneys general, both liberal and conservative, has objected to Rose’s overzealousness in her sentencing recommendation.

We trust Rose will debate publicly on these important questions about the propriety of her office’s conduct and tactics.

*Rubashkin attorneys Nathan Lewin and Guy Cook, Des Moines Register*

**This is a dark day.**

It is a dark day for American justice. Judge Reade has ignored not only the expert opinion of six former United States Attorneys General and numerous other high-ranking former Justice Department officials that Mr. Rubashkin’s sentence should be significantly less than that recommended by the U.S. Attorney; she has imposed a sentence even more draconian than what the U.S. Attorney sought. There is something very wrong with this picture.

It is a dark day, as well, for American Jewry. While none of us condones any wrongdoing by Mr. Rubashkin, the extraordinary severity of the sentence imposed upon one of our Jewish brothers sends chills of shock and apprehension down our collective spine. This is a horrifying development.

*Agudath Israel of America Executive Vice President Rabbi Chaim Dovid Zwiebel*

Lawyers often speak of a “trial penalty,” and there’s no doubt Rubashkin paid a high price for testifying in his own defense. He must have known it was coming when prosecutors obtained a 163-count indictment against him: Clearly, the government was throwing the book at him. Charging defendants with so many crimes increases the potential punishment, and provides a huge incentive for them to cut a deal. The government needs to wield that club — piling on charges — with great discretion.

Also helpful would be mandatory minimum sentences for serious economic crimes, to prevent cooperating witnesses from getting off with relative wrist-slaps. We’re also dubious about basing sentences on economic loss calculations; in many complex white-collar cases, the numbers are speculative and lead to uneven sentencing results.

Attorney General Eric Holder Jr. last month issued new guidelines for charging and sentencing that address “unwarranted disparities.” But the plea to his prosecutors for consistency goes only so far... Jawboning isn’t reform.

*The Chicago Tribune, in an editorial, June 21*

# Rubashkin Achdus Goes Global

BY DEBBIE MAIMON

Close to a thousand women packed a hall in Stamford Hill, London, last Sunday night to hear Mrs. Chaya Gourarie, a sister of Sholom Mordechai Rubashkin, share deeply personal aspects of the case and an uplifting message of hope and faith.

Sponsored by Bais Brocha, an *aim veyeled* organization servicing women from all parts of England, the event drew an extraordinary number of participants, according to key organizer Mrs. Menucha Weiss.

Mrs. Weiss' parents, Mr. and Mrs. Englander of London, founded Bais Brocha in memory of their mother, Mrs. Brocha Berger *a"v*. The Sunday night event was part of a biennial program that normally draws several hundred women. The overflow, standing-room-only crowd that came to hear Mrs. Gourarie took the organizers by surprise.

"The numbers far exceeded what we normally get," Mrs. Weiss told the *Yated*.

"Sholom Rubashkin has been in the headlines," she added. "People read about him in the papers we get from America. There's a lot of sympathy here. People want to hear how he and his family are coping."

Mrs. Gourarie, who flew in from Postville, Iowa, riveted listeners with an intimate account of a nightmarish saga that has shattered her brother's life and thrown his family into turmoil.

She described how Sholom Mordechai had been targeted by forces bent on destroying a kosher slaughtering plant, and how government officials had singled him out for unusually cruel and harsh treatment.

They took minor infractions by the company and artificially inflated them into a "massive fraud," she said. Laws never used to prosecute anyone before were utilized to convict Sholom Mordechai and increase his punishment.

The persecution culminated in a 27-year sentence for offenses for which others in similar situations have been given very short prison terms, or have merely paid a fine.

"How ironic," said the speaker, "that as America celebrates Independence Day on July 4<sup>th</sup>, a Jew is being wrongly deprived of his liberty by officials who manipulated the law to destroy him."

## A BITTER ODYSSEY

Mrs. Gourarie revisited the beginning of the bitter odyssey, marked by trumped-up charges about drugs, weapons and worker abuse inside Agriprocessors, and the government-staged media circus photographing Sholom Mordechai in leg shackles and handcuffs.

She spoke of how he was denied bail for two and a half months before trial, deemed a "flight risk" because he is Jewish and the State of Israel has a "Law of Return." The unfair denial of bail continued for seven months after the trial until his sentence was imposed two weeks ago.

Sholom Mordechai was stripped of all his property and assets so that his family became impoverished and he was left with no money to afford legal counsel, the audience learned.

"The person who had once taken care of the *tzorchei tzibbur* of a great portion of Postville, who had quietly distributed millions in *tzedakah* to *mosdos* and people in all kinds of trouble, was now in dire straits himself," Mrs. Gourarie said.

"If not for a modern-day Pinchos, who like the Pinchos in this week's *parsha* rose up to prevent a disaster, Sholom Mordechai would have been doomed, *chas vesholom*," she noted.

"Rabbi Pinchos Lipschutz, who had never met my brother, believed in his innocence and threw himself into preventing a *mageifah*. He became Sholom Mordechai's friend and most devoted advocate. He rallied others to the cause of defending a Jew who was being scapegoated."

The growing support of thousands of Jews has been the Rubashkin family's lifeline, Mrs. Gourarie said. How fitting, she added, for someone like Sholom Mordechai, who sees the *tayerekeit* in every *Yid*, and who never made distinctions between Jews, to be the catalyst for *Yidden* coming together *b'achdus*.

## 'NOT AN AMERICAN PROBLEM'

The audience heard about a "show trial" in which improper tactics by the prosecution received the judge's sanction. They learned of the harassment to which Sholom Mordechai has been subjected by certain prison authorities and inmates, for clinging to the *mitzvah* of *tzitzis*, and for insisting on wearing a *yarmulka*, and *davening* with *tallis* and *tefillin*.

One of the participants in the Bais Brocha event, speaking by phone to *Yated*, described the growing sense she and others had that Sholom Mordechai is not "an American problem that we in England can simply read about and turn the page.

"We began to see the issue with a broader lens. This case has implications for Jews everywhere. The world is watching as a Jew in a free country is being persecuted, under the pretense of legality. And this is happening in America, the land of civil rights!"

## SUICIDE WATCH

Mrs. Gourarie described an extraordinary series of events that followed Sholom Mordechai's sentencing two weeks ago.

Prison guards removed Sholom Mordechai from his cell, and following protocol when a defendant is sentenced to a lengthy prison term, placed him under "suicide watch." He was stripped of his clothing and given nothing but a thin sheet to cover himself, with a guard posted in the cell to monitor him.

He was denied access to a phone. He had been whisked away

by prison guards immediately after the sentence was passed down, without being granted even a moment to say a few words to his family. Completely in the dark about the bizarre developments that ensued at the prison, the family grew intensely worried when many hours passed without any word from Sholom Mordechai.

When a call finally came from Linn County Prison, Leah Rubashkin rushed to answer. But it wasn't Sholom Mordechai. It was one of his cellmates who had overheard an exchange by prison guards about where they were taking Sholom Mordechai.

"They're putting him on suicide watch," the inmate said. "He would want you to know."

"Suicide watch!" Leah froze.

"Don't worry. It's standard. He seemed fine. No need to be worried. He was dancing in the cell when he first came back from court," the inmate said.

"Dancing?"

"Yeah, like he had just gotten good news. I said to him, 'You crazy or something?' He didn't answer. He just danced a few more steps."

Later, released from "suicide watch" and returned to his cell, Sholom Mordechai told his family that just two weeks earlier, following his dramatic acquittal of state-labor charges, he had been so elated after returning from court, he had danced in his cell.

"And now, here I was coming back to this same cell, but in such a different state of mind. I had to remind myself that everything comes from the same Source. The acquittal... the sentence... It's the same *Ribono Shel Olam*. He's in charge. I know he'll get me through this."

"But your cellmate said you were dancing...?" Mrs. Gourarie asked.

He was quiet for a moment. "Yes... it's hard to explain. My *ne-shama* just felt it had to."

### THE TOOLS TO SURVIVE

In the bleakness of the prison, where the frosted-over windows block one's view of the trees and sky, and garish lighting wipes out all sense of time, "Sholom Mordechai celebrates *Shabbos* with a *simcha* that many of us who live in freedom don't experience," Mrs. Gourarie told listeners.

She quoted from a letter she had received from an inmate with whom Sholom Mordechai has shared a cell in the Dubuque prison, before being transferred to Linn County.

The letter was in response to one Mrs. Gourarie had written thanking this cellmate, a non-Jew, for befriending Sholom Mordechai and protecting him from a second cellmate who ridiculed and taunted him when he *davened*.

"Leave him alone. Let him pray if he wants to!" the man would growl at the hostile cellmate. "I wish I knew how to pray. I wish I was a believer."

"I'm actually envious of your brother," the letter writer wrote to Mrs. Gourarie. "He has a wife he can pour his heart out to. His family is devoted to him. My wife divorced me when I came to prison. My kids wrote me off. But there's something else about him I envy..."

"You should see him when he's getting ready for '*Shabbos*' before the sun sets on Friday," the letter went on. "He sings a little song and even dances to it. I even know the song myself by now. *Shabbos is coming, we're so happy....*"

Mrs. Gourarie went on to describe a phone conversation she had with Sholom Mordechai when he called from prison one *Erev Shabbos* to wish her a good *Shabbos*.

"You sound upbeat, but how are you really?" she asked him, knowing he takes pains to hide his *tzaar* from his family.

"I'm fine, *boruch Hashem*. I'm getting ready for *Shabbos*."

"What are you doing?"

"Well, I just took a shower and laid out my new *Shabbos* clothes," he said.

"*Shabbos* clothes? What are you talking about, Sholom Mordechai?"

He had received a clean set of prison clothes that day, he told his sister. And it made him happy that he had something fresh and clean for *Shabbos*. Those were his 'new *Shabbos* clothes.'

"For such a warm, *hartzige Yid*, being in a prison in such an environment *Shabbos* after *Shabbos* with no one to talk to... how could it not be *gehenom*?" Mrs. Gourarie wondered. "Without *bitachon*, it wouldn't even be survivable." She said her brother's faith strengthens the entire family.

Audience reaction to the talk was electrified. Instead of concluding after the 40 minutes she had been allotted, Mrs. Gourarie was urged to continue.

"She was not only giving us the inside story on the Rubashkin case, she was talking in general about faith in times of adversity. She was infusing the room with *chizuk*," said one of the participants, Mrs. Bassie Itzinger. "She told us, 'If I didn't believe with all my heart that the ending will be good, I wouldn't be here.'"

### AFTERSHOCKS

Mrs. Itzinger said that the Bais Brocha event caused "aftershocks" in the community, as husbands discussed their wives' intense reactions to the event in *shul* the next morning after *davening*. A parlor meeting to raise funds was assembled on very short notice, graciously hosted at the home of Mr. and Mrs. Yanky and Esty (Gruenberg) Frankel.

"I don't know the family personally, but Rubashkin was a household name in my family when I was growing up," Mrs. Frankel told the *Yated*. "They're known for their *chessed*, their *hachnosas orchim*... I was more than happy to do something to help."

"We just laid the groundwork at this meeting," she added. "Hopefully, with follow-up over the summer, a lot more can be done."

Mrs. Gourarie said she received two calls from women in Switzerland who had heard about the Bais Brocha event and wondered if, before returning to the United States, she could find time to travel to Switzerland to share her story with women in the community.

### ECHOES OF HISTORY

As the case receives increasing attention in Jewish communities overseas, concern is growing about how U.S. government officials were allowed to make Sholom Mordechai the scapegoat for a massive, unwarranted raid that destroyed a town and shattered the economy of Northeast Iowa.

By pretending that he orchestrated a massive fraud that precipitated the collapse of his father's company, prosecutors were able to make him responsible for the vast economic fallout triggered by the raid.

That included million in losses suffered by a bank that had loaned Agriprocessors a substantial amount of money.

Prosecutors further twisted the knife by driving off potential buyers of the plant after it declared bankruptcy, virtually guaranteeing that the bank could not recoup its loan.

The amount of loss was then grossly exaggerated by prosecutors with the aim of raising the "offense level" by which a federal prison sentence is calculated. All this in order to make an outrageous 27-year sentence for low-level offenses appear "justified."

Hearing the full dimensions of the story prompted one of the participants at the Bais Brocha event to comment on its chilling parallel to events in European Jewish history.

"Look at the broad outlines of what happened here. How different is it from what historically would happen after a pogrom, when the town's Jewish residents were blamed for the damage caused by their attackers, and forced to pay outrageous amounts for the destruction of public property? After all, they had 'incited' the rabble. It was their own fault, they were told.

"The echoes of history are hard to miss when you're standing on European soil listening to this sordid tale."

# Never Again

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BY RABBI PINCHOS LIPSCHUTZ

Is it anti-Semitism? Everyone I meet who brings up the Rubashkin case has the same question. Was Sholom Mordechai targeted for prosecution because he is a Jew? Was the disproportionate sentence he received tied to his religion?

It is a fair question, with no fair answer. We see what was done to him. We see that he was prosecuted for crimes for which no one was ever charged in the history of the United States. We see that he received a sentence so blatantly exaggerated when compared with any sentence handed down to anyone previously convicted of similar crimes. We see the way the prosecutors set him up as one of the most evil men ever to walk the streets of Iowa. Yet, when it came down to it, they couldn't prove any of their charges and had him sent away for actions totally unrelated to the onslaught of the federal government with its now infamous 2008 raid.

We are now in the period of the Three Weeks. This week we *bentch Chodesh Av*. This time of year commemorates the calamities the Jewish people have faced going back to the years we spent in the desert before we entered Eretz Yisroel. When we accepted the Torah at *Har Sinai*, "*sinah yordah le'olam*," an irrational hatred took hold of the nations of the world. They hate us without rhyme or reason. There is no rational explanation for it. That's just the way it is.

Ever since we were thrown out of our land, we have suffered at the hands of oppressors. Wherever we have been in the Diaspora, our hosts have been repelled by us. They said we were too clean or too dirty, too rich or too poor, too good in business, thieves, crooks, and parasites. We were taxed into poverty, forced to live in ghettos, and forced to wear yellow stars, not only in Germany.

They forced us to convert to Christianity or be burned at the stake. People who converted were burned anyway, because their conversion wasn't genuine. We poisoned the drinking water, they said. We killed little babies for the *Seder*, they claimed with all seriousness. We were kicked out of country after country, and in those countries where we were allowed to remain, we were rounded up and burned alive. This happened in countries such as England. Yes, England. In France they burned the *Talmud*. In Italy too.

Our lives were made miserable. Our children were taken into the Czar's army at young ages and never heard from again. We were forced to build coliseums and then sent into them to fight starved lions until they ate us for dinner. We were sold into slavery and sent around the world in chains.

We were persecuted by every means that civilized man could dream of, and the collective memory of the Jewish people has not forgotten it. Many Jews have adopted the slogan "Never Again." They think that by saying it, they can ensure that never again will we be singled out for murder, pillage, torture, or inhumane treatment. But we know that is not true.

We look around the world and see Iran arming itself with nuclear weaponry and we watch a world sitting by, barely lifting a finger. Can we truly say, "Never Again"?

We see the State of Israel held to a double standard by all nations of the world. Can we say, "Never Again"?

We see Jews being targeted for derision again all across Europe. Can we say, "Never Again"?

We see an American president publicly humiliate the Israeli prime minister. Can we really say that America will always be there for Israel and ensure that never again will the Jewish people be liquidated?

We see what happens when Israel attempts to enforce a blockade that's intended to hamper the ability of their terrorist enemies to rearm themselves. We see a world gone mad in hypocritical condemnation of a besieged country as it tries to defend itself. Can we really say, "Never Again"?

Recently, a Jewish group met with Vice President Joe Biden. In an unguarded, off-the-record moment, he said to them, "You people have a saying of 'Never Again.' Well, let me tell you that it could happen again in an instant."

And he ought to know.

We also ought to know, and we do. We know that our existence here is tenuous. We are thankful for the freedoms granted us by the great country in which we reside. We are as patriotic as our neighbors and recognize how lucky we are to live at this time in this place. But we know our history and we are always on edge, constantly on the lookout for signs of "it" rearing its ugly head. We are always on the defensive and doing our best to protect ourselves. We do what we can in the form of *hishadlus* to make sure that it won't happen again and that it won't happen here.

And then we see a Jew's business targeted in a way in which no other business was ever targeted. We see that business blasted in the media as a hotbed of all forms of evil. We see that Jew painted as an individual who has taken advantage of the poor and the weak. We see that Jew locked in jail awaiting trial, denied release on bail because he is a Jew who can run off to Israel.

When we see all this, what do we expect people to think?

We have been chased from country to country and have been victimized by courts of justice around the world for millennia. We are a nation whose members have been jailed on libelous charges since time immemorial. When we see one of our own found guilty by a biased judge who prevented a jury from hearing the truth, and then we watch in horror as that man receives a life sentence in jail, what do people expect us to think?

When the trial outcome and the sentencing don't stand the test of common sense, what are people supposed to think? When they see five people submit affidavits that they

A LETTER SHOLOM MORDECHAI SENT  
IN RESPONSE TO SOMEONE  
WHO WROTE TO HIM IN JAIL.

וְיָדוּעַ אֲנִי שֶׁכָּל הַדְּבָרִים אֵלֶיךָ

THANK YOU FOR YOUR LETTER OF פִּגְמוֹת  
 YOUR דְּבָרִים אֵלֶיךָ are certainly Heard  
 By OUR FATHER in HEAVEN AND THE  
 מַלְאָכִים בְּיָדֵי הַשָּׁמַיִם AND יְהוָה  
 THE FORTY AND FORTY THAT  
 THAT הַשָּׁמַיִם is seeing is SURE TO BRING  
 ONLY מִצְוָה FOR US ALL,  
 THIS IS ONLY A פִּגְמוֹת. WHEN ISRAELI  
 FOUND DIRT IN HIS BOX (INSTEAD OF THE Gems  
 & GOLD HE HAD BY HE SAID וְכֵן הָיָה  
 AND ACTUALLY THE DIRT WAS MUCH MORE  
 EFFECTIVE IN MAKING HIS TRIP TO ROME  
 A SUCCESS. THE EMPEROR WHO HE WAS  
 TRYING TO IMPRESS FOR מִצְוָה HAD  
 PLENTY OF GOLD BUT THE מִצְוָה DIRT  
 MADE HIM HIS FRIEND AND FOR מִצְוָה  
 BUT מִצְוָה IS NOT IS FOR WHAT HAPPENS  
 IN THE PAST AND A YIP HAS אֲנִי חָשׁוֹב  
 דְּבָרִים WHO IS מִצְוָה ONLY DOES  
 זִכְרוֹן, BUT מִצְוָה IS FOR THE FUTURE, THE  
 NEXT MOMENT. A מִצְוָה IS COMANDED BY הַשָּׁמַיִם  
 TO TRUST HIM, אֲנִי חָשׁוֹב & AFRAID BECAUSE  
 דְּבָרִים WILL FULFILL HIS TRUST IN HIM  
 AND GRANT HIM THE פִּגְמוֹת THAT HE NEEDS  
 THE מִצְוָה SAYS IN יְהוָה  
 וְיָדוּעַ אֲנִי שֶׁכָּל הַדְּבָרִים אֵלֶיךָ



# Outpouring of Solidarity in Lakewood

BY DEBBIE MAIMON

Between five and seven thousand people jammed Lake Terrace Hall in Lakewood Monday night in an outpouring of solidarity for Sholom Mordechai Rubashkin that continued past midnight.

Rav Aryeh Malkiel Kotler, *rosh yeshiva* of Bais Medrash Govoah, called for an intense identification with a fellow Jew's pain and a readiness to be *moser nefesh* to rescue him from dire straits.

Rav Pinchos Lipschutz, publisher of *Yated Ne'eman*, opened a window into Sholom Mordechai's private life, his embodiment of the extraordinary *chesed* he witnessed in his parents' home, and his well-spring of *bitachon* that is the secret of his endurance.

He spelled out the poignancy of the family's plight by applying the *novi* Yeshaya's exhortation to straighten perverted justice and deal justly with the *yasom* and *almana* to Sholom Mordechai and his family.

Rav Lipschutz decried the perversion of justice that characterizes this case, and exposed some of the government's lies and unscrupulous tactics that have fueled it from the very beginning (see sidebar).

Rav Ephraim Wachsman, *rosh yeshiva* of Yeshiva Meor Yitzchok in Monsey, spoke of the chains of *golus* that rattle beneath the facade of freedom in this country, and drove home the anguished *enkas osir*, the soul-shattering sob of the incarcerated.

How searing for all of *Klal Yisroel*, he said, to witness the degradation of one of its finest sons, one whose *chesed* and *ahavas Yisroel* made him a legend in his own time.

He slammed the arrogance of a judge who turned her back on pleas for leniency coming from prominent former attorneys-general, including foremost legal experts who helped write the very laws being exploited to lynch Sholom Mordechai.

Rav Wachsman singled out for their cruelty the animal rights activists of PETA, who made the first "breach in the wall" of Agriprocessors, citing their public gloating over the virtual life sentence imposed on Sholom Mordechai.

He stressed the supreme importance of *pidyon shvuyim*, citing Rav Chaim Kanievsky's and Rav Aharon Leib Shteinman's *p'sak* that Sholom Mordechai's case clearly merits this appellation.

The Honorable Mr. Bob Barr, a former presidential candidate and congressman who is assisting the appellate team, riveted the audience with his call to "stand up for justice at a time of moral crisis."

He cited June 22, when Judge Linda Reade imposed her draconian sentence of 27 years as a "day of infamy" that will long taint American history.

## 'A DECLARATION OF WAR'

Mr. Barr called Judge Reade's sentencing order "a declaration of war on justice, fairness and equality," and said that it should be required reading for anyone in this country who cares about justice.

"When the government fails in its duty," he said, "you cannot remain neutral. You must get into the arena and fight for those who have been denied justice. And it can't be just a one-time effort, a single rally, a single protest. That would be letting Sholom and his family down. That would be letting ourselves down, as well."

Stating that the road to justice would be long, arduous and costly, Mr. Barr said he was nevertheless optimistic because of a scene he witnessed in the courtroom, sitting behind Sholom Mordechai when the sentence was issued.

"I watched as Sholom got up and turned around to his family and smiled. Some were crying and he smiled at them, and he urged them to smile, too. The strength in that single smile, the inner strength it took for him to urge his family to be strong, surpasses the power of the officials who denied him justice."

Mr. Barr stressed the importance of turning up the heat in a vigorous campaign to win public recognition for the merits of Sholom Mordechai's cause. The appellate team will do the legal work, he said, but the community needs to support that effort with all the resources at their disposal.

"Sholom Rubashkin has to become a poster child for injustice in America," he said. "His name and his cause have to resonate across the media and the airwaves, so that people in positions of power and influence hear about him and start to care, because the public cares."

"Whether through articles, letters, speeches, gatherings, the campaign has to stay in high-gear... There are many roads to justice and it's vital to have 'soldiers' going down every one of them," the former presidential candidate said.

## BEDROCK OF FAITH

The final speaker, R' Getzel Rubashkin, spoke about how our world is an *olam hafuch*, where the bizarre reversal in the way things should rightfully be can overwhelm and confuse us.

"The wicked are powerful and the righteous are persecuted. Standing upside down for too long in such a world, you can lose your balance," he said.

In such a time, he said, "*Lulei Sorascha sha'ashuai, az ovadeti be'oniy* - If not for Your Torah, I would have perished in my torment.' Our strength and endurance comes from knowing that the Torah is true, that there is one *Ribono Shel Olam*, and everything - even the crazy, upside down *olam hafuch* - comes from a single Source."

"I miss my father... my family misses him so.... My father misses his family. It's very painful," R' Getzel continued. "I don't pretend to be able to make sense of this upside down universe, but I don't have to. The bedrock of faith is not to understand, but *kabbolas ol* and *mesirus nefesh*."

"Verdicts and rulings from powerful officials are only illusions of

power,” he said. “When we see through those illusions, and they no longer strikes fear into us, that’s one sign that *geulah* is around the corner.”

### THE GOVERNMENT’S WIN-WIN STRATEGY

According to the federal sentencing guidelines governing white-collar crime, the factors that determine the length of a prison sentence in a fraud case is the magnitude of loss caused by the defendant. To lock up Sholom Mordechai for at least twenty years, prosecutors had to find a way to show that he caused \$20 million in losses or more.

Here’s how they did it.

They found a legal mechanism to manipulate the loss amount. They imposed an injunction forbidding prospective buyers of the \$85 million company to hire any Rubashkin family member in a newly owned meat plant.

Prosecutors made sure that bidders for the plant knew that the government had a weapon to ensure compliance with this “No-Rubashkin edict.” That weapon consisted of the government’s right to impose forfeiture of the plant and all of Agriprocessors’ assets, including name brands, property and machinery. This warning was spelled out by assistant U.S. attorney Richard Murphy in documents filed with the bankruptcy court.

A number of reputable businessmen, Meir Eichler, Mordechai Kork and Fred Goldfein, signed affidavits to the effect that government officials warned them that they could seize the business if anyone named Rubashkin were hired in a managerial capacity. One such businessman, Yechiel Cohen, came from Minnesota to the sentencing hearing in Cedar Rapids to testify in person regarding these intimidation tactics.

In the face of these threats, bidders and investors were forced to back off. On the one hand, every potential purchaser felt that he could not operate the plant successfully without help from the former owners. On the other hand, what reasonable person would risk having their multi-million dollar purchase forfeited by the government?

The “No-Rubashkin” edict and threats of forfeiture succeeded according to government plan. Responsible parties have attested that the trustee, Joe Sarachek himself, told people that government officials urged him not to sell the plant and to let it shut down.

Agriprocessors thus became so devalued that it was worth pennies on the dollar. Its eventual sale, at \$8,500,000, could no longer pay back the bank loan. That loss of money was then blamed on Sholom Mordechai.

That is how it came to pass that Sholom Mordechai Rubashkin was convicted of causing a bank to lose \$26 million. The loss amount, manipulated by the government, was then used, in combination with other trumped up charges to “justify” a 27-year sentence.

When the defense sought to shine the light of truth on this sinister scheme in court, a government-appointed lawyer simply denied it. There never was any such thing as a “No-Rubashkin” injunction, she said. And the judge, in the face of a mountain of evidence to the contrary, decided to make that the final word.

It is unquestionably a matter of public record that Rubashkins were to be boycotted from the business as per government order. It was a known fact in the business and legal community, and the press carried reports of this injunction against the Rubashkins.

Consider the following two excerpts from news articles around the time of bankruptcy and sale of Agriprocessors:

From the Waterloo Courier, January, 2009:

*State officials, including Lt. Gov. Patty Judge, have said they want to find a buyer for the plant and believe it is vital for Postville’s economy. But Judge said in December that it was unacceptable for the Rubashkin family to continue to be involved with the plant.*

From Des Moines Register: July 21, 2009:

*The buyer, SHF Industries, filed papers Monday swearing that it had no connection to the previous owners.*

The government’s denial of something so well-established, and the judge’s acceptance of this lie in the face of so much overwhelming evidence, is an outrage that cries out to the heavens. As Rabbi Lipschutz underscored in his speech in Lakewood, “The government’s denial of the ‘Rubashkin boycott’ is a powerful giveaway that the Feds know that their actions were unethical and could get them in trouble.”

Recall a time when Jews or blacks and other minorities were being blacklisted from universities, institutions and professions? It was something everyone knew about. It was verified by press reports, the applicants themselves were being summarily rejected, and the smoking gun - official documentation of the blacklisting - was a matter of record.

In the face of this mountain of evidence, imagine an apologist or spokesman standing up and saying it never happened. It’s a rumor. It’s your imagination.

That is essentially what happened here. How could the government deny something so well-established? But it shouldn’t shock us. Because falsehood and fabrication lie at the very heart of this case. Lies and truth-twisting began with the affidavit and the seven superseding indictments, and have run straight through the trial and sentencing.

Supporters of Sholom Mordechai Rubashkin are demanding a judicial review of his prosecution, trial and sentencing. For growing numbers of people, only when the shameful corruption in his case comes to light will public trust in American justice be restored.



# Voices Added to the Growing Chorus for Rubashkin

BY DEBBIE MAIMON

Thousands of women turned out Thursday night, July 18, to show support for Sholom Mordechai Rubashkin at a gathering in Toras Aron Hall in Lakewood, New Jersey.

Combined with the massive turnout at the men's *asifa* in Lakewood earlier that week, an estimated 10,000 Lakewood residents have declared their solidarity with a growing movement calling for justice for Sholom Mordechai.

The Lakewood rallies followed events in Boro Park, Crown Heights, Flatbush, Monsey, Monroe, New Square, Miami, Los Angeles and overseas in London, which collectively have drawn over 25,000 people.

Anguish and outrage over the corruption of justice that has marked the Rubashkin saga from the beginning have mobilized Jews from all branches of the religious community in an outpouring of unity and support.

Sholom Mordechai is facing a 27-year prison sentence after being convicted in a show trial, in which prosecutors used a wildly inflated indictment, trumped up charges and unlawful legal tactics to secure a conviction.

Funds are being raised for a costly appeals process, and for a multi-faceted lobbying effort, to secure congressional support for a judicial review of a case that has come to symbolize prosecutorial abuse of power.

But the flaming injustice of this case was not what the three riveting speakers at Thursday night's Lakewood women's gathering focused on. Instead, Mrs. Rosa Hindy Weiss, Mrs. Leah Rubashkin and Rav Ephraim Eliyahu Shapiro, in strikingly different ways, used the occasion to give tribute and to inspire.

The MC, Mrs. Bayla Stein, added an air of poignancy to the evening with her heartfelt words and *divrei Torah*.

## A LIGHT SHINING THROUGH

Mrs. Weiss, daughter of Sholom Mordechai, shared a wrenching personal narrative about setting out on a journey to do the impossible: raising a small fortune to pay for her father's legal defense after he was jailed without bail and all his property and assets were confiscated.

She traced her first bitter disappointments, going from door to door and coming away with only small amounts. "I remember feeding my newborn, exhausted and emotionally drained, staring at the suitcase at the foot of my bed, a large wheelie which we never really unpacked for months while we traveled around..."

Just when prospects seemed the most dismal, she said, a light shone through the darkness.

She described her encounter with Mr. Yerachmiel Simmins and Rabbi Pinchos Lipschutz, who had never met Sholom Mordechai

but warmly embraced his cause, as the turning point in the family's ordeal.

Through its strong advocacy for Sholom Mordechai, and a steady stream of appeals and news articles, the *Yated Ne'eman*, led by Rabbi Lipschutz, turned a little known case into a strong grassroots movement. Tens of thousands of Jews have since adopted Sholom Mordechai as a brother, and are committed to gaining justice for him.

"I learned of the beauty of the *Yiddisher folk*," Mrs. Weiss said. "*Ashrechem Yisroel*. How unbelievable the Jewish people are. There are none like them."

"I met *Yidden* from all walks of life, all trying to help in whatever way they could. And whether it was fifteen dollars or a hundred and fifty thousand, their help came with such special *brachos*, such special *kochos*, such *achdus*!

"*Hakadosh Boruch Hu* must be loving this," she said with a tremulous smile.

## "HE WAS ON THE OPERATING TABLE..."

Mrs. Weiss evoked the scene in the courtroom four weeks ago, as Sholom Mordechai waited for the judge to impose a prison sentence, his family assembled in the gallery behind him.

"I sat next to my mother listening to the sentence being read... How did she find the strength to stay so calm? Here was my father on the operating table, as a death sentence was being handed down. He was jotting down his last wishes, looking straight into our eyes, giving us strength, a last lingering look that would have to last till who knows when..."

"These are my parents," she told a visibly moved audience. "In the months after the raid, when things got so tough it felt unbearable, my father and mother would sit down, and the family too at times, and they'd learn *Chovos Halevavos*, *Shaar Habitachon*, and strengthen themselves.

"Because of that strength, my mother could tell her husband as they faced the frightening events of the past two years, 'We've trained together for this for twenty-eight years.'

"Because of my father's deep faith, from the witness stand he could calmly tell the prosecutors who are out to destroy him, 'All I want in life is to serve my G-d.'

"These are my parents. Only people with this level of faith can hold their family together, so strong, so optimistic, so determined in the face of so much pain, waiting with complete trust for the day we can make a *seudas hoda'ah*."

Brushing away tears, Mrs. Weiss thanked those present for their support, saying, "It warms my heart that my father is not just an example for me but for thousands of others. I am so lucky to be their daughter."

## I CARE ABOUT YOU

Rav Ephraim Eliyahu Shapiro, *rov* of Cong. Shaaray Tefilla of North Miami Beach, electrified listeners with a heartfelt address that hammered home the lifesaving importance of demonstrating an abiding care and concern for another Jew.

Citing the *posuk* of “*Hashme’ini es kolaich, ki kolaich oreiv - Let me hear your voice, for your voice is sweet,*” he stressed the connection between the word “*oreiv,*” sweet, and “*areivus,*” responsibility.

When does Hashem have *nachas* from our *davening* and learning? When does he respond to our *tefillos*? When we ourselves respond with commitment and responsibility to a Jew in need. Sometimes, the simple message of “I care about you” can overturn a life,” he said. It can give a despairing person a reason to get out of bed in the morning.

He recounted a stirring vignette of someone who reversed course in life and embarked on a journey of spiritual return after being shown unexpected sympathy and support from a Jew who witnessed his humiliation.

The speaker reminded listeners of the countless ways in day-to-day living in which a person can demonstrate “I care about you” to a fellow Jew.

He concluded with a ringing tribute to Sholom Mordechai, whom he called the “*quintessential baal chesed,*” the paradigm of a caring Jew in whose merit Hashem should be *mekayeim* “*Tivneh chomos Yerushalayim,*” the rebuilding of the walls of Yerushalayim.

## LITTLE NODS, WINKS AND SMILES FROM ABOVE

In the final address of the evening, Mrs. Leah Rubashkin briefly revisited the harrowing events surrounding the government raid on Agriprocessors and the onslaught that left her family reeling.

She spoke of being humbled by the experience of being plucked from a position “where we had the *zechus* on being givers to a situation where we now are on the receiving end.”

She recalled a period of great blessing during which the Rubashkin family had the privilege of building up Postville into a community with two *mikvaos*, a *shul* that hosted so many diverse people and *nuscha’os*, yet remarkably remained one unified *minyan*. They also built a *yeshiva*, a boys *cheder* and a girls school.

Many of the institutions she and her husband founded have shut down in the wake of the government’s assault on Agriprocessors. Other parts of the once-flourishing community infrastructure are tottering.

“People ask me, how we are coping? I answer with two words: *Shaar Habitachon*.

*Shaar Habitachon* in *Chovos Halevavos* explains that when we put our complete trust in Hasehm, He responds. Hashem’s *Hashgacha* works hand-in-hand with a person’s *bitachon*, *kemayim ponim el ponim*. This is what keeps up going.”

## COURTROOM DRAMA

Mrs. Rubashkin’s signature warmth and wit infused the room as she opened a window into a fascinating slice of courtroom drama that played out in the last few days of the state trial.

“We learned to recognize the small nods, winks and smiles that Hashem shows each of us along the way, little reminders that no matter how bad things look, He is running the show.”

One such “wink” appeared at the conclusion of the state trial, she recalled. The child-labor case was wrapping up and would soon go to the six-member jury. An individual who the defense had tried to empanel during jury selection, but who was selected only as an alternate, would then be dismissed.

“We sensed that this person saw the craziness behind the gov-

“*What this case is really all about, is the achdus and the ahavas Yisroel that has come to the fore.*”

ernment’s arguments. We badly wanted him on the jury. But as an alternate, he would only be included in deliberations if one of the jury members dropped out.

“The trial slowly wound down to the final day. The case would soon be given to the jury - without the alternate. Suddenly one juror started to feel ill. ‘Do you want to be excused?’ the judge asked. Hope fluttered in our hearts. We held our breath, willing this juror to say, ‘Yes, I’m too sick to continue,’ so that the alternate would take his place.

“To our bitter disappointment, he said, ‘I think I can handle it.’

“But the judge decided to take a very unusual step. He was worried that the not-so-sick juror would suddenly need to be excused, leaving a five-person jury. In that case, the trial would end in a mistrial. No one wanted that.

“So he added the alternate to the jury and made it a seven-person jury. That extremely rare, last-minute decision by the judge was the ‘smile and wink from Above’ that filled us with hope.”

The alternate ended up becoming the jury foreman and leading deliberations to a sweeping acquittal: *not guilty* on all counts.

## THE LONG ROAD AHEAD

Mrs. Rubashkin finished her talk to a hushed room by noting that what distinguishes this case is not her family’s *bitachon* - many people have *bitachon*, she said. Many go through challenges and come out stronger.

“What this case is really all about,” she said, “is the *achdus* and the *ahavas Yisroel* that has come to the fore. That *Litvishe* and *chassidim*, Lubavitchers, Satmar and Bobov, Skver and Belz, can all stand together on an issue. That’s truly G-dly!”

She described the heartwarming sensation of gathering all the letters that had been sent to Sholom Mordechai in prison, lifting his spirits with their messages of *chizuk* and caring. “Over 4,000 letters have come from children alone. Letters have come from countries and from schools around the world, crossing physical borders and religious roadblocks. From New York, New Jersey, Florida, California, Montreal, Toronto, Brazil, England, Argentina and Eretz Yisroel.”

Looking at the long and costly appeals process that stretches ahead, one is reminded of the words of the Honorable Bob Barr who addressed the massive Lakewood men’s *asifa* the Monday before.

“You must keep the heat turned up about the need for justice for Sholom Rubashkin. One rally, one gathering, one protest is not enough. His name has to resonate in the media, over the airwaves. No conversation should end without the words, ‘Sholom Mordechai must be free!’”

One can only echo Mrs. Rubashkin’s heartfelt closing words that in the *zechus* of the outpouring of *achdus* in our community, “the *Aibishter* should grant a *geulah protis* to each one of us and the *geulah sheleimah* to all of *Klal Yisroel*, *bimeheirah beyomeinu*.”

# A Ray of Hope

BY MOSHE LUDMIR

Drive along the New York State Thruway and there are mountains towering above you, peaks that seem to brush the heavens. Yet, standing on the higher floors of the Sheraton Crossroads Hotel in Mahwah, N.J., the tops of those same mountains are visible, and they seem, somehow, less daunting.

The Community Executive Conference, held at the hotel this past Sunday night, was an opportunity for *askanim* representing all streams of Orthodox Jewry to meet with attorney Nathan Lewin and the leading *askanim* for the cause of Reb Sholom Mordechai Rubashkin, as well as to be apprised, firsthand, of developments in a case so important to every *Yid*.

Standing in that twelfth-floor conference room, I could not help but think that those mountains were a most appropriate backdrop for the event.

For so long, there were lone voices heard a wilderness of indifference, apathy and even cynicism, voices that dared challenge the findings and 'due process,' voices proclaiming that Reb Sholom Mordechai was an innocent victim of a vicious manhunt. For so long, those few believers stood alone, climbing a steep mountain called the American justice system and the court of public opinion, armed with little: neither funding nor connections nor the public trust, just faith and confidence in their own position.

Today, *boruch Hashem*, that mountain seems to have shrunk, as the public joins those believers on the climb.

A new spirit has swept through *Klal Yisroel*, especially in recent months, as individual *Yidden* tell themselves, "No, we will not let an innocent *Yid*, a father and husband just like us, be locked up for a crime he didn't commit." *Yidden*, many who struggle to get through each day, reach deep in to their pockets - and hearts - for a *Yid* they've never met, taking part in this unprecedented display of *achdus* and *ahavas Yisroel* for one who personifies those traits.

And, as they learned at the conference, they aren't only doing it for Sholom Mordechai. They are doing it for themselves. For today, he is the *korban*. Tomorrow, it can, *chas veshalom*, be someone else, unless we make it clear that there is no way that we will ignore this mockery of justice by a judge who sits by a flag synonymous with liberty and freedom.

The diversity of the crowd was immediately apparent at the *tefillas Minchah* at the program's start: flat Satmar-style hats, round Gerrer hats, black *yeshivishe* hats, gray Modern-Orthodox ones and some plain *kippot*, all *davening* to *One Ribbono Shel Olam*, asking, '*Barcheinu avinu kulanu ke'echad*.'

The dynamic and eloquent chairman, Reb Shlomo Eliezer Meisels, opened the program by thanking each attendee, a representation of the "best and brightest" of *Klal Yisroel*, individuals who have distinguished themselves through their compassion and concern, and, of course, a readiness to act on behalf of another.

He described his personal awe, as one of the prime *askanim* of the Rubashkin gatherings in communities across the tri-state area, at the generosity and empathy of *Yidden* everywhere.

He then called upon the driving force behind the movement to help Reb Sholom Mordechai - what has been termed the "Orthodox Tea Party" by some - Rabbi Pinchos Lipschutz, whose name and publication have become one

with the cause.

Standing next to the flag of the United States, Rabbi Lipschutz spoke about the merit we have to live in this great country, where we are afforded rights and freedoms that our fathers never dreamed of. One of these basic, inalienable rights is a fair and impartial trial by a qualified judge - something our brother, Reb Sholom Mordechai, was denied.

Rabbi Lipschutz expressed his personal appreciation to the group of already-busy people, none of whom has extra time, yet who came readily and happily for the cause. Finally, Rabbi Lipschutz shared his gratification at the fact that someone with the expertise and reputation of Nat Lewin is the '*shliach tzibbur*' representing Sholom Mordechai. With this, he turned the microphone over to the attorney.

Mr. Lewin, in his remarks, detailed the sequence of events leading up to his filing of the motion. He related that, in May of 2008, lawyers requested the documents detailing procedures prior to the raid, but the documents were slow in coming. They were finally obtained, under the Freedom of Information Act. While reading them he subsequently confirmed what he had long believed: U.S. District Court Chief Judge Linda Reade met frequently with the law-enforcement team actively engaged in the planning of the raid on Agriprocessors. The judge was legally obligated to inform the defendant as his defense team of her involvement before presiding at the federal trial of Sholom Mordechai Rubashkin.

Mr. Lewin referred to his findings as a breakthrough in the case, and expressed the hope that the trial, its verdict and sentence would be vacated.

Mr. Lewin then graciously answered questions from an audience composed of intelligent and insightful activists, responding to each one with patience and clarity, thus justifying the confidence of the public.

After the lengthy question-and-answer session, the chairman called upon the deputy mayor of New Square, Reb Yisroel Moshe Spitzer. Mr. Spitzer quoted the *posuk* in *Tehillim* which states, "*Gal einai ve'abita niflaos*," citing the *gematriah* of *gal*, thirty-three. He expressed the hope that Motion 33, the one filed by Mr. Lewin on Thursday, will result in the eyes of the Justice Department being opened.

The final speaker was Rabbi Menachem Genack, CEO of the Kashrus Division of the Orthodox Union, whom Rabbi Lipschutz, in his introductory remarks, called a good friend to this cause and a good friend to all Jews. Rabbi Genack spoke with great passion about the vindictiveness of a prosecution and what it means for the American justice system in general and American Jewry in particular and the obligation of all Jews to work to right the wrong.

Heartened by the ray of hope shown, and confident that truth will prevail, the group of remarkable individuals, so different in appearance but bound by a common thread, headed out into the summer evening.

And perhaps, as they headed back on to the highway, en route to destinations across the five boroughs and beyond, the mountains seemed just a little more conquerable...

With Hashem's help.

# Examining the Motion

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BY EDWIN BLACK

Chief District Judge Linda Reade both coordinated with prosecutors and acted as judge in the contentious conviction of Agriprocessors kosher slaughterhouse operator Sholom Rubashkin, according to internal federal documents and court filings obtained by this reporter. According to the documents, Judge Reade personally participated in many aspects of the raid and prosecution “game plan” nearly from its planning inception in October 2007, some six months before the raid and long before the ultimate trial of Rubashkin before her. Her continuous week-to-week involvement in the organization of the raid and ultimate prosecution was not disclosed to defense counsel or a House Judiciary Sub-Committee during hearings on the matter. Ultimately, Judge Reade sentenced Rubashkin to 27 years imprisonment for financial crimes related to the original immigration case. That sentence was two years longer than requested by prosecutors and startled many legal experts as inexplicably harsh.

The revelations have caused Rubashkin’s attorneys, Nathan Lewin and Alyza Lewin of Washington D.C. and Guy Cook of Des Moines, to file emergency court papers this past Thursday morning demanding a new trial and the immediate recusal of Judge Reade. While the motions have been filed in Judge Reade’s court, they ask her not even to rule on the motion and instead “to transfer this motion to another judge for determination” in order “to preserve public confidence in the impartiality of the judicial system.”

Judge Reade has previously disclosed in writing that she engaged in so-called limited “logistical cooperation” with law-enforcement authorities but only to ensure that attorneys and interpreters would be available for the almost 400 aliens and other workers arrested in Postville, Iowa and then processed in nearby Waterloo.

But copies of Department of Justice emails, memos and BlackBerry messages in their totality paint a different picture, one of a Judge who was consulted and the over-all raid was arranged to meet her specifications and even her travel plans. Attorneys have stated, had they known about her involvement in the investigation, arrest and prosecution, they would have demanded her recusal from the outset.

Operation CJV—Cedar Valley Junction, as it was dubbed by Minnesota and Iowa agents of Immigration and Customs Enforcement (ICE)—involved weekly interagency meetings as far back as fall 2007. Judge Reade was involved or briefed on the progress of those meetings, and in many cases, the documents reveal.

For example, an October 20, 2007 ICE internal summary states that “On October 29, 2007, the case agent and the co-case agent met with the USAO [United States Attorney’s Office] for a scheduled weekly meeting. The USAO was presented the information regarding a possible enforcement action for the week May

11, 2008. The USAO did not appear to have any issues with this date and discuss the dates with the Chief US District Court [Linda Reade] to see if that meets her scheduling needs.”

Another ICE internal memo dated January 28, 2008 reports in-depth on the coming raid and preparations to discuss “prosecution charges, and the scheduled meeting with the U.S. District Court Judge.” That memo continues to specify the role the Judge played and concluded the Judge is “willing to support the operation in any way possible.” The memo specifies, “At 1:30 local time, a meeting was held with the Chief District Judge. There were many attendees at the meeting as requested by the Judge. The attendees included the Judge, the clerk of court, USMS [United States Marshals Service], Probation, USAO, and ICE. The Judge was updated on the progress with the Cattle Congress [temporary facilities for a detention and processing center for the many anticipated arrestees] as well as discussions about numbers, potential trials, IT issues for the court, and logistics. The court made it clear that they are willing to support the operation in any way possible, to include staffing and scheduling.”

The January 29, 2008 memo continues and concludes the Judge is “very supportive.” It states, “The U.S. District Court Judge asked that one concern be relayed to ICE HQ. She has asked that ICE/GSA enter into a contract with the Cattle Congress as soon as possible so that she can continue to hold the court’s schedule for that time frame. Again, she was very supportive of operating at an offsite location but just wants to make sure we get it locked in as soon as possible.”

Another ICE internal memo, dated March 17, 2008, reveals that the Judge continued to give “full support” to the operation. Moreover, she wanted to schedule further action in accordance with her own vacation plans. The March 17, 2008 ICE memo, written long before the raid and any prosecution, states, “The USAO also stated that they have briefed Chief United States District Court Judge Linda Reade regarding the ongoing investigation and their expectation that it is anticipated to result in several hundred criminal arrests and subsequent criminal prosecutions within the judicial boundaries of the Northern District of Iowa. Judge Reade indicated full support for the initiative, but pointed out that significant planning and preparation will be required to allow the Court to clear docket time, request additional Judges, Court Reporters, Court Certified Interpreters, support staff, and facilities to conduct Judicial proceedings. It was pointed out that the judicial calendar is prepared many months in advance and as such the enforcement phase of this investigation should be planned for the spring of 2008. Judge Reade further advised that she would be out of the country and unavailable for all of February and half of March

*Judge Reade did not disclose to Rubashkin's attorney  
about the possibility of a recusal motion,  
of her long-term involvement.*

2008.”

On March 17, 2008, an ICE internal memo reveals, Judge Reade was involved with the smallest details of the forthcoming raid, including concern over the cleanliness of the employees when they would they appear before her. The March 17, 2008 memo states, “On March 17, 2008, RAC Cedar Rapids met with the USAO, U.S. Probation, the USMS, and the United States District Court staff to include the U.S. Magistrate Judge and U.S. Chief District Court Judge. The parties discussed an overview of charging strategies, numbers of anticipated arrests and prosecutions, logistics, the movement of detainees, and other issues related to the CVJ (Operation Cedar Valley Junction) investigation and operation. The Chief District Court Judge requested that ICE and/or USMS ensures that the detainees take showers and are wearing clothing that is not contaminated when appearing in court. The next meeting with the Court will be set for the first week of April.”

Emails between ICE officials and prosecutors continue the saga of the judge's continuous role. A February 14, 2008 DOJ inter-agency email subject lined “Agriprocessors” complains that the date of the raid is out of their control, it is being directed by the Judge. “The date for the operation was set by the availability of the courts, not by ICE and is the first dates that the District Courts could go. Because we anticipate a very high percentage of the arrests going criminal, the Chief District Court Judge requested we coordinate with her court. The Chief District Court Judge has cleared the court calendars, including moving trials and clearing the calendars for 3 other District Judges and 2 Magistrate's court schedules in order to go May 7th. While we can move the operation a day or two forward or back, we do not have the ability to move it any further due to the court schedules.... Changing it now would be virtually impossible.”

By then Sholom Rubashkin had already been identified as the prime target. A March 12, 2008 DOJ Power Point presentation in large bold display letters, is headlined “Agriprocessors Inc.” It reads, “Agriprocessors, Inc. opened in Postville, Iowa in 1987 and is owned by Abraham (Aaron) Rubashkin. The Vice-President of the company is Aaron's son, Sholom Rubashkin. The company is owned and operated by the Rubashkin family. A large number of the non-Hispanic workforce members at Agriprocessors, Inc., including the owner and his family, are Hasidic Jews. Agriprocessors, Inc. is responsible for the slaughtering and processing of kosher and non-kosher meat products. Agriprocessors claims to be the largest kosher slaughterhouse in the nation. The company processes beef, poultry, chicken, veal, lamb, and turkey. According to payroll reports, Agriprocessors, Inc. employs between 900 and 1100 workers.”

Days later, a March 31 DOJ interagency email subject lined, “Cedar Valley Junction Update” states, “There was a meeting today with ICE, USMS, ODAG and USAO for the Northern District of IOWA regarding the Agriprocessors operation. ICE was represented by OI, DRO and OPLA. The first Assistant for the Northern District Rich Murphy indicated that he has a meeting this Friday

(April 4) with the Chief Judge who has requested a briefing on how the operation will be conducted. Murphy has requested an operation plan from ICE by COB Wednesday so that he can incorporate it into his presentation.”

An April 02 Blackberry and email exchange between DOJ officials asks, “What is the status of our Op plan? Where are we on the doc for the USAO fro [sic] his presentation to the judge?”

The emails, memos and other documents are part of hundreds of pages of government and other court documents obtained.

Legal experts say that recusal standards demand that a judge must disqualify himself or herself “in any proceeding in which his impartiality might reasonably be questioned,” and goes on to assert, “what matters is not the reality of bias or prejudice but its appearance.” Moreover, the legal standards and case law do not require an average person to be “convinced” of a conflict, but merely “harbor doubts about the judge's impartiality.” Rubashkin's attorneys have quoted these standards and case law decisions in their demand for a new trial and the recusal of the judge.

At a July 24, 2008 House Judiciary Subcommittee Hearing examining details of the unusual mass raid, subcommittee chairwoman Zoe Lofgren (D-Cal) asked Deborah J. Rhodes, a Senior Associate Deputy Attorney General who had been sent to testify in place of the United States Attorney, “what information was provided by the Department of Justice, Department of Labor, Department of Homeland Security—any or all of them—to the Federal court in Iowa. This was planned for a long time. When was the connection made with the court, and what measures were taken to ensure that the court's view of the cases would not be affected and that judicial neutrality would not be compromised?”

Associate Deputy Attorney General replied in vague terms that the judge was merely given a “head's up.” She testified, “My understanding – primarily for logistical reasons. That is not unusual. If there is going to be an enforcement operation that is going to bring a large number of cases to the court, it is not uncommon to give the court a head's up on that.” Rep Lofgren replied, “So Judge Reade would have been contacted in advance? I am not making a value judgment; I am just trying to find out what happened.” Rhodes answered, “That is correct,” but gave no further details of the Judge's continuous oversight of the operation.

Nor did Judge Reade disclose in December, 2008 to Rubashkin's attorney, during a scheduling telephone exchange about the possibility of a recusal motion, of her long-term involvement. Instead, she simply set a deadline for filing the motion. According to the American Bar Association Model Code of Judicial Conduct, Rule 2.11, her continued silence violated her obligation to “disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification.” Rubashkin's attorneys have argued this very point in their motion last week.

*Edwin Black is the author of IBM and the Holocaust and the forthcoming book The Farhud: The Arab-Nazi Alliance in the Holocaust*

# Rubashkin Lawyers File Emergency Motion for Mistrial

BY DEBBIE MAIMON

Attorneys for Sholom Mordechai Rubashkin filed an emergency motion last week demanding a new trial, after evidence came to light that Judge Linda Reade had colluded with prosecutors in the planning of the 2008 immigration raid on Agriprocessors and the federal prosecutions of hundreds of suspects.

The evidence came in the form of classified documents that were released under the Freedom of Information Act (FOIA) by the Immigrations and Customs Enforcement (ICE).

ICE was the agency that conducted the military-style raid with help from the Iowa U.S. attorney's office, local police and the federal court.

The documents had been sought by Sholom Mordechai's attorneys since February 2009, many months prior to his federal trial. The raid's extraordinary scope, extraordinary judicial proceedings, and the severity meted out to those arrested triggered an uproar at the time.

An outcry from civil rights groups such as ACLU and American Immigration Lawyers Associations [AILA], as well as grassroots Hispanic organizations, led to the formation of a House subcommittee in August 2008. The committee's function was to examine details of the raid's planning, execution and aftermath, and to investigate allegations of civil rights violations.

The actions of ICE personnel, federal prosecutors and Iowa's federal court headed by Chief Judge Reade came under scrutiny as committee members sought to determine if the government's actions crossed legal and constitutional bounds.

Congresswoman Zoe Lofgren, D-CA, who chaired the committee, noted that the mass raid was planned over a long period time. "When was the connection made with the Court?" she questioned a government spokesperson. "What measures were taken to ensure that Judge Reade's view of the cases would not be affected, and that judicial neutrality would not be compromised?"

These questions received no satisfactory answers because then U.S. District Attorney Matt Dummermuth, responsible for the law enforcement action, failed to show up to the hearing. He sent in his place a deputy assistant who had no firsthand knowledge of the raid, and gave misleading replies that did not accurately reflect events.

The committee produced no satisfactory answers and congressional interest in the outcome soon fizzled out.

The ICE documents would have answered many searching questions raised at the hearing. But they were not available at the time, and ICE refused to release them until Sholom Mordechai's attorneys sued the government.

Then, piece by piece, over many months, they were finally produced - too late to be of help to the committee members or to help Sholom Mordechai defend himself at his trial.

## BOTH PROSECUTOR AND JUDGE

The incriminating documents, which now form the basis of the appellate team's powerful motion for mistrial, paint a picture of a judge who viewed the government's law enforcement action against Agriprocessors as an extension of her own authority.

"The government's own memoranda show that more than six months before the raid, Judge Linda Reade began a series of meetings in which she collaborated with the law-enforcement team that prosecuted the case against Sholom Rubashkin," wrote Nathan Lewin, lead appellate counsel for Sholom Mordechai.

"Without disclosing to defense counsel her meetings with the U.S. attorney and the support she expressed for the raid, she presided at Mr. Rubashkin's trial, and then immediately had him imprisoned and sentenced him to two years more in prison than the prosecution requested."

According to ICE internal memoranda, Reade had asked for regular briefings on the raid plans, and went as far as to arrange the timing of the raid to accommodate her own vacation schedule.

ICE officials provided her with a steady stream of updates as early as seven months prior to the raid's actual launch. Reade discussed what internal ICE memos call the "charging strategies," referring to the specific charges to be filed against those arrested.

She attended meetings at which briefings by law enforcement were given on how the hundreds of arrested immigrants would be transported to makeshift courts and imprisoned in temporary holding facilities until they were sentenced.

As the window of time leading up to the May 2008 raid narrowed, Reade directed officials to give her a precise "game plan," an internal ICE memorandum said.

She even accompanied the assistant district attorney in scouting out the cattle grounds in the nearby city of Waterloo, before the final arrangements were made to use this site for the trial proceedings and as a detention center.

## READE SHOULD HAVE RECUSED HERSELF

Instead of recusing herself from the trial, as required by law when a judge can no longer claim neutrality, Reade concealed from Sholom Mordechai's defense counsel the magnitude of her involvement with the case when the possibility of their filing a motion for her recusal was discussed.

This crucial information was also withheld from the aforementioned congressional inquiry into the raid held in July 2008, two months after the raid.

"I was horrified to discover the level to which Judge Reade was involved in prosecutorial functions and was in fact engineering things," Mr. Lewin said in an interview with the *Yated*. "It explained

some of the mysteries in the case. Why, for example, did she sever the bank fraud charges from the immigration charges, only to allow the prosecution to prejudice the jury for two days with immigration testimony?

“Based on what we now know, these moves made strategic sense for someone so deeply invested in the prosecution. A separate immigration trial would have lifted the veil on the scope of Judge Reade’s extraordinary involvement with the prosecution, and defense counsel would surely have moved for her recusal,” Lewin said.

#### NO PRESUMPTION OF INNOCENCE

Reade’s bias against Sholom Mordechai was on clear display at his trial and afterward, fueling the conviction in many quarters that the trial resulted in a grave miscarriage of justice.

Trial observers and defense attorneys were disturbed by the one-sided evidentiary rulings that made it impossible for Sholom Mordechai to defend himself. Key witnesses, testimony and evidence that would have vindicated him were struck from the record. It was clear to observers that for Judge Reade, there was no presumption of innocence in this case.

Further evidence of Reade’s hostility was evidenced by her refusal, without cause, to grant Sholom Mordechai bail pending sentencing. She kept him imprisoned for 76 days while he awaited sentencing.

In a final burst of animus, she then sentenced him to 27 years imprisonment, two years more than the draconian sentence prosecutors recommended.

“Reade’s bias is so pronounced that her credibility and judgment have been tainted,” Lewin told the *Yated*. “For this reason, in order to preserve public confidence in the judicial system, we requested that the motion be transferred from Judge Reade, who according to legal protocol would rule on it, to another judge whose impartiality has not been compromised.

The Iowa press has given this story full coverage. Articles defending Judge Reade have been noticeably absent. The court’s only response to the motion for mistrial has been to request a week’s extension to respond, which was granted by the defense. The court’s response will be issued by August 23.

#### READE’S CONDUCT DREW FIRE LONG BEFORE RUBASHKIN TRIAL

Judge Reade’s violations of the judicial code of conduct had been criticized long before Sholom Mordechai’s case came to trial.

A *New York Times* report in August 2008 describes the unprecedented judicial proceedings that followed the ICE raid and the arrests of several hundred immigrant workers.

“Immigration and criminal defense lawyers were stunned when nearly 300 illegal immigrant workers were convicted on criminal charges and sentenced to prison - all in just four days,” the article said.

This lightning-swift process of arrest-hearing-conviction-imprisonment was made possible by unprecedented fast-track judicial proceedings, and the dispensing of normal due process, immigration lawyers told the *New York Times*.

“Now the legal blueprint for those extraordinary proceedings has come to light, and it is raising questions about the close collaboration, in the months before the raid, between the federal court in Iowa and the Iowa prosecutors who pressed the charges,” the article went on to say.

#### LAWYERS HAD TO FOLLOW SCRIPTS

The blueprint referred to in the article was a 117-page handbook of “scripts,” laying out step by step the hearings that would come after the raid, as well as samples of the guilty pleas that prosecutors planned to offer the workers.

“These were basically guilty plea handbooks, and contained a series of waivers of various rights of the defendants,” Rockne Cole, a defense lawyer who was present, told the *New York Times*. “The entire process seemed designed for fast-track guilty pleas.”

Cole was one of the two dozen attorneys hastily summoned by Judge Reade’s assistant to meetings at the Cedar Rapids courthouse, while the raid was underway. Once assembled, all were presented with the specially prepared handbooks.

Studying the scripts, Cole became convinced that the hearings had been organized not to facilitate justice but to produce guilty pleas for the prosecution. The handbooks prepared by the government were in essence a lawyer’s guide to how to get your client convicted and deported, he told the *Yated*, revisiting what he called a deeply troubling episode.

“I was there for just twenty minutes,” he said, “but I’ll never forget those scenes.”

“What I found most astonishing,” he told *New York Times* reporter Julia Preston, “is that apparently, Chief Judge Reade had already ratified these plea deals prior to one lawyer even talking to his client.”

In a letter he later wrote to Rep. Zoe Lofgren of the congressional subcommittee that scrutinized the raid, Cole described how he declined to take part in what he saw as sham justice and “walked out in disgust.”

Reade subsequently claimed in writing that she merely provided “logistical coordination” with the prosecutors. Yet, the record shows, as Rockne Cole described in the *New York Times* article, there was “a breathtaking level of coordination” between herself and federal prosecutors.

#### ‘COLLUSION BETWEEN PROSECUTOR AND JUDGE APPALLING’

In a May 2008 interview with the *New York Times*, Judge Reade said she was surprised by how many Agriprocessors defendants had pleaded guilty rather than contest the charges. She said she had planned to spend the summer presiding over trials in those cases.

Her remarks hit a false note in light of what the plea scripts and fast-tracking were all too obviously designed to accomplish - and succeeded in doing with stunning efficiency.

According to AILA’s Charles Kuck, “The ‘Handbook’ that attorneys had to follow illustrates that railroad justice was the rule of the day. It’s clear that the Iowa federal district court was driving the train, fatally compromising its own integrity as an independent branch of government. This collusion between prosecutor and judge is appalling.”

Committee members at the congressional hearing, investigating the raid and its aftermath, heard a chilling description of events from attorney David Leopold, current president of AILA:

“The workers impacted by the raid were essentially coerced into giving up their rights under the immigration law, such as the right to a hearing before an immigration judge and a chance to apply for relief from deportation.

“This scheme was accomplished by overcharging the workers and threatening them with a 2-year mandatory sentence. Here’s where the plea deals and psychological coercion came in.

“Faced with a plea deal of 5 months in prison and deportation, or maximum prosecution ending with a minimum 2-year sentence, these workers essentially had no choice but to waive their rights and plead guilty,” Leopold testified at the congressional hearing.

“The immigrants, shackled to each other in groups of 10, were efficiently packaged, convicted and sentenced to jail time. The fast-tracking system, in which up to 17 detainees were assigned to a single lawyer, amounted to a conviction and deportation assembly line.

“The mass use of the scripted plea bargains and waiver of rights

guaranteed their immediate deportation after release, regardless of extenuating circumstances,” Leopold testified.

“This travesty could not have occurred without the full complicity of the federal district court for the northern district of Iowa,” noted past AILA president Kathleen Walker in an op-ed published at the time.

The Postville raid-and-conviction scheme “raises deep and disturbing legal and ethical questions about the collaboration of different arms of government and the legitimacy of the convictions,” David Leopold told the *Yated* in a phone interview.

#### TRAMPLING OF HUMAN DIGNITY

As a child of Holocaust survivors who fled Germany ahead of Kristallnacht, Leopold said he doesn’t make comparisons with the Holocaust lightly.

“But reflecting on the military-style raid with helmeted, gun-wielding police...the mass roundup and criminalizing of peaceful, unarmed people and the trampling of human dignity...that is the comparison I couldn’t help making.”

He recalled a sharply worded letter AILA wrote to Judge Reade following the raid, questioning the legality of the judicial tactics used to prosecute and convict immigrants who, in most cases, had no clue what they were pleading to and being sentenced for.

“We received no direct answer from Judge Reade,” he said, other than a belittling comment that “immigration attorneys do not understand criminal justice.”

Leopold noted the troubling fact that Senator Tom Harkin of Iowa nominated Stephanie Rose as the new district attorney of the Northern District of Iowa soon after the raid. Rose, whose appointment was confirmed by President Barack Obama, was third in rank in the U.S. attorney’s office at the time of the raid, and presumably participated in the kangaroo court proceedings.

“What was Ms. Rose’s role in those events?” Leopold asked. “How is it that instead of a reprimand to the U.S. attorney’s office for violating norms and creating a stain on American justice, there was a promotion of one of its senior officials? The public deserves answers.”

The fact that the people in positions of influence and leadership are willing to simply turn the page and pretend none of this happened is not acceptable, he said.

#### PIVOTAL MEETING FOLLOWING FILING OF MOTION

A pivotal conference drew key supporters and activists to a meeting Sunday night in Mahwah, NJ, where Mr. Nathan Lewin explained salient facts in the Rubashkin case, the grounds for the appeal and the contents of the emergency motion.

He described the various possible responses to the motion by the Court, and what the defense’s counter moves would be.

Rabbi Pinchos Lipschutz, in his opening comments, told the assembled that the purpose of the gathering was to protect from injustice not only Sholom Mordechai Rubashkin, but all Americans. The freedom of every one of us is imperiled by federal judges who are not impartial, he said, and by prosecutors who put their careers ahead of the pursuit of justice.

“We are gathered here as loyal, patriotic citizens who believe in the noble ideals on which this great country was founded,” he said. “As law-abiding citizens, we want to ensure that those who take advantage of others are justly prosecuted. No one is above the law.

“As President Obama stated when he nominated Justice Kagan, we want to ensure that everyone is accorded a fair trial and a chance to defend themselves, under judges who are blessed with empathy and compassion, as well as knowledge of the law and loyalty to the constitution of the United States.”

Rabbi Menachem Genack, CEO of OU Kosher, addressed the gathering, stressing the importance of the Jewish community’s

quest for justice for Sholom Mordechai.

#### JUSTICE...OR JUST ICE?

Nine months ago, the *Yated* ran an article titled “Justice Denied” about the travesty of justice that passed for a trial, at which Sholom Mordechai was convicted of bank fraud.

The article explored the evidence of Judge Reade’s bias toward Sholom Mordechai, and the fact that other defendants, scheduled to be sentenced by Reade, had filed motions for her recusal due to her over-involvement in their prosecution.

From the November 2009 article:

*In one case cited by the Des Moines Register, Reade denied a motion for recusal filed on behalf of 29-year-old Karina Pilar Freund, charged with aiding and abetting undocumented immigrants at Agriprocessors.*

*Freund’s attorney, Mark Brown, argued in court documents that Reade took part in pre-raid proceedings following the ICE raid. He said that “Reade’s involvement in hiring Spanish interpreters, contacting possible defense attorneys and coordinating court proceedings calls the appearance of her impartiality into question.”*

*In her response denying the motion, Reade said she was “simply performing her official duties,” and that the defendant confuses “logistical coordination” with collusion.*

*Were trial observers at the Rubashkin trial similarly confused? Or did Reade’s “simply performing her duties” cross the line into collusion with the prosecution? As the full trial proceedings become a matter of public record, and as Sholom Mordechai’s appeal moves forward, the public will learn the truth.”*

Now, nine months later, that truth has finally emerged. Whether it marks a significant turning point in Sholom Mordechai’s case as so many hope and pray, and whether justice denied will become justice served, will soon be clear.

#### LEWIN CALLS ON ASSISTANT D.A. LANNY BREUER

Mr. Lewin revealed at the Sunday meeting that he authored a letter to the assistant attorney general of the Criminal Division of the Department of Justice, Mr. Lanny Breuer, calling upon him to reconsider his earlier position not to get involved.

“Shocking evidence has come to my attention since our correspondence,” Lewin wrote. “It establishes that the sentencing judge and the U.S. attorney engaged in gross misconduct in engaging in many *ex parte* [one-sided] discussions into the May 2008 immigration raid on Agriprocessors.”

Lewin went on to describe the lapses and violations of the judicial code of conduct committed by Judge Reade. He also sharply criticized the Iowa prosecutors for unlawful conduct in failing to disclose to defense counsel Judge Reade’s deep involvement in the immigration raid and her collaboration with the prosecution.

He requested that Mr. Breuer’s department investigate the federal prosecutors who withheld this exculpatory information, and take appropriate disciplinary measures against them.

Lewin ended with a plea that the Department of Justice remedy the injustice perpetrated against Mr. Rubashkin and consent to his release from prison while the matter is being investigated.

The Jewish community has an important role to play at this juncture, he noted. Contacting the Department of Justice, asking for a judicial review of the Rubashkin case, reflects deep public concern about the case, which will generate significant pressure, he said.

In addition, plans are moving ahead for a congressional initiative, the details of which will soon be forthcoming. People will be asked to urge their congressmen to sign the initiative that will petition the Department of Justice for an investigation into the inequities of the case.

Among all the initiatives, Lewin told a teleconference of Jewish media reporters that prayers for *siyata diShmaya* are uppermost.

# Weiner Writes AG On Rubashkin

BY DEBBIE MAIMON

In a strongly worded letter to U.S. Attorney General Eric Holder, New York Rep. Anthony Weiner called on the nation's highest law enforcement office to investigate the "credible allegations of improprieties and unfairness" in the Rubashkin case.

Congressman Weiner's letter followed the emergency filing of a motion for mistrial by Sholom Mordechai Rubashkin's defense team. The motion was based on disclosures from documents released under FOIA that revealed improper collaboration between federal prosecutors and Judge Linda Reade in the months leading up to the trial.

"Chief Judge Linda Reade was repeatedly consulted by law-enforcement agents and prosecutors from the U.S. attorney's office [who then brought Rubashkin's case to trial before her]. The judge offered to help in any way possible," the letter advised Holder.

"While I am not privy to all the details of this case, the allegations of judicial and governmental misconduct that have emerged publicly are deeply troubling and clearly warrant a full investigation by your office," Weiner wrote.

"Congressman Weiner is the first elected public representative to take a principled stand against the injustice perpetrated on Sholom Mordechai Rubashkin," said Rabbi Pinchos Lipschutz, editor of *Yated Ne'eman* and a leading activist and advocate in the case.

"While many are disturbed about the abuse of power that has characterized this case, the congressman has demonstrated the moral leadership and political will to correct that abuse. Hopefully, others in positions of influence will join him in calling for justice."

Speaking by phone to the *Yated*, a spokesman for Mr. Weiner's office said that the congressman "was aware of the growing concern in public and judicial circles about the Rubashkin case and felt it was important to intervene."

"There are principles of justice involved here that can't be ignored," spokesman Dave Arnold said.

## 'LEVEL OF COLLABORATION MADE JUSTICE A SHAM'

Even before the Department of Homeland Security documents surfaced, critics noted that Judge Reade appeared too involved in the planning process of the May 2008 immigration against Agriprocessors.

One Iowa immigration lawyer familiar with the events said his conscience didn't permit him to take part in the criminal proceedings against the illegal immigrants that were brought to trial after the raid, because "the level of collaboration between Judge Reade and federal prosecutors made justice a sham."

He also noted that since Reade controls the appointments to the Criminal Justice Panel, meaning she has the power to short circuit the careers of attorneys she doesn't like, virtually no one in her district is willing to cross her.

Although many lawyers objected to the scripted plea deals and other features of fast-track justice that sent hundreds of immigrants to prison, those who were summoned to take part in the criminal proceedings felt compelled to do what was asked of them.

"When a federal judge who wields power like Linda Reade summons you," you don't refuse, this attorney said, requesting anonymity.

Rep. Weiner's letter noted that six previous Attorneys General sent a letter to Judge Reade, expressing their opinion that a life sentence was wrong. They urged her to impose a sentence far more in keeping with lighter sentences issued for similar crimes.

Ignoring these entreaties, Reade imposed a 27-year sentence on Sholom Mordechai, harsher than the sentence recommended by prosecutors, Rep. Weiner wrote to the Attorney General.

## STRIKING HYPOCRISY

In light of the revelations of judicial misconduct in the documents released by Homeland Security, Reade's moral posturing against Sholom Mordechai is striking in its hypocrisy.

She and the state of Iowa's highest law enforcement officials, while violating laws that forbid intimate communications between judge and prosecutors, collaborated to lock up for life a person "whose offenses never warranted a federal prosecution to begin with," said Nathan Lewin, lead appellate lawyer for Sholom Mordechai.

What's worse, they concealed their collaboration from the defendant and his attorneys so that they were unable to move for recusal of the judge.

Weiner's letter to Eric Holder compared this rampant injustice to the recent Ted Stevens case in which exculpatory information was knowingly withheld from the defense. Following the discovery of this breach of law, the Department of Justice took the rare step of dropping the government's case against Stevens.

Praising the Attorney General for taking "that difficult and commendable step," Weiner noted that public confidence in the federal criminal process is diminished when prosecutorial and judicial abuse is allowed to go unchecked.

Those familiar with the case stress its relevance for all Americans. "The fight for justice in this case goes beyond Sholom Mordechai. This is a fight to uphold the constitutional right to a fair trial that is at the very heart of our system of democracy," said Rabbi Lipschutz.

"If we fail to protest the collusion between a federal judge and prosecutors, we are condoning corruption. We are opening the door to illegal practices by powerful people that can victimize any one of us, at any time."

# Motion in Rubashkin Case

Sholom Mordechai Rubashkin's motion for mistrial, filed three weeks ago, has triggered a fiercely defensive response from the office of Iowa U.S. Attorney Stephanie Rose. The government brief contains glaring inconsistencies with facts on record, suggesting troubling attempts at a cover-up.

The motion for mistrial, filed by appellate lawyer Nathan Lewin with Iowa attorneys Guy Cook and Montgomery Brown, accuses Chief Judge Linda Reade, who presided over the trial, of unlawful over-involvement in the planning stages of the ICE raid.

New evidence based on documents released under FOIA painted a picture of collaboration by Judge Reade with law enforcement in the planning of the ICE operation and in the hundreds of prosecutions that followed.

Those actions should have rendered her ineligible to preside at the trial of those arrested, including Sholom Mordechai, his attorneys argued.

The motion cited not only her participation in meetings and strategy sessions with ICE agents and Iowa federal prosecutors, but questioned her deliberate concealment of these activities from the defendant, when the subject of recusal was discussed with defense lawyers.

These violations of the judicial code constitute grounds to vacate the trial and conviction, and to grant Sholom Mordechai a new trial, the motion asserted.

In response, Iowa U.S. Attorney Stephanie Rose issued a sweeping denial that Reade was involved in anything other than "logistical cooperation" and insisted that Reade could not have been prejudiced against any of the defendants since she was never told who they were.

"Although the Court (i.e., Judge Reade) was necessarily involved in those aspects of the logistical planning that impacted court functioning, Chief Judge Reade was never told until the day of the raid that Agriprocessors was the target of the operation," the Government's Response states.

"Accordingly, Chief Judge Reade was never made aware that defendant Sholom Rubashkin had any potential connection to the government's investigation and planned enforcement action."

The ludicrousness of this claim is self-evident to anyone even slightly familiar with the geographic location of Agriprocessors and nearby Waterloo, where nearly 400 arrested workers were fast-tracked through the court in four days.

## WHICH IS IT, MS. ROSE?

The government's response makes the mistake of trying to accomplish mutually exclusive goals: maintaining Reade's complete ignorance about which business was going to be raided by ICE,

while at the same time attempting to justify her visit to the Waterloo site months before the raid, when discussions were underway about where to imprison and bring to trial hundreds of expected "arrestees."

Judge Reade herself helped select this compound, as is clear from ICE records that document her visiting the site together with federal prosecutors prior to the May 2008 ICE operation.

Reade is on record as urging federal prosecutors to secure the rental of the site as early as possible so that she could move ahead with preparations to set up the court and temporary jail facility there. [No courthouse in the vicinity of Postville was large enough to handle hundreds of cases at once.]

In addition, the government brief hastens to note that Judge Reade's reason for choosing Waterloo was a humanitarian one: "It would make it easier for arrestees' families to attend court proceedings."

If these concerns were part of Reade's calculations, she was obviously fully informed that Postville was the intended site of the raid. Since Agriprocessors was the only factory in a radius of many miles that employed hundreds of immigrants, who else could possibly have been the target?

Yet, U.S. Attorney Stephanie Rose, in the government's brief, maintains that "Chief Judge Reade *was never told* that Agriprocessors was the target of the operation."

So which is it, Ms. Rose? If Reade didn't know, why did she choose to set up shop in Waterloo out of consideration of the defendants' families, as the government's response maintains?

And if she did know that Agriprocessors was about to be raided, and there was nothing wrong with her level of involvement in the planning of the operation, why would the government seek to cover it up?

## GOVERNMENT BRIEF IGNORES CORE COMPLAINT

Despite 40 pages of legal argument, "there is not one word justifying the "cover-up" - meaning Reade's failure, and that of the prosecutors, to tell the defense lawyers about a single one of the weekly meetings she had privately with prosecutors and immigration officials," attorney Nathan Lewin said in a phone conversation with the *Yated*.

Those conferences, described in an April 11, 2008 document as "weekly operational/planning meetings," included top ICE officials, the U.S. attorney's office, the U.S. Marshall's Service, and none other than Chief Judge Linda Reade.

These regular meetings are themselves sufficient under Supreme Court precedents to invalidate Reade's participation in the trial, Lewin stressed.

“I think we are on very strong legal ground in seeking to invalidate the trial, although the prosecution and the judge will fight that to the bitter end,” he said.

#### STEPHANIE ROSE UNDER THE MICROSCOPE WITH LINDA READE

For those who know something of U.S. Attorney Stephanie Rose’s role in the Postville prosecutions, it is ironic, to say the least, to see her rush to Judge Reade’s defense in the government’s response to the Rubashkin motion for mistrial.

Rose herself has come under the same scrutiny to which Reade is now being subjected for her role in the Postville prosecutions which are widely viewed as a stain on American justice.

“[At the time of the raid], Rose was among the key assistant U.S. Attorneys who drove the mass prosecutions of nearly 300 undocumented immigrant workers arrested at the Agriprocessors,” wrote David Leopold, president of American Immigration Lawyers Association.

“There the government brazenly used the federal identity theft law as a hammer to coerce the workers into pleading guilty to social security fraud, despite questionable evidence, and accepting automatic deportation.

“A prosecutor’s job is to do justice, not merely to convict. The Supreme Court’s ruling that charges of identity theft were improperly applied in the Postville prosecutions raises serious questions about whether Stephanie Rose, who has been nominated as U.S. Attorney for the Northern District of Iowa, is the right choice for the job,” Leopold wrote.

#### THE WHOLE TRUTH: STEPHANIE ROSE

A 2009 *New York Times* article slammed the nomination of Rose as U.S. Attorney for the Northern District of Iowa, reminding the public of Rose’s key role in the Postville prosecutions.

Elaborating on actions of hers that crossed the bounds of legality, Leopold cited a May 12, 2008 press release from the U.S. District Court for the Northern District of Iowa (under Chief Judge Reade). The press release announced the temporary assignment of federal judges and court personnel to Waterloo, Iowa, “in response to the prosecution of numerous illegal aliens.”

“This notice was issued by the court before any of those who were arrested and charged had been found to be in the country illegally,” AILA’s Leopold pointed out.

The raid was underway at the time, and close to four hundred immigrants were first being transported to Waterloo where they were detained pending court proceedings. About 75 were later released, yet the District Court had already labeled all of them “illegal aliens.”

Leopold went on to ask some very searching questions.

“Since her nomination last year, Rose’s supporters tried to distance her from any role in the Postville cases, claiming that the prosecutions were directed by the Department of Justice in Washington, DC.

“At the time, Rose was the third in the office chain of command in the Attorney’s Office of the Northern District of Iowa. Did she really have no clue that the Postville prosecutions were being planned by her colleagues?

“Did she really have no prior knowledge of the ICE Postville investigation or that criminal arrest warrants for 697 Postville workers were being prepared and sought by her office in early April 2008?

“And, in light of the Supreme Court unanimous decision that the identity-theft law could not be applied to prosecute immigrants only because they used false Social Security numbers, does she still think use of the law as a hammer to obtain guilty pleas from the Postville defendants was appropriate?

“Stephanie Rose needs to tell the truth, the whole truth, and nothing but the truth. The public is entitled to nothing less,” wrote AILA.

Now, with the disclosure of the ICE documents, and with the expected release in the near future of the unredacted [unedited] portions, the public is a step closer to discovering the full extent of what went on behind closed doors between Stephanie Rose, her fellow colleagues in the Attorney’s Office, ICE agents and Chief Judge Linda Reade.

“It becomes increasingly important to impress upon the Department of Justice the extent of how improper these proceedings were on the prosecutors’ part and on the part of the judge,” attorney Lewin said.

# Supporting The Rubashkin Motion

BY DEBBIE MAIMON

The nation's most prestigious authority in legal and judicial ethics has issued a scathing indictment of Judge Linda Reade's conduct in the Rubashkin case.

In a written legal opinion addressed to the Eighth Circuit Court of Appeals, Professor Mark Harrison, one of the key architects of the Code of Judicial Conduct - the country's standard judicial ethics guidebook - asserts that Judge Reade repeatedly violated the Code's provisions.

Harrison's affidavit accompanies a new motion, filed this week by Sholom Mordechai Rubashkin's lawyers, for a stay [postponement] of the September 7 deadline for filing an appeal.

Defense lawyers are requesting that the Eighth Circuit first consider the merits of the Motion for a New Trial that was filed several weeks ago. If a new trial is granted, an appeal would be unnecessary.

Professor Harrison's affidavit, attached to the motion for a stay, powerfully bolsters defense arguments that Sholom Mordechai's trial was tainted by Judge Linda Reade's judicial misconduct and should therefore be vacated.

"Based on my experience and my review of the facts and documents, it is my opinion that Judge Reade violated several provisions of the Code of Conduct applicable to federal judges," Professor Harrison wrote.

The renowned legal authority studied the defense's Motion for a New Trial filed in early August and the government's response to that motion. His scrutiny included the new evidence released under the FOIA [Freedom of Information Act], after defense attorneys sued the government to obtain the information.

Those documents showed that Judge Reade had initiated and authorized private meetings with federal prosecutors and law enforcement agents that crossed permissible bounds. Compounding the impropriety, she concealed this information from the defense team when they were considering the possibility of requesting her recusal.

The U.S. Attorney's Office hotly contested the defense motion, belittling the disclosures in the FOIA documents as "nothing new." True, Reade had attended numerous meetings with federal prosecutors, the brief conceded, but her involvement was limited to logistics. She was never told at these meetings who the raid would target or where it would take place, and her neutrality was therefore never compromised.

Reade Committed Multiple Breaches of Judicial Code

Professor Harrison ignores these protestations in his affidavit to the Eighth Circuit, stating unequivocally that Reade's more than ten private meetings with law enforcement officials and prosecutors violated the Judicial Code.

"Meetings or communications about impending litigation between a judge and only one side, to the exclusion of the other parties or their lawyers [known as *ex parte*], are prohibited," Harrison wrote.

The rules barring *ex parte* meetings are designed to safeguard the judicial process, "to prevent its corruption through bias, prejudice, coercion and exploitation," he stressed.

Those safeguards were violated by the multiple meetings which occurred between October 2007 and May 12, 2008, in which Reade participated.

"The meetings in question all concerned an impending matter - the Postville raid and the arrest of Agriprocessors employees and officials - and therefore clearly involved what the Code of Conduct defines as *ex parte*," Harrison wrote.

## TESTIMONY FROZEN IN TIME

Harrison's affidavit cited a letter to Rep. Zoe Lofgren by attorney Rockne Cole in connection with the July 2008 Congressional Hearing into the details surrounding the controversial ICE raid and the subsequent Postville prosecutions.

At the time, the government's actions drew blistering criticism from eyewitnesses and voices in the legal community who protested the gross violation of the defendants' civil rights.

Cole described a "secret" meeting of defense counsel assembled by the court to arrange for the representation of defendants arrested in the Agriprocessors raid. The meeting was attended by people from the U.S. attorney's office who explained the procedures that had been prearranged for the processing of the arrested immigrants.

Harrison singled out a statement in Cole's letter that proved beyond a doubt that Judge Reade participated in plea discussions between lawyer and client that should have been off limits to her as the future presiding judge.

"What I found most astonishing," wrote Cole, "is that apparently Chief Judge Reade had already ratified these deals prior to a single lawyer even talking to his or her client. This directly violates the Rule 11 plea procedure, which provides that 'the court must not participate in these plea discussions.'"

"Indeed," wrote Cole, "this ratification appeared to have been *ex parte* with the United States Attorney's Office. Indeed, it *had* to have been *ex parte*, because no lawyers had even met with their clients prior to these plea deals being announced."

"Rockne Cole put his career on the line by writing that letter," said David Leopold of the American Immigration Lawyers Association [AILA], who has written extensively about the travesty of justice committed in Postville, in which hundreds of defendants

were misled into waiving their rights.

“There were undoubtedly many present at that meeting who were repulsed by what was going on, but Cole had the moral courage to dissent,” Leopold said.

#### BINDING PLEA DEALS HINT AT READE’S ORCHESTRATION

Other legal observers note that almost without exception, the plea deals the defendants were coerced into signing were “binding,” meaning that they came with a mandatory five months imprisonment, followed by deportation. This fact, too, hints broadly at Reade’s collaboration with federal prosecutors.

The power to hand down sentences lies at the heart of a federal judge’s immense clout.

Judge Reade is notorious for using her sentencing discretion to impose uniquely harsh sentences, often going beyond the prosecutors’ recommendations.

In the case of a binding plea deal, however, the judge renounces her sentencing discretion - she cannot raise or lower the sentence - and the defendant waives his right to a trial, or to change or withdraw his plea. Because they etch the defendants’ decisions in stone and allow for no flexibility on the judge’s part, binding plea deals are rare, experts say.

Yet, in the mass proceedings in the Postville prosecutions, hundreds of binding plea deals calling for jail sentences and deportation were pre-scripted and signed by the defendants in a matter of a few days. They were then presented to Judge Reade, who, without discussion or debate, instantly rubberstamped them.

The only way this could have happened with a powerful, controlling judge like Judge Reade is if she herself had orchestrated the plea deals with prosecutors ahead of time. There is no other way she would agree to give up her sentencing discretion *in hun-*

*dreds of cases*, insiders said.

#### GOVERNMENT FAILS TO ADDRESS READE’S FAILURE TO DISCLOSE

Professor Harrison in his affidavit addressed the government’s argument that “difficult and unprecedented logistics” involved in the processing of hundreds of defendants justified Reade’s prior communications with law enforcement officials and prosecutors.

“Logistical requirements do not negate the prohibition of *ex parte* communications, nor do they excuse the failure to make a complete written record of them, and to disclose them at the earliest possible time,” Harrison countered.

His affidavits echo the question many have voiced after reading the government’s brief: why was there no attempt to address the fact that Judge Reade made no disclosure of her many meetings with prosecutors and ICE agents? Whether those meetings were improper or not, the government’s total silence on her failure to disclose them is revealing.

In addition to the multiple breaches of ethics cited above, Harrison’s affidavit notes a final overarching violation of the Judicial Code: Reade’s “failure to recuse herself from presiding at the trial of principal defendant arrested in the raid that was the subject of her *ex parte* meetings.”

Sholom Mordechai’s motion for a new trial is generating probing questions in many quarters, forcing people to turn back the pages of recent history for a fresh look at events.

“The Postville events are returning to haunt the U.S. Attorney’s Office and Judge Reade,” observed a member of AILA. “They would prefer to rewrite history - and might have succeeded - except for the testimony of a few who stood up at the time for human dignity and American justice. Their testimony is frozen in time - a voice that can’t be silenced.”

# Divrei Chizuk Mima'amakim

BY DEBBIE MAIMON

People who have read about the plight of Reb Sholom Mordechai Rubashkin often wonder what type of person he is. They wonder why he has been zoche to have all of Klal Yisroel davening for him. Those who know Reb Sholom Mordechai personally speak about his deep yiras Shomayim and constant desire for aliyah in ruchniyus.

Reb Sholom Mordechai sent me this letter before Yom Kippur. Though it was a private letter and not intended for publication, I can not help but share it with you. The chizuk derived from the letter is not so much from what he writes, but from where it was written. Locked behind the walls of a secure prison, Reb Sholom Mordechai wrote these words of chizuk and bitachon. Despite the daunting challenges he has faced and even in the dire circumstances in which he currently finds himself, he continues to be a paragon of emunah and bitachon. He knows that everything that transpires is letov and that the Ribono Shel Olam causes things to happen for reasons we don't understand.

Picture a man sitting in jail. Picture a man who has been incarcerated for almost a year and has been sentenced to a quarter century of jail time. Picture a man who refuses to succumb to yi'ush and despair. And read his letter.

•••••

Today is ches Tishrei...getting closer to Yom Kippur:

These are times when one needs to tap into the deepest level of his neshama to be able to continue and grow in avodas Hashem, which is what Yom Kippur is the koach for. Today, ches Tishrei, the eighth day of Tishrei, is about serving Hashem lemaaleh min haseichel.

As every day, we are waiting for the yeshuah proti and the yeshuah kloli, and we will be zoche to see it. Ches is eight, which is higher than tevah. Hashem created the world in seven days, and eight is in the bechinah of that which is "hecher fun der velt."

Velt alts hagbolohs and hesterim.

Ches also has big shaiches to Yom Kippur because one of the zechusim that the kohein gadol can enter the Kodesh Hakodoshim on Yom Kippur is bezechus hamilah, bezois yavoi Aharon.

Milah is done bayom hashmini, on the eighth day. The whole inyan of a bris is to the binding that is higher than seichel. Bepashtus, a bris is needed for two ohavim, for those times that the seichel and the reasons that now is uniting the two ohavim to like each other and want to be together are not there. So the two ohavim make a bris that says that even when there will a time that the reason for our unity is not revealed, the bris, which is higher than seichel, will be there to keep us united.

Likewise, the kohein gadol prepares himself seven days before Yom Kippur. The avodah of Yom Kippur is on the eighth day, be-

cause the kochos to accomplish on Yom Kippur are unlimited and higher than tevah. Very simply put, in order to correct the past, like we do with teshuvah, we must draw from kochos that are higher than nature, because nature says that what happened is done. Yud Gimmel harachamim is lemaalah mitevah.

Further, the avodah of Yom Kippur is "achas lemaalah veshevah lematah," which is also the avodah of eight.

The high point of Yom Kippur is when the kohein gadol goes into the Kodesh Hakodoshim, and when he is there it says in the posuk, "Vechol adam lo yiyeh be'ohel," and adam here means even those malachim who are called "pnei adam." The avodah of Yom Kippur is done on such a high madreigah that even the malachim cannot be there when the kohein gadol is doing his avodah. The kohein gadol is the shliach of Klal Yisroel so it is an avodah that is only with the Aibishter and the Yidden.

Every Yiddisher neshama has five parts: nefesh, ruach, neshama, chayei, and yechidah. The five tefillos of Yom Kippur are keneged the five chalokim of the neshama, with yechidah being the tefillah of Ne'ilah. The regular p'shat of Ne'ilah is that the doors are about to close, the day is about to end, and the shaarei Shomayim are about to close, so "chap arein" and make one more very strong effort in your avodas hateshuvah of Yom Kippur and request even stronger from the Ribono Shel Olam to make the kesivah tovah into a chasimah tovah. The aron kodesh is open and the tefillos gather the strength from a whole day of fasting and davening.

But there is a deeper p'shat for Ne'ilah.

Hashem says to all creation, including the greatest malachim, the ones that Yechezkel Hanovi describes as "upneihem kepnei adam," that now is a time for Ne'ilah, to close the doors, to all creation that is limited. Now is the time to be beyechidus with the Yidden. It's a time when the Yid who has the yechidah, the level which is always connected with Hashem, is going to be alone with His essence, Hashem, the only One he really, really, wants to be united with, because the doors are closed to everybody else. Just like it says by the avodah in the Bais Hamikdosh, "Vechol adam lo yiyeh b'Ohel Mo'ed," that when the avodah of Yom Kippur is being done, nobody else is there.

This year has been for me and my family a year of yechidah. It has been a year during which we needed to draw on kochos that were much deeper and stronger than any other level. The nisyonos brought out the koach of yechidah.

Yechidah is the level of the neshama that brings a Yid to "azoi un nisht andresh." This way, Hashem's way, and no changes, not even a small change that can separate me from Hashem, the true and only Being.

Yechidah, the Yid, is connected to a point that any separation is

simply intolerable, impossible. Nothing else matters. It's only *der Aibischer* Who matters; there is nothing else. The *nisayon*, whatever is other than Hashem's *ratzon*, is just not real. It can't be. When *yechidah* is challenged, there is no rational, *seicheldiker* thought process to weigh the *maalos* or *chesronos*. The only question is, "Is what is being asked of me to do, will it allow me to stay connected with my essence or will it separate me?" Know for sure that separation from Hashem, even a temporary one, for a quick moment, is not an option. Just as death, even a temporary one, just for a second, is not an option. The truth being that Hashem is higher than time, so there is really not even the concept of "only for a second." As Dovid Hamelech says in *Tehillim*, "*Vechatosi negdi tomid.*"

Being connected, on the other hand, is a real *simcha* with the *avodah* of *yechidah*.

I mean try it. It's really real. Why are you just too caught up in the limitations of rationality? Serve Hashem for real in an unlimited way, as Hashem is unlimited (and as you want the *brachos* you are asking for to be unlimited).

There is absolutely nothing more thrilling than knowing that you are connected with Hashem. Listen, Hashem is with you and he is giving you the *avodah*. That's the most important thing to happen to you. *Yechidah* says that I am holding on to You, Hashem, and I am not letting go. Nothing will separate me from You.

There is a story about a *Yid* in the times of the Spanish Inquisition. He was a *tzaddik* and he had the most trying *nisyonos* that a human being could endure. After all *nisyonos* that he had, he had a *nisayon* of terrible magnitude. He stood on his ship. He raised his eyes to heaven and said to Hashem, "Hashem, You are doing everything to try to push me away from You. So I am telling you that I am not separating myself from You!"

This is what *yechidah* is.

It's the *Yid* in his *avodah* from life who says to Hashem, "It's only You and I am not separating myself from You." This is one of the

stories that I read when I was in *yeshiva* and came to me in South Dakota state prison.

What defines *mesirus nefesh* is that it is not what the *Yid* wants to gain from the *avodah* that he is given, but rather that this is the only way it can be. Why? Because the only thing *yechidah* knows is the truth of Hashem and "*Ein Od Melvado.*"

It's not about gaining *s'char* of anything. It's all about this. If whatever is happening is going separate the *neshama* from *Hakadosh Boruch Hu*, then it will not happen. He can't do it.

That's what *teshuvah* and *Yom Kippur* show, in a revealed way. No matter what a *Yid* did throughout the year, the *Yid* has a *neshama*. He really wants Hashem. What is the *Yid's* real *ratzon*? What does he really want? He wants Hashem. He is fasting on *Yom Kippur* and saying *viduy* and taking down any separation that may be between him and Hashem.

The *avodah* of *yechidah* is also shown *besimcha* on *Simchas Torah* after the *hachanah* of *Chodesh Elul*.

The whole month of *Tishrei* starts with the *kabbolas hamalchus* of *Rosh Hashanah*. Then, when we have the realization that we may have not served the King as we should have in the past, we do *teshuvah* during the *Aseres Yemei Teshuvah*.

On *Yom Kippur*, the *teshuvah* is *niskabel*. *Teshuvah* means to return. We returned to our real source and we have revealed the deepest *kochos* of our *neshama*, our *koach mesirus nefesh*, our connection to Hashem that is unlimited.

In the next days, "*Gut's teg,*" we are so busy doing *mitzvos be'ahava* that we have no time to do any *aveiros*.

Then we have *Zeman Simchaseinu* of *Sukkos*, when we sit in the *tzeil* of *Hakadosh Boruch Hu* and his loving protection.

We take the *Arbah Minim*, which shows the unity of all *Yidden*, as each *min* represents a certain type of *Yid*. The important lesson is that we are really one unit, so much so that if one is missing, the other is so affected that a *mitzvah* cannot be done.

Then we have *Shemini Atzeres*, which is exactly what we said was *Ne'ilah*. Like *Rashi* explains the *moshol* of the king who had others who came to the party and then he says to his son, "*Bo'ih venagalgel ani ve'ata.*"

That's what *Ne'ilah* is. The doors are closed to everybody else. It's the *kohein gadol*, the representative of *Klal Yisroel* and the *Aibischer* together.

And that makes the greatest *simcha*. The *simcha* of *Simchas Torah* that is shared by every single type of *Yid*, learned and not-so-learned. We are dancing with the Torah in its *mantel*. We are not learning now. And that is because our connection with the Torah and Hashem transcends understanding. There is an essential connection that exists that fuels the dancing and that's *yechidah*. *Yidden* are *davening* for me every day and giving me more *chizuk* than they can imagine. The letters they send are so full of *ahavas Yisroel* and *achdus*. They express their love and caring like to a family member. Yes, because we are family. So I join in their *tefillos* and I am *mispallel* for all my brothers and sisters.

*Gemar chasimah tovah. Betov hanireh vehaniglah.* There should be the *geulah proti* for each *Yid* and the *geulah kloli* for all *Yidden* with the coming of *Moshiach*.

Sholom Mordechai Halevi



# Kiruv Imperatives

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BY RABBI PINCHOS LIPSCHUTZ

This juxtaposition of *Parshas Lech Lecha* with *Parshas Noach* has a profound message for us. That lesson is underscored in the famous Rashi at the beginning of *Parshas*. It's a message we've heard innumerable times but for some reason, never truly absorb.

Rashi states that according to one opinion, had Noach lived in the generation of Avrohom, he wouldn't have been regarded as anyone special. Why was Noach inferior to Avrohom? In what way did the two men differ so radically that the Torah has to hint that had Noach lived in Avrohom's era, he would not have been considered a *tzaddik* at all?

The answer that is often given is that Avrohom reached out to the people and engaged in *kiruv* work. Avrohom cared about his neighbors. He *davened* for them and sought to bring them *tachas kanfei haShechinah*. Noach, by contrast, wasn't able to be *mekarev* anyone.

When *Hakadosh Boruch Hu* told him about the impending *Mabul*, Noach's reaction was acceptance of the decree. He didn't defend the people or seek to have the decree annulled. Avrohom's response to the news of destruction looming over Sedom was precisely the opposite. He *davened* to spare the wicked ones from annihilation.

Avrohom is credited with enlightening and educating an entire community, as indicated by the *posuk* which states, "*Es hanefesh asher asu beChoron*." Noach's sphere of influence was practically non-existent.

We all know the answer but it doesn't impact us. We never take it to heart. We should pause to consider how we can apply the Torah's message about the supreme value of reaching out to our fellow Jews in our own lives.

If Noach, whom the Torah describes as a *tzaddik tomim*, would have been totally insignificant in a future generation because he didn't invest effort in drawing people closer to the Creator, how would the Torah describe us? Our generation may well be as immoral, corrupt and licentious as his. Yet, we live post *Matan Torah*, at a time when the people we are responsible for are not uncivilized pagans, but modern, intelligent, *bnei Avrohom Yitzchok v'Yaakov*, who, due to the upheavals of *golus*, have lost their connection to our glorious heritage.

We do our best to be *tzaddikim*. We work very hard at being *temimim*. We learn as much as we can, do as much *chesed* as is humanly possible, and constantly find worthy causes to donate to. But we are lacking in the way we treat people who look different than us. We look down upon them and don't consider it our obligation to befriend them or get involved with them.

A story is told about three young residents of a virulently an-

ti-religious Shomer Hatzair kibbutz who showed up at the *kollel* of the Chazon Ish in Bnei Brak. Upon entering, they said to the stunned *yungeleit*, "*Anachnu rotzim lilmod Torah* - We want to learn Torah." The *kollel* fellows didn't know how to respond. They consulted with the Chazon Ish, who instructed them to learn with the *kibbutzniks*. He explained that these young men were the children and grandchildren of the original *olim* to *Eretz Yisroel* who threw away their *Yiddishkeit* as their boats made their way across the Mediterranean.

The parents of those *olim*, said the Chazon Ish, had run to their *shuls*, grabbed the *paroches*, and cried bitter tears over their children who were becoming lost. Their tears may not have helped for those who intentionally abandoned *Yiddishkeit*, but they were stored in *Shomayim* and were being responded to as the *olims'* children, who were *tinokos shenishbu*, sought out Torah. Thus, predicted the Chazon Ish, they will come back, and not only will they embrace a Torah life, but in the coming years so will many thousands more.

We see those prophetic words coming to life. We have a role to play in realizing the potential for greatness in the Jewish people, as far as many of our brethren have wandered. You'll never know where they are if we don't stretch out a hand to such people. When we come in contact with them, and when it is appropriate, we should try to interest them in the glory of their heritage so that they may one day enjoy the benefits of a Torah life.

We should not only concern ourselves with those who have become detached from Torah. There are many Torah observant people who need us. There are many people with whom we are in contact each day who could benefit from a little more love, some compassion, and the knowledge that someone cares about them. *Frum* people also need *kiruv*. *Frum* people can also be lonely and in need of a friend. *Frum* people can also use *chizuk* once in a while. They get down when things don't go right with their *parnossah* or their children. They are overwhelmed as they cope with the myriad challenges of life. How can we think of ourselves as *tzaddikim* if we couldn't care less whether the guy who sits next to us by *davening* was able to get his children into school? How can we consider ourselves *temimim* if we feign ignorance to the pain of our neighbors and colleagues?

A new day school opened in southern Florida for the children of irreligious Israeli *yordim* who would otherwise be in public school. When the school opened a woman came to register her child in the school. She told the administrator that she could only afford \$1500.00 for tuition, but would augment that by washing the floors of the school. This woman had no clear idea

of what was motivating her to demonstrate this type of *mesirus nefesh* for her child to receive a Torah education. People who are distant from *Yiddishkeit* can still be so close to *Hashem*. All they need is for us to stretch out a friendly hand to them and they'll do the rest themselves. It is folly for us to judge people based on their dress and outer appearances. Inside, *heim rotzim lilmod Torah*.

When Sholom Mordechai Rubashkin was on trial for his life in South Dakota, he went to the local mall to purchase something he needed. While there, he saw young Israelis at booths trying to convince shoppers to purchase their products. Instead of going home that weekend, he stayed in South Dakota with his family to spend the *Shabbos* with twelve Israelis. Did they become *frum* from that encounter? Who knows? But they surely absorbed the warmth of *Shabbos* in a way they never did previously. They acquired a new perspective on *Yiddishkeit*.

Many times we have passed by people we could readily identify as secular Israelis without so much as giving them a second thought. We can't all spend a *Shabbos* with them, but we can stretch out a hand of friendship and make them feel wanted. You never know where your initiative will lead.

The *parshiyos* of *Sefer Bereishis* are part of the eternal Torah so that we can learn the lessons they impart. The *parshiyos* are not simply collections of good stories. They are meant to portray how we are to lead our lives. Maybe not all of us are able to involve ourselves in *kiruv* activities. But we can all change our mindset to recognize that those who actively pursue *kiruv* are not people to be mocked, vilified or pitied for their naïveté.

Besides, life is about going as far as you can and doing as much you can; you never know how far you can go and how much you can accomplish until you try. You never know the difference you can make in a person's life until you give it a shot.

# “Unity for Justice” - The Video

BY SHLOIME DACHS

As *Yated* readers are no doubt aware, Reb Sholom Mordechai Rubashkin was sentenced to 27 years in jail. Across the world, Jewish communities have united to protest the injustice and support the legal battle for Sholom Mordechai's freedom. Thousands joined in unity at *asifos* to say *Tehillim* and offer *chizuk*. *Mi ke'amcha Yisroel*. Sholom Mordechai is actually a metaphor for us as a nation being imprisoned behind the bars of *golus*, and once we unite *ke'ish echad beleiv echad* for his release, we will *iy"H* merit the true freedom we so desire.

Over two dozen Jewish music artists teamed up for a unique “Unity” musical production to raise awareness of the Rubashkin case, resulting in more resources for the staggering legal bills. In just a few days, over 100,000 people across the world have viewed this unique and moving video presentation.

Participating artists are Mordechai Ben David, Avrohom Fried, Lipa Shmeltzer, Yaakov Shwekey, Yitzchok Meir Helfgot, Shloime and Dovid Dachs, Boruch Levine, Shloime Gertner, Mendy Werdyger, Yeedle Werdyger, Yisroel Werdyger, Gad Elbaz, Benny Friedman, Yehudah Green, Beri Weber, Michael Schnitzler, Yossi Goldstein, Avi and Yossi Piamenta, Bentzi Marcus, Yossi Green, Ohad Moshkovitch, Ken Burgess, Yanky Lemmer, Aaron Razel, Mendy Wertzberger, and Dovid Gabay.

Thanks to the many others who are featured in the chorus on the recording, including Shloime Tausig, the Sparks Choir, Y-Love, the Shira Choir, Describe, Yoni Zeigelbaum, Yitzchak Fuchs, Moshe Kravitsky, Avi Begun, Rivie Schwebel, Ari Klein, Shua Kessin, Dovid Stein, Michael Pruzansky and C. Lanzbom.

The “Unity” song was originally performed by Mordechai Ben David and written by MBD and Sheya

Mendlowitz. The video was produced and directed by Danny Finkelman and filmed by Maurico Arenas. Musical production was done by Ilya Lishinsky and the song was mixed and mastered by Yitzchak Shem Tov. Additional lyrics were composed by Moshe Kravitsky.

Special thanks to Eli Finkelman and Meyer Cohen of Trapcall.co and Teltech, who sponsored the production. Thank you to *Yeshiva World News* for hosting the Unity video. *Hakoros hatov* to Rabbi Pinchos Lipschutz. When the Rubashkin story wasn't headline news, the *Yated* paved the road for the world to hear and learn about what was happening to a special *Yid* and his wonderful family in Iowa.

The new “Unity” song was released at a press conference this past Thursday, October 7, at the Jewish Children's Museum in Brooklyn.

On a personal level, I'd like to thank Daniel Finkelman for inviting me to participate in this unprecedented production, uniting Jews from all walks of life. My son, Dovid, and I are humbled and honored to have been given the opportunity to sing on Sholom Mordechai's behalf.

When I met Mrs. Rubashkin and her family for the first time at the studio, I received far more *chizuk* than I gave them. May Hashem continue to give her the *koach* and *simchas hachaim* to endure all the challenges and *ni-syonos* that lie ahead.

To view the video and to donate much needed funds, visit [Unityfor-justice.com](http://Unityfor-justice.com).



# Achdus Lessons

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BY RABBI PINCHOS LIPSCHUTZ

This paper's staunch support of Sholom Mordechai Rubashkin has engendered some misunderstanding. In contrast to popular belief, we took up his cause and are waging a campaign to have his wrongful conviction overturned not because of a personal friendship or because we knew him prior to the day his company became front-page news in newspapers across the country. We rallied behind him because we became convinced of the justice of his cause. We saw an honest and generous person being hounded and demonized by forces apparently bent on destroying him. We saw the public being fed a web of lies about the meatpacking plant he helped manage. We witnessed a propaganda campaign gaining enormous traction in the media.

An altruistic, deeply spiritual man was being sold to the public as a greedy millionaire who made his fortune taking advantage of the underclass. That was a breathtaking distortion of reality. The travesty cried out and we could not sit by quietly as this fine man was dragged through the mud and eventually railroaded by the justice system.

Prior to last week, I had met Sholom Mordechai just once. Last Thursday, I visited him in Otisville, meeting him for a second time. I had met him the first time under such drastically different circumstances - in his home, surrounded by a loving family.

He was then awaiting trial, but had *bitachon* that he would be cleared of all charges since he knew he was innocent. Little did he imagine that the next time we would meet, he would be sitting in jail with a 27-year sentence hanging over him.

During the first visit, it was not possible to discern, either from his surroundings or from his demeanor, that he was the wealthiest person in town. His house was a large but simple pre-fab, at the end of a long unpaved road, surrounded by cornfields. There was no evidence of the turmoil into which his life had been plunged.

From the way he comported himself, he could have been just another of the many fine people who had moved to Postville to be employed as *shochtim* and *bodkim* at Agriprocessors. The people in *shul* treated him with quiet respect. When he was out of earshot, they spoke to me about some of his extraordinary deeds and his unheralded acts of charity and kindness. They told me of the high esteem in which he was held by the town's residents, Jew and gentile alike.

People close to him knew him as a *baal bitachon*, a person suffused with *yiras Shomayim* and *emunah*. His custom of arising early in the morning to learn and say *Tehillim* was adopted many years back. He always understood that the wealth he possessed was not meant for him to enjoy, but rather to help people in need and to support worthy institutions. His home was not just a home. It was a virtual communal center, open at all times of the day and

night to people who needed a warm meal, a comfortable bed, a shoulder to cry on, and financial aid.

Most of all, Sholom Mordechai had a sense of happiness and calm about him. When I met him last week, I was happy to see the same warm smile and the same quiet acceptance that mark those who place their faith in Hashem. To see him imprisoned in surroundings that so assault the senses was deeply painful.

I was struck by his ability to maintain his equilibrium despite his environment, and his deep concerns about his family and his legal case. Perhaps the most amazing thing about all this is that he is outwardly just a regular guy like you and me. Thrust into an awful situation, however, his response has been anything but ordinary. His quiet strength and heroism are humbling. Instead of blaming people and becoming embittered by his plight, he has remained a fountain of hope, optimism and trust in Hashem.

As we visited, I thought to myself how, most times, people's strengths so often lie dormant and untested. When the chips were down, Sholom Mordechai reached into his deepest spiritual reserves to remain strong and undaunted. He is able to retain his humanity and the sense of dignity and self-respect that distinguish the free, despite his harrowing surroundings.

The way he has handled himself should inspire all of us with the realization that we, too, possess the raw power of *emunah* and the potential for greatness. We should never have to be tested by calamity in order to bring these *kochos* to the surface and to prove that we can meet crises without crumbling.

It is thanks to his love of all people and attempts, when he was free, to foster and ensure *achdus* in his corner of the world, that *Klal Yisroel* has rallied to his side with an unprecedented outpouring of *tefillos* and support which sustain him.

*Achdus* is the glue that holds *Am Yisroel* together with a supernatural power. With *achdus*, we can overcome terrible adversity and the unrelenting hardships of *golus*.

Much of the world was focused last week on the rescue of the trapped Chilean miners. Many people derived lessons for life from their determination to survive their ordeal.

For 66 days, 33 men sat entombed in a dark underground cave, half a mile below civilization. They banded together and were on the brink of death when a drill bit from up above poked into their tiny shelter. They sent up a note that they were alive, and the nation of Chile, and the world,

Food was sent down to the miners, and a couple of months later, they were pulled, alive and well, to safety.

What enabled these people to come out alive? By their own testimony, it was their shared plight and concern for one another. Before they were found to be alive in a tiny corner unaffected by the

mine's collapse, they survived by sharing a small amount of food that some of the men had left over in their lunch pails. Had each person reacted by caring solely for himself, no one would have made it. Had they not embraced one another, they would have all succumbed. Instead, they sat in that cold, damp, dark tomb, supporting and caring for one another.

In order to survive in our own cave, known as Earth, we must also learn how to care for one another and not be self-absorbed and self-centered. If we focus only on ourselves and are callous and inconsiderate of others, we will never excel and the society we create will be one we do not want to live in.

That is the message of the Tea Party revolution which is sweeping this country. People had become apathetic about the direction the country is taking. They permitted their leaders to act in ways which harmed the very populace they were elected to represent. Instead of recognizing their obligation to their constituents, they viewed themselves as being on a higher plane than the common man. Upon assuming positions of power, they lost touch with reality. They viewed themselves as being above reproach and promoted their own interests, oblivious and indifferent to the needs of others.

The failure of entrenched politicians was due not only to their trail of broken promises, but to the fact that they ignored the feelings and opinions of the people they were representing. They got away with this outrageous neglect of their mission because the masses weren't united.

People who were being crushed by the declining economy, who had lost their jobs, whose incomes had dropped, and whose taxes had risen all believed that they had no options. Those who feared

what would happen to their health care assumed that they had their backs against the wall and were out of options, as did people who had become ensnared in the growing government bureaucracy.

It was only after people began speaking to each other and realizing that they were not alone in their distress over the direction the country was taking that the incumbent Democrat reign began to weaken. Slowly, multitudes of people joined hands in the awareness that they were not isolated voices of dissent, and a movement began gathering speed and momentum.

People shared their concerns over rising taxes, a weakening economy, an ever-expanding big-brother government, and a president and party with an aggressive, leftist agenda.

It is only through open communication, a coming together of diverse groups, and selfless dedication to a cause and to each other that the country will succeed in reversing the current balance of power favoring the Democrats. When simple, ordinary folk organize around the cause of replacing politicians who promise one thing and do another, and when they finally demand an accounting from those who flout the public will, a changing of the guard will be ensured.

Let us also resolve to unify as we never have before, so that we can use the tools at our disposal to overturn the abuses of power that have harmed our community and individuals such as Sholom Mordechai. Let us resolve to follow the example of Avrohom Avinu and the *avos* in the *parshiyos* of *Sefer Bereishis* that we are currently studying. Let us genuinely adopt *achdus* as our defining trait, so that it may lead us from this dark cave of *golus* to the ultimate redemption, speedily and in our day. rejoiced.

# Pressure Mounts for Justice Dept. Investigation into Rubashkin Case

BY DEBBIE MAIMON

Joining a growing chain of concerned congressmen, Rep. Mike McMahon (D-NY) wrote to Attorney General Eric Holder this week urging him to investigate allegations of judicial misconduct in the Rubashkin case.

The New York congressman joins Rep. Anthony Weiner (D-NY), Rep. Tim Murphy (R-Pa) and Rep. Bill Delahunt (D-Mass) in demanding that a case that increasingly stands out as an example of prosecutorial and judicial abuse be subjected to legal scrutiny.

"I believe these allegations demand your immediate attention," the congressman wrote. Among the most serious violations of legal ethics, he cited case documents that reveal Judge Linda Reade was repeatedly consulted by federal prosecutors in the months preceding the raid on Agriprocessors and the arrest of Sholom Mordechai Rubashkin.

"These ex parte communications between Judge Reade and the prosecutors who later tried Sholom Mordechai should have been disclosed to the defense, who would then have had the grounds to request the judge's recusal.

If, in fact, these communications were concealed, as the defendant has charged, such actions constitute a "serious miscarriage of justice," the congressman asserted.

McMahon also said that he was troubled by the grossly disproportionate prison sentence imposed by Reade, suggesting that the sentencing guidelines had been "abused" by prosecutors and judge alike.

Echoing widespread criticism of Judge Reade's draconian 27-year sentence, he expressed amazement that the judge had ignored the advice of the nation's most esteemed experts, including six attorneys general and other renowned legal scholars.

These prominent voices had urged Reade to keep Sholom Mordechai's sentence consistent with those issued to other first-time, non-violent offenders in similar situations.

Spurning their pleas for moderation and balance, "Reade actually increased the length of sentence asked for by prosecutors, from 25 to 27 years," McMahon noted.

The McMahon letter comes amid mounting public awareness of widespread prosecutorial misconduct in the nation's federal courts. A much-talked-about special feature in USA Today recently reported on over 200 cases of proven misconduct on the part of federal prosecutors in the past two years. The abuse of office resulted in innocent people being jailed and guilty ones walking free.

In some of the cases cited by the article, judges caught prosecutors hiding evidence, lying to juries or breaking plea bargains. In other cases, innocent people were imprisoned. Even when defendants were released or exonerated, some lost livelihoods and reputations.

In response to the USA Today article on prosecutorial misconduct, legal scholars pointed out that such behavior is often enabled or compounded by judges who are partial or consider themselves above the law.

In the case of Judge Reade, those close to the case have denounced this judge not only for the illegal pre-trial meetings with prosecutors that came to the surface only recently. She has been harshly criticized for abusing her discretionary power at the trial itself. In shutting out compelling evidence that

would have exonerated Sholom Mordechai, she prejudiced the jury against him - and raised doubts about her own impartiality.

Although the bank fraud trial in which he was convicted was supposed to be severed from the immigration charges, Reade nevertheless allowed the prosecution to inflame and prejudice the jury with reams of immigration-related testimony.

A full array of government witnesses took the stand under prosecutors' coaching and incriminated Sholom Mordechai with testimony that painted him as an arrogant boss who routinely flouted immigration laws, then scrambled to cover up his tracks just days before the immigration raid.

Present at the trial were two immigration lawyers from the much respected Des Moines Nyemaster law firm, who could easily have established the truth. These attorneys, Neil Weston and Jay Eaton, had been hired by Agriprocessors and paid tens of thousands of dollars to screen out undocumented workers and false immigration papers.

This was an intricate process that was fraught with legal "landmines." Employers could be sued for firing employees that they only suspected - but could not prove - were in the country illegally. The laws governing the rights of employees to be protected from dismissal based on suspicions that they were undocumented are complicated and ever-changing.

Had these attorneys been allowed to take the stand and tell the jury the truth - that they were working with Sholom Mordechai over a number of years, right up to the very day of the raid to identify undocumented workers among the employees, the trial's outcome would have likely been vastly different.

Their evidence would have punctured the false testimony depicting the defendant as a greedy lawbreaker who kept illegal workers on the workforce because they supplied cheap labor. The evidence would have thrown a monkey wrench into the effort to convict Sholom Mordechai by demonizing him to the jury - over immigration charges that were later dropped.

Judge Reade made certain that the prosecutors' game plan would not be thwarted. She threw herself behind prosecutors' objections to the Nyemaster attorneys' testimony on the grounds that it was "irrelevant," and barred their evidence from the jury.

The Rubashkin case underscores the simple fact that prosecutors and judges hold extraordinary power to ruin people's lives. Unethical prosecutors and judges, in the absence of any negative consequences for misconduct, will abuse that power - out of incompetence, runaway ambition or plain prejudice.

How much of a role did prejudice play in the railroading of justice in this case? Debate continues to swirl about this question.

The opinion of one of Sholom Mordechai's defense lawyers is instructive. "This case has never been about actual federal crimes committed with intent," opined defense attorney Guy Cook, a native Iowan, in a phone interview with the *Yated*.

"This is a case of people buying into intense prejudice against someone wrongly viewed as a crafty Jewish businessman who exploited poor immigrants to amass a private fortune. That image couldn't be further from the truth, but such is the power of prejudice."

# “I Will Thank You Forever”

*Excerpts of a recent letter written  
by Sholom Mordechai Rubashkin  
to his wife, parents, family and relatives  
on the occasion of his 52<sup>nd</sup> birthday*

B”H

Mazel tov! Today is, *boruch Hashem*, my *yom huledes* and also the anniversary of our *chasunah*. May Hashem make it *keflayim letoshia, amein!*

There is a *minhag* from the *Baal Shem Tov* that a person should recite the *kapittel* of *Tehillim* that corresponds to chronological age. As I am, *baoruch Hashem*, embarking on my fifty-second year, *le’orech yomim veshonim tovos*, I’ll begin as of today to recite *kapittel nun-bais*, chapter 52.

I was fortunate to be able to find a *Chumash Mikra’os Gedolos* here in the prison chapel, and I’d like to share with you a few *pesukim* from this *perek* that I learned today.

To my amazement, I find that Dovid Hamelech seems to have my own story in mind in this *kapittel*. Every *perek* of *Tehillim* has lessons for me, but this one seems to be talking to me personally.

Dovid Hamelech talks here about his adversary, Doeg Ho’adomi. “*Mah tis’halel bra’ah hagibor*,” the *posuk* begins. “Why do you pride yourself with evil, mighty warrior?” This refers to Doeg, who was a *gibor* in Torah, a great Torah scholar. Despite his accomplishments, he was engaged in evil and proud of it, totally failing to realize his base-ness.

“You, Doeg, sought to cut off all my means of support,” Dovid says. “You thought that if Achimelech (the *kohein* who fed Dovid when he was fleeing Shaul) had not given me food, I would have died from starvation. How wrong you are!”

*Chessed Keil kol hayom*, Hashem’s kindness is active all day, the *pasuk* says. *Rashi* offers two explanations of what is meant by “all day.” First, that Hashem acts throughout the day to save the *nirdof*, the victim. Second, His kindness is constant; it flows continually without a break or pause. Both kinds of *chedes* saved Dovid from falling prey to his enemies.

“Hashem has many messengers,” Dovid tells us. If Achimelech hadn’t fed me, others would have done so.” In the words of the *Chovos Halevavos*, *Shaar Habitachon*, “Nobody can hurt another person or save him from harm. Everything that happens is an extension of His will.”

Doeg denies an important *yesod* of *emunah* by implying that without Achimelech’s intervention, Dovid would have been doomed. Such thinking is warped, Dovid tells us. The *yeshuah* comes from Hashem’s *chedes* that is *kol hayom*, carried out through many avenues and mes-

sengers, and no human being can obstruct Him.

“*Havos tachshov leshonecha* - Your tongue thinks treacherous thoughts,” the *posuk* continues. But doesn’t thinking originate in the mind? Why, then, does Dovid associate treacherous thoughts with the tongue?

The *Metzudas Dovid* explains that the tongue reveals what the heart is thinking. A person’s words open a window into his true intentions. Doeg’s *lashon harah* led to the destruction of *Nov Ihr Hakohanim*, the city of *kohanim*. From his *lashon harah* came a catastrophe - the murder of innocent people. According to the *Metzudas Dovid*, this is what Doeg intended, and his *lashon harah* reflected these secret evil intentions.

These words practically jumped off the page as I read them.

We are now in the midst of discovering some of what was said in secret never-transcribed meetings between a judge and prosecutors (read *persecutors*). Their true intentions are now surfacing: a plan to destroy a person, a family, a community. What is even more shocking is that if in the process they had to destroy an entire city as collateral damage, to these sinister people it was worth it.

Dovid Hamelech says in the *posuk*, “*Ohavta kol divrei bola*.” He uses the word “*bola*,” which means “swallowed,” to describe *lashon harah* that destroys and kills. The *Metzudas Dovid* says that the most dangerous and destructive words are swallowed and uttered quietly. The very secrecy and concealment that surround these words point to their evil nature.

Dovid Hamelech explains another pillar of *emunah*. In *posuk zayin*, he says that Hashem will uproot the evil and repay the evildoers. In *Chovos Halevavos*, *Shaar Habitachon*, *perek daled*, *bitachon* is discussed as the belief that not only will *tzaddikim* be rewarded, but that punishment will be meted out to the wicked.

Dovid Hamelech spells out Doeg’s future punishment, saying that when *reshaim* are uprooted and destroyed, *tzaddikim* who survived by holding on to their *emunah* will be awed. Their *yiras Shomayim* will be strengthened by witnessing Divine justice.

The *Malbim*, in the last *posuk*, “I will thank You forever...and I will place hope in Your name for it is good,” explains that Dovid is saying that Hashem’s miraculous salvation in the past strengthens his faith and gives him hope for miracles in the present also.

The words “*ki tov*” in this *posuk*, “for it is good,” allude to *maaseh bereishis*, where the good is obvious and indisputable. This is the kind of good we hope and trust Hashem will bring about: where we can together sing and thank Him for all his *nissim kol hayom*, miracles that sustained us all day, throughout this entire period of distress.

Every single *Yid* will then have their *yeshuah proti*, personal redemption, and we will all witness the *yeshuah kloli* for all of *Klal Yisroel*, *bebias go’el tzedek*, *Moshiach Tzidkeinu*.

Sholom Mordechai Halevi sheyichye

LETTER FROM CONGRESSMAN ANTHONY WEINER TO AG ERIC HOLDER  
REGARDING THE RUBASHKIN CASE.

ANTHONY D. WEINER  
9th District, New York  
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August 13, 2010

The Honorable Eric Holder  
Attorney General of the United States  
950 Pennsylvania Ave., NW  
Suite 5111  
Washington, DC 20530

IN RE: U. S. v. Rubashkin, Case No. 2:08-cr-01324-LRR (ND IA)

Dear Attorney General Holder:

I know you to be committed, both personally and in your capacity as Attorney General of the United States, to ensuring that all matters presented to federal courts be handled from start to finish in a fair, even-handed, and uniform manner, especially cases alleging the commission of federal crimes. In this spirit I welcomed your May 19, 2010, memorandum to federal prosecutors stressing these principles.

I was also impressed that in April 2009 you took the difficult but commendable step of deciding, and announcing publicly, that the Department of Justice would drop charges against late Senator Ted Stevens because information in the government's possession that should have been turned over to the defense was improperly withheld.

I now bring to your attention another case involving credible allegations that important relevant information was withheld. The case concerns apparently improper communications, disclosed in documents produced under the FOIA, between a federal judge and federal prosecutors and investigators. Documents recently filed in the United States District Court for the Northern District of Iowa (Case No. 2:08-cr-01324-LRR), allege that Chief Judge Linda R. Reade was repeatedly consulted by law-enforcement agents and prosecutors from the U.S. Attorney's Office during several months preceding a May 2008 immigration raid on a kosher meatpacking plant. The judge offered to "help in any way possible" with preparations for the raid.

Intimate communications and private meetings between a supposedly impartial federal judge and federal law-enforcement agents and prosecutors who bring a case to trial before that federal judge are impermissible, even if these contacts are disclosed to the defendant. If the contacts between the judge and the government are deliberately concealed from the defendant and his attorneys so that they are unable to move for recusal of the judge, the result is demonstrably and unquestionably unjust.

LETTER FROM CONGRESSMAN BILL DELAHUNT TO AG ERIC HOLDER  
REGARDING THE RUBASHKIN CASE.

BILL DELAHUNT  
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Congress of the United States  
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October 6, 2010

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The Honorable Eric Holder  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. Attorney General:

I am writing to you regarding the highly questionable circumstances surrounding the criminal prosecution of Sholom Rubashkin, the former manager of the Agriprocessors kosher meatpacking plant in Postville, Iowa, which was raided by the government in May 2008.

First, I want to commend you for your outstanding service as our nation's 82<sup>nd</sup> Attorney General. As a Member of House Judiciary Committee, I share your desire to see that justice is served fairly for all who come before our courts. In the vast majority of cases, defendants are afforded fair process and, if found guilty, are sentenced fairly. But this is not always true. The case of Sholom Rubashkin is one particular case that has come to my attention. This case illustrates that injustice can happen and that grossly disparate sentences may be imposed in our system of justice.

Sholom Rubashkin's kosher meatpacking plant in Postville, Iowa was raided by the government in May 2008 (same sentence as earlier—probably can be cut). Although Rubashkin was initially arrested on immigration violations, all such charges were subsequently dismissed by the government. Rubashkin was then tried and found guilty of bank fraud and related white-collar crimes in November 2009. He was sentenced in June 2010 to 27 years in prison, two years beyond what even the government recommended. This case raises very serious issues of judicial and prosecutorial misconduct, resulting in an unfair and grossly disparate sentence. I believe these allegations are sufficiently serious to warrant an investigation by your office.

Rubashkin's case has also raised a number of other concerns that warrant review.

The process by which the government and the judge arrived at and justified such a sentence is troubling. Rubashkin is a first-time offender and was found guilty of white-collar violations with no hint of violence or physical harm to anyone. The federal judge -- the Honorable Linda Reade of the Northern District of Iowa -- gave what amounts to a life sentence for a 51-year-old man. The sentence has been criticized by many lawyers and legal scholars, including six former U.S. attorney generals who publicly called on the trial judge to impose a fair sentence consistent with other, similar cases. Instead, the judge imposed a sentence even greater than the prosecutors were seeking. This 27-year sentence is far more extreme than many sentences imposed on other defendants convicted of more serious white-collar crimes.

There are other troubling aspects of this case as well.

# Rubashkin Case Tests American Justice

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BY DEBBIE MAIMON

Framed against the issue of prosecutorial abuse of power that has captured national headlines, the Rubashkin case is increasingly seen as testing the soundness of the American system of justice.

A much-publicized two-part series in a leading magazine revealed that prosecutorial misconduct plagues courtrooms across the nation. Amid the debate stirred by these disclosures, mounting calls of foul play in Sholom Mordechai Rubashkin's case have been reaching the Department of Justice.

Recent revelations of prosecutorial and judicial abuses in the case, which powered a hard-hitting defense motion seeking a new trial for Sholom Mordechai, have prompted letters of protest from a growing array of congressmen.

To date, a dozen congressmen have written to Attorney General Eric Holder, protesting the evidence that recently surfaced of improper collusion between the judge and the prosecutors who convicted Sholom Mordechai. A number of the congressmen decried what they called "discriminatory treatment" meted out to him after his arrest in 2008, when he was denied bail.

## READE DENIES MOTION FOR NEW TRIAL

The new-trial motion, filed six weeks ago by lead appellate attorney Nathan Lewin along with Guy Cook and Montgomery Brown, was denied by Judge Linda Reade last Thursday.

Dismissing compelling evidence that she had been over-involved in planning for the ICE raid on Agriprocessors, Reade insisted that she had done nothing improper by holding numerous ex-parte meetings with federal agents.

She denied cooperating with the US Attorney's Office on anything but "logistics" in preparation for the 2008 immigration raid. She denied knowing that Agriprocessors would be targeted and when the raid would take place. And she insisted that she had no foreknowledge that Sholom Mordechai would be sought by federal agents.

In view of the nature of the charges, Sholom Mordechai's attorneys had asked that Reade turn the new-trial motion over to an impartial judge. To expect one who is accused of impropriety and misconduct to be capable of rendering an honest "self-judgment" flies in the face of common sense, critics of Judge Reade reasoned.

"An honest person would acknowledge the human tendency to rationalize and downplay one's own mistakes, and would therefore have turned this case over to another judge," a member of the defense team said.

## JUDICIAL ARROGANCE

"The fact that she ruled on the question of her own guilt, and insisted on assessing herself the serious charges against her, points

to judicial arrogance," attorney Nathan Lewin said in an interview with the *Yated*.

He noted that Judge Reade's defense of her actions is "woefully inadequate" and failed to address the serious allegations of judicial misconduct that were made against her.

"She took pains to clarify that contrary to information recorded in the ICE documents, she never scouted out the National Cattle Congress site with the Iowa Attorney. But she adroitly skirts all the other charges, simply brushing them aside as not worthy of consideration. That only lends them more weight," said Lewin.

Reviewing the most serious charges, Lewin said Reade failed to disclose or explain how often or why she met repeatedly with the prosecutor on many occasions beginning six months before the raid.

"Nor does she explain why she requested a meeting with 'many attendees' from law enforcement, during which she stated she was 'willing to support the operation in any way possible,'" he said.

"And what of her demand from the prosecutor for a 'final game plan' on the anticipated raid, and the weekly meetings cited in the ICE memoranda with the prosecutor prior to the raid?" the appellate attorney asked.

He noted that Judge Reade, in her 'Order,' "ignores the sworn affidavits of Mr. Rubashkin's lawyers, that had they known what has now been disclosed by the ICE documents, they would have moved to disqualify her."

What would likely have happened then, he said, is that "under governing standards set by federal law and Supreme Court decisions, she would have been disqualified. And she would not have had the authority to issue the dozens of rulings that harmed Sholom and resulted in the jury's adverse verdict."

## READE CONTRADICTS GOVERNMENT CLAIM

Reading Reade's order of denial, one is struck by her bland denial of facts on the record. She argues that "even assuming the truth of Mr. Rubashkin's allegations [that her collaboration with federal agents tainted the trial]," inasmuch as the trial was about financial charges not immigration counts, the secret meetings about the raid had no bearing on the jury's bank fraud verdict.

Yet, prosecutors themselves stated explicitly that immigration charges were crucial to the jury's guilty verdict.

Lead prosecutor Peter Deegan made this clear in court papers. Explaining his reasons for seeking dismissal of all the immigration charges, he wrote: "The verdict was premised, at least in part, on the fact that the defendant knowingly misled a bank about the fact that he was harboring illegal immigrants."

Therefore, he reasoned, a whole new trial about "harboring" charges that were already encompassed in the jury's verdict would

be a waste of time and money.

Deegan's statement is profoundly significant. What he meant was that the verdict reflected the jury's belief that the defendant defrauded the bank by harboring illegals and lying about it [by assuring the bank that Agriprocessors was in full compliance with the law, when in fact illegal immigrants were found there].

But with the dropping of immigration charges, whatever grounds existed for linking bank fraud to harboring illegals - and for justifying hours of testimony that poisoned the jury - collapsed.

How could it be said that the defendant "misled a bank" about compliance with a law that he was ultimately not found to have violated [since the charges were dismissed]?

A jury was thus profoundly influenced by a flood of testimony that should never have been admitted, based on charges that were dropped.

This testimony was allowed by a judge who, due to secret pre-trial collaboration with the government, had lost even the *appearance* of impartiality.

Ignoring the government's stance confirming the centrality of immigration testimony to the jury's verdict, Judge Reade resorted to feebly arguing that she "fails to see how the new evidence" [of her ex-parte communications with the government] could have affected the trial and verdict. (*See sidebar.*)

#### **REP. ANTHONY WEINER: "CREDIBLE ALLEGATIONS OF MISCONDUCT"**

Many of the congressmen who wrote to Attorney General Holder agreed that the evidence of foul play that surfaced in the ICE memo-randa cries out for investigation.

Congressmen such as Anthony Wiener (D-NY), Rep. Bill Delahunt (D-Mass), Rep. Brad Sherman (D-Ca) and Rep. Shelly Berkely (D-NV) and Rep. Bill Pascrell (D-NJ) have urged Holder to investigate the "credible allegations of misconduct" based on disclosures in the ICE documents.

Rep. Delahunt, in particular, called attention "to what appears to have been a tainted and secret relationship between the trial judge and the government leading to the prosecution of Rubashkin."

#### **A LONG-RUNNING POWER CLIQUE**

Rep. Delahunt's letter hints at statements made by Iowa attorneys, in interviews with the *Yated*, testifying to a long-running power clique in the Iowa Attorney's Office that includes Judge Reade, who was a former member of that office prior to her appointment as a district judge.

"Members of this office are deeply entrenched. There has been scarcely any turnover in the past twenty years. These prosecutors are accustomed to doing whatever they went - ramming through the courts whatever convictions and sentences they decide on. Misconduct is hard to prove, and there is no accountability," one attorney said, asking not to be identified.

In addition to the congressmen noted above, adding their voices to the calls for a thorough Department of Justice investigation are Rep. Mike McMahon (D-NY), Rep. Tim Murphy (R-Pa), Rep. Alan Grayson (D-Fla), Rep. Chris Smith (D-NJ), Rep. Carolyn McCarthy (D-NY), Rep. Sheila Jackson Lee (D-TX) and Rep. Bob Filner (D-Ca).

#### **REP. BRAD SHERMAN: BAIL DENIAL WAS "DISCRIMINATORY TREATMENT"**

Rep. Brad Sherman, in his letter, took Attorney General Holder back to the early stages of the prosecution, when Sholom Mordechai was denied bail pending his trial. Sherman protested the discriminatory treatment in this punishment, noting that federal prosecutors had argued that as a Jew, Sholom Mordechai posed a unique flight risk, because he might flee to Israel to escape trial.

The magistrate judge, Judge Scoles, put his imprimatur on this argument and denied bail. The move outraged the Jewish community, which regarded it as a dangerous precedent that threatened all American Jews.

In the face of sharp protests from leaders of Jewish organizations and prominent officials, the decision was overturned by a higher court, but not before Sholom Mordechai spent 76 days in jail for the sole reason that he is Jewish.

"Denying a defendant bail solely due on account of his Jewish faith is highly discriminatory," Congressman Sherman wrote to Attorney General Holder. "If such a policy exists, I request that you reverse it immediately."

#### **REP. SHEILA JACKSON LEE: "MISCARRIAGE OF JUSTICE"**

In an especially pointed letter, Rep. Sheila Jackson Lee articulated her concern that a "miscarriage of justice" occurred "as a result of Mr. Rubashkin being denied bail after his conviction and before sentencing."

Rep. Jackson Lee, who sits on the Judiciary Committee as well as on various congressional subcommittees, questioned Judge Reade's unwillingness to accept Sholom Mordechai's spotless record of bail compliance as proof that he was not a flight risk.

Why, she asked, were Mr. Rubashkin's prior actions not regarded as "clear and convincing" evidence that fears that he would try to escape trial were unfounded?

"I urge you to investigate these and other alleged injustices against Sholom Rubashkin and eagerly await your response," the congresswoman wrote.

#### **REP. CAROLYN MCARTHY: "GROSSLY DISPROPORTIONATE PUNISHMENT"**

Congressmen Sherman, Grayson, Delahunt, McMahon, McCarthy, Filner and others raised the issue of the 27-year prison sentence, viewing it a severe injustice to a 51-year old defendant with no hint of violence or prior crime.

"This case raises very serious issues of judicial and prosecutorial misconduct, resulting in an unfair and grossly disparate sentence," wrote Congressman Delahunt to Attorney General Holder. "I believe these allegations are sufficiently serious to warrant an investigation by you."

Rep. Sherman cited the letters to Judge Reade by six former attorneys general who called the virtual life sentence unjustifiably harsh and had urged her to be guided by moderation and fairness.

"Your office should review this case because of the excessively harsh sentence imposed on Mr. Rubashkin," wrote Rep. Carolyn McCarthy. "It appears to be grossly disproportionate to the sentences given to other non-violent, white collar offenders - some of whom have been served sentences as low as one year for similar offenses."

#### **REP. MIKE MCMAHON: "INCORRECT INTERPRETATION OF SENTENCING GUIDELINES"**

Rep. Mike McMahon called Attorney General Holder's attention to the misapplication of the Federal Sentencing Guidelines. He slammed the prosecutor's recommended sentence as based on "incorrect interpretation of the Guidelines" and "ignorance of the mitigating circumstances" in the case.

The recommended sentence took no account of Sholom Mordechai's large family, his autistic son, his lack of any prior criminal history and his extraordinary record of community service and philanthropy.

"Amazingly, instead of taking the advice of experts such as the former attorneys general and past Justice Department officials," McMahon wrote to the Attorney General, "Judge Reade actually increased the length of the sentence prosecutors had recommended, from 25 to 27 years.

## SECRET MEETINGS

All the congressmen who were moved to write to Attorney General Holder expressed their concern over the ex-parte meetings between Judge Reade and the Iowa's attorney office that were uncovered by documents released through FOIA.

"I request that you review whether any prosecutor involved in the case violated his legal and/or ethical obligations with respect to these ex-parte communications," Rep. Sherman wrote.

"The Rubashkin case raises issues of questionable legal ethics, excessive sentencing and a potential miscarriage of justice, all of which are a serious concern to me as a senior member of the House Judiciary Committee," asserted Rep. Jackson Lee.

Congresswoman Shelly Berkely told the Attorney General she was deeply concerned over "the extent of the apparent collaboration between Judge Reade and federal agents. The possible violation of the principles of transparency and fairness - two fundamental features of the American courtroom - are deeply problematic."

Rep. Bill Pascrell echoed this stance. "I believe the allegations of harsh sentencing of Mr. Rubashkin and the troubling information about non-disclosed ex-parte communications has created enough concern to warrant an investigation by the Department of Justice."

As congressional concern mounts about a case that is increasingly viewed as a symbol of prosecutorial and judicial misconduct, Sholom Mordechai's defense team is looking ahead to the appellate process.

Attorney Lewin has vowed to rigorously pursue the case, with plans to file two separate appeals. The first will appeal Judge Reade's Order denying a new trial. The second appeal will focus on legal errors in the federal trial.

"We are confident that the Court of Appeals will not tolerate the violations of fair and due process that mark this case," he said. "We look forward to seeing Mr. Rubashkin vindicated in the appellate process."



## The Truth About Illegal Workers At Agriprocessors

What are the facts about whether Agriprocessors employed illegal immigrants? Could all the media reports be false? Would the government have carried out criminal proceedings and deported hundreds of people who were not in the country illegally?

The *Yated* spoke to defense attorney Montgomery Brown who defended Sholom Mordechai in both the federal and state trials.

"Hundreds of undocumented workers were indeed found at the company, but Sholom was not harboring them in defiance of the law," Brown explained.

"The issue was not whether Sholom and management *knew* that undocumented workers were present in the plant. The issue was how to identify the 'no-match employees' [workers whose social security numbers didn't match up] within the confines of a set of laws that were conflicted about how to deal with them.

"And once these illegal immigrants were identified, what was the legal processing for terminating their employment at Agriprocessors? One could not simply dump them. Sholom was attempting to deal with the no-match employees within the parameters of a complicated legal environment.

"We were prepared to prove this by producing an extensive history of email correspondence between Agriprocessors and its immigration attorney, Jay Eaton, from the prominent Nyemaster law firm, who was guiding the company in this process. Unfortunately, Judge Reade barred this testimony.

"The simple fact is that the charges of harboring illegals (which were ultimately dismissed) were very defensible in court. Had we been given a chance to challenge them in an immigration trial, we believe Sholom would have been fully exonerated."

Co-counsel Guy Cook added, "When Sholom was allowed to defend himself against labor-law violations at the state trial - which included some of the very same charges heard at the federal trial - he won a complete acquittal. This fact raises serious questions about the fairness of the federal trial, at which he was not permitted to rebut the 'harboring' charges that so prejudiced the jury."

# The Lie At The Heart Of The Postville Documentary

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BY DEBBIE MAIMON

A documentary on the 2008 Postville ICE raid that highlights government abuse of human rights is hijacked by a political agenda that makes use of a cropped picture of Sholom Mordchai Rubashkin to manipulate the audience.

What begins as a moving historical narrative about the plight of migrant workers in Postville, Iowa, and their harrowing, unjust treatment at the hands of federal agents, degenerates midway into a crude sideshow of Rubashkin-bashing. The film thus falls prey to the same evils it protests.

The documentary, "Abused," which was filmed in Postville and weaves together the personal stories of victims of the raid, is being screened in various locations in the United States, most recently in Manhattan. There is talk of bringing it to Washington, in hopes of attracting the attention of activists and legislators concerned with immigration reform.

By showing the human face of the raid's victims, the film captures the devastating impact of the massive law enforcement action that jailed and deported close to 400 undocumented workers. It conveys the tragedy of shattered lives and broken families.

## LAUNCHING PAD FOR ANTI-RUBASHKIN SLUGFEST

The film's author and producer, Luis Argueta, undercuts the documentary's authenticity by using it as a launching pad for maligning Sholom Mordechai Rubashkin. In so doing, he raises questions about his own agenda, and that of the documentary's sponsors, most of whom have not been publicly identified.

A great deal of screen time is devoted to casting Sholom Mordechai as a greedy executive who secured the company's fortune by exploiting and abusing the immigrant employees. The implicit message is that the immigrants suffered at least as much from mistreatment at the workplace as at the hands of the government.

As evidenced in the Manhattan screening, this ploy tends to work well with a great many viewers who, witnessing the hapless lot of the immigrants, are ready by the film's end to lynch the villain most responsible for their misery.

But who is that individual? Which government official(s) conceived, planned and executed the brutal raid? It's impossible to know with any certainty. The faceless "big, bad government" as the villain in the story won't play nearly as well as someone with a name and a face people recognize.

## WHIPPING UP THE CROWD

Argueta has the film abruptly change focus, giving viewers a culprit they can point to - Sholom Mordechai Rubashkin - whose face dominates the upper left-hand corner of the screen as his many "crimes" are enumerated.

It is not the benign countenance most people visualize when hearing Sholom Mordechai's name. This is a picture of someone with narrowed eyes and a grim, hard expression. There is something disturbing about the way this face hovers over the film's tale of hardship and woe. One is reminded of Jewish caricatures of Nazi propaganda plastered on the walls of buildings in the Hitler era, with the ubiquitous caption, "The Jews are the cause of our misfortune!"

Sholom Mordechai's picture flashes repeatedly as the audience hears live testimony from former Agriprocessors employees about the terrible working conditions there, and then reads the formidable list of charges for which Sholom Mordechai was indicted, including a whopping 9,311 child-labor violations.

Anger sweeps through the room at the thought of this man enriching himself on the backs of poor immigrants - *a man who actually had children operating dangerous power tools and working with toxic chemicals!*

## COUNTING ON AUDIENCE'S IGNORANCE

Arugeta was probably counting on the fact that outside of Postville, few people are aware that Sholom Mordechai was fully acquitted of the 9,311 child-labor charges the state originally indicted him on.

Argueta himself knows this only too well since he was present at the state trial, taking notes and even filming parts of it, Rubashkin family members recall.

He was also under no illusion about why the state case fell apart and why the jury threw out all the charges. Prosecutors produced no evidence and no credible witnesses to back up those charges.

The immigrants flown in from Mexico and Guatemala to testify for the government had been deported after the raid. They agreed to return to the country that had ejected them and to cooperate with the prosecution in return for a promise by federal agents to help them procure a coveted U-visa. The visa would enable them to work in the United States and to apply for permanent residency.

According to immigration regulations, only victims of crimes committed at the workplace who cooperate with the government in the investigation of those crimes are eligible for U-visas. Once it is granted, the victim's entire family is included in its provisions.

The stage was thus set. The witnesses flew to Cedar Rapids with federal agents and testified under oath, as planned, that they had been hired as minors and had suffered injuries at Agriprocessors from dangerous machinery and chemicals.

They utterly failed, however, to persuade the jury.

As the jury foreman later commented, "All of them admitted they had lied about their ages to get jobs in Postville. Who could be sure of their true age? There were other credibility issues. And none of

the witnesses established a direct line of guilt from the charges to the defendant.”

It didn't help the government's cause that the immigrant witnesses had been coached, in almost all instances, by the same attorney, Ms. Sonia Konrad Parras, and ended mimicking each other. When confronted with inconsistencies in their testimony, all fell back on scripted responses of “I don't know/I don't remember/I don't understand.”

### THE ELEPHANT IN THE ROOM

A sweeping acquittal, like an elephant in the room, is a hard thing to ignore, or explain away, especially when state prosecutors had two years to prepare the case, and the most successful attorneys in the D.A. office were entrusted with the task. How is it that they couldn't make any of the charges stick?

Argueta has government spokesmen in the film rationalizing that “labor violations are very hard to prove,” that the judge “set the bar too high.”

Labor violations are hard to prove? There were over thirty USDA inspectors throughout the plant any time of day, and scores of human resources personnel, company managers and supervisors that could have been subpoenaed to testify about labor violations. Why weren't they?

Moreover, the prosecution was led by the highly competent District Attorney Tom Miller, who had unlimited resources at his disposal. With the state of Iowa cash strapped and state employees sent on “forced furloughs” to save the state money, Miller still won an allocation of thousands of dollars for the purpose of flying the Guatemalan witnesses to Iowa to give testimony at the child-labor trial.

Obviously bitter about losing such a high-profile case, Miller made a pathetic attempt at salvaging some dignity by insisting that “abundant evidence of extortion and abuse of workers” at Agriprocessors *did* exist. He declined to explain, however, why none of this “abundant evidence” was produced at trial.

### WHY WERE THEY APPLAUDING?

As the documentary completely loses its way, trading an important historical narrative for an undisguised hate-Rubashkin agenda, the audience seems to forget the educational purpose of the documentary.

Viewers at the Manhattan screening became fully engrossed in the film's changed focus - the criminal profile of Sholom Mordechai as described by federal prosecutors - and reinforced by the unsmiling, tough-looking Sholom Mordechai that stared at the audience from the documentary screen.

As the final clip played, with the audience receiving the information that “the accused was sentenced to 27 years in prison,” the room actually erupted in applause. As if the Postville saga of human suffering culminates with the “villain” receiving due punishment for his crimes.

But how did Sholom Mordechai Rubashkin come to be the villain in this tale that purports to be about rampant government injustice toward an immigrant population?

How did he come to be the focus of a documentary that advertises its purpose as “raising awareness of the human toll of the ICE raid, and encouraging the debate about immigration reform?”

### SHORTCHANGING HIS OWN COUNTRYMEN

The lie embedded at the heart of this film deals a serious injustice not only to Sholom Mordechai. By removing the spotlight from the government, Argueta short-circuits the film's stated mission and shortchanges his own fellow countrymen whose cause he professes to be fighting for.

Why aren't the faces of Homeland Security officials who ordered the raid staring from the documentary screen? What of people like former Iowa attorney Matt Dummermuth whose office oversaw the Postville prosecutions, and Judge Linda Reade who did the most to

fast-track the “assembly-line” criminal proceedings at the National Cattle Congress? Why are their pictures and allegations of their misconduct not featured for the audience's edification?

### MAKE UP YOUR MIND, LUIS

In addition to the intellectual and factual dishonesty that laces the film, the bias that drives the documentary is on display in the author's double standard regarding government reliability.

When it comes to government claims that the arrestees were treated with decency and compassion, Argueta makes a compelling case for government manipulation of the truth. The film also exposes the sham in the charges of identity fraud and document fraud to which the immigrants were forced to plead guilty.

Yet, the film's producer has no problem using the very same governmental voice that falsely criminalized the immigrants as his authority for criminalizing Sholom Mordechai.

So which is it, Mr. Argueta? How can you trash government credibility while at the same time use it to prop up the demonization of someone you don't like?

In the grand scheme, given the anti-immigration mood of the country, the documentary is not likely to exert much political influence. But before turning the page on this sorry episode, for accuracy's sake, let's zero in on Argueta's chief cinematic prop - the mysterious tough-looking picture of Sholom Mordechai that evoked such a strong audience response at the Manhattan screening. Where was this picture taken? What does it represent?

### THE PAYROLL CRISIS

Although the picture is thoroughly cropped, family members and some Postville residents had no trouble identifying it. The original was taken by a news reporter in the middle of a payroll crisis at Agriprocessors, the Friday after the 2008 ICE raid. It appeared in a local paper along with an item about the crisis.

In the original image, Sholom Mordechai is surrounded by concerned Guatemalan employees who are hoping to collect the paychecks of their husband/wife/sister/brother imprisoned in Iowa jails after the raid. He's talking with an interpreter while holding negotiations over his cell phone with the company's lawyer, trying to find a legal means of distributing the checks to family members.

State regulations forbid the disbursement of payroll checks to anyone but the person to whom the check is made out. In keeping with the law, the payroll checks would have to be mailed to the prisoners and signed by them. Only then could they be given over to family members.

Mr. Chaim Abrahams of Postville, a former manager at Agriprocessors, says he vividly remembers the crisis that ensued when the state refused to bend regulations.

### PANIC SETS IN

With the breadwinners in so many families jailed indefinitely, the families were in a state of panic and turmoil, Abrahams recalled. Financially strapped, with nowhere to turn, they hoped at least to make use of the last payroll check due their husband or father, or whomever money was owed to.

As news reached them that the state would not grant permission for payroll checks to be disbursed to anyone but the parties to whom they were made out, despair set in.

“This was a terrible time for Sholom Mordechai,” Abrahams recalled in a phone interview with *Yated*. “The company was reeling after the raid. Sholom Mordechai and others were making a massive effort to keep Agriprocessors going, but it didn't look good. There were federal investigations underway, FBI agents all over the place. Everyone was tense and scared. In the middle of all this, the families came begging for the payroll checks.

“It was *Erev Shabbos*. Sholom could have sat in his office and let



The mysterious tough-looking picture of Sholom Mordechai that evoked such a strong audience response at the Manhattan screening. Fully cropped and placed in a sinister context, the photo was appropriated for ignoble purposes.

someone else tell them the bad news - that the government refused to authorize the checks to be disbursed. But he didn't do that. He came outside to talk to the people. He heard their pleas and reassured them that he would find a way to help them get the money.

"Then he got on the phone with the company lawyer, Jay Eaton of the Nyemaster law firm. He begged him to find a resolution to the dilemma. Eaton and another lawyer started making phone calls to lawyers for the state. All kinds of solutions were proposed. The back and forth with state lawyers dragged on for hours.

"At one point, Sholom pledged to cover any financial liability that would occur if a check was disbursed to the wrong person and the rightful party made out a legal complaint. The total possible liability came to \$150,000.

"The fortune in legal fees the crisis was costing doubled this amount. Yet Sholom was willing to pay it to help these people," Abrahams recalled. "The amount of good will, energy and money he poured into this affair - and at such a terrible time for the company - is something unbelievable."

#### FROM SHOLOM MORDECHAI

Writing from prison, Sholom Mordechai adds the following:

"We initiated contact with the Postville church, asking for their help in getting the payroll checks to the families of the jailed workers. We wanted church officials to certify that the people signing the checks were in fact who they claimed to be. The plan was for the Freedom Bank of Postville to honor the church's certification, and if the State agreed, to cash the checks."

Sholom Mordechai remembers making his way first to the grounds outside the church to talk to the families of the arrested workers and then to the bank to negotiate an arrangement with the bank manager, Stan Straate.

After discussions with Straate and the bank president, an agreement was reached, pending a go-ahead by state officials. The bank

also agreed to remain open past closing time so that the checks could be cashed before the bank closed for the weekend.

On his way back to the church to update the families, Sholom Mordechai received the bad news. His lawyer notified him that the state refused to budge. Not only that, but he was warned by a lawyer for the state, Ms. Gail Sheridan Lucht, that the state would press separate criminal charges for each and every check issued deliberately to the wrong party.

Sholom Mordechai recalls: "I was standing in the middle of the crowd when this news came in. I was stunned. I couldn't believe what I was hearing. There was a humanitarian crisis here and the reaction was, 'We couldn't care less.' We had offered to take complete liability. Church officials, bank officials, we were all working on this together because of the desperate situation these families were in.

"I felt angry and outraged at the lack of caring on the part of the state. They didn't want to be bothered. It didn't concern them."

#### THE TELLTALE PHOTO

Outside the church, with immigrants crowding hopefully around him, Sholom Mordechai struggled to describe the situation to an interpreter. Reporters accosted him and cameras flashed. A picture appeared the following day of Sholom Mordechai in the middle of a crowd of immigrants, cell phone in hand, looking pained, grim, and angry.

"Latinos hope for agreement on distributing paychecks," the caption read. "Immigrants waited in St. Bridget's Church on Friday as lawyers from the Archdiocese of Dubuque and Agriprocessors meat-packing plant tried to devise a way to get paychecks to the plant's workers," KCRG reported.

This picture was later used in local news broadcasts and articles about Sholom Mordechai. And fully cropped and placed in a sinister context, it was appropriated for ignoble purposes by Luis Argueta, author and producer of the Postville documentary.

# Rubashkin Cited In Congressional Hearing On Overcriminalization

BY DEBBIE MAIMON

Federal criminal law has, in the past decade, exploded in size and scope, and deteriorated in the effective pursuit of justice. Honest, hard-working Americans doing their best to be respectable, law-abiding citizens can no longer be assured that they are safe from federal prosecutors, legal experts testified at a recent Judiciary Subcommittee hearing on Capitol Hill.

The subcommittee on Crime, Terror and Homeland Security heard testimony from a diverse coalition of national organizations, who have joined forces to mobilize solutions to the growing problem of what they called “overcriminalization” plaguing American society.

The term refers to a nightmarish national trend in which law enforcement officials and courts prosecute people under a growing web of vague, poorly defined laws that disregard America’s fundamental principles of justice.

## YOU CAN BE GUILTY EVEN WITHOUT CRIMINAL INTENT

Federal criminal law used to focus on inherently wrongful conduct: murder, stealing, molestation, kidnapping, treason, counterfeiting and the like. Most importantly, under historical principles of justice, a person was considered to have committed a crime *only* if he intentionally did a wrongful act with wrongful intent [*mens rea*, Latin for a guilty mind].

In other words, the law recognized the crucial difference between an accident and a crime.

No longer, said witnesses at the judiciary subcommittee hearing. Today, as a broad range of non-harmful conduct has become criminalized, the “criminal intent” factor has been increasingly dropped. The result? More and more Americans who are otherwise law-abiding are being ensnared and unjustly punished.

Legal experts say that there are more than 4,450 federal crimes on the books and as many as 300,000 federal regulations that can be enforced criminally. Scores of federal departments and agencies have created so many criminal offenses that the Congressional Research Service itself recently admitted that it was unable to count all of the offenses.

From 2000 to 2007, Congress created 452 entirely new crimes - that’s more than a crime a week, said Brian Walsh, a senior fellow at The Heritage Foundation, a Washington think tank, who focuses on overcriminalization.

A few months ago, the Heritage Foundation and NACDL [National Association of Criminal Defense Lawyers] released a groundbreaking joint report on this problem, “*Without Intent: How Congress is Eroding the Criminal Intent Requirement in Federal Law.*”

## US HAS THE LARGEST PRISON POPULATION IN THE WORLD

The report said that overcriminalization and the erosion of the criminal intent factor led the United States to have both the highest number of people in prison - approximately 2.3 million - as well as the highest rate of incarceration - roughly one in 100 - of any nation on earth.

Despite these shocking statistics, no one would claim that this system has made the United States anywhere near the safest society in the world. Far from instilling greater respect for the law, criminalizing conduct that is not inherently wrong in the long run erodes the government’s moral authority, critics note.

“For many, when it comes to regulation of social conduct, every problem is a nail, so all that’s needed is the hammer of criminalization,” said NACDL president Jim Lavine. “With every passing Congress, though, we are getting a better idea of exactly what this criminal justice structure looks like, and it is not pretty, it is not cheap, and it is surely not rooted in the American values of fairness, justice, and checked government power.”

Lavine pointed out how due to the problem of overcriminalization, he has seen, in over 25 years as a criminal defense attorney, “families shattered, careers ruined, businesses fail, thousands of innocent workers become unemployed, and entire communities devastated - all at the taxpayers’ expense.”

“It used to be a grave statement to say someone was making a ‘federal case’ out of something,” Walsh told lawmakers at the hearing. “Today, although the penalties are often excessively severe and harsh, the underlying conduct punished is often laughable.”

## CONGRESSMAN POE: RUBASHKIN VICTIM OF “ABUSIVE LAW”

One of the witnesses at the hearing, Congressman Ted Poe (R-TX), following up on this line of argument, cited the Rubashkin case as an example of overcriminalization and its often ludicrously disproportionate penalties.

“We have many compelling cases before us,” Poe told participants at the hearing. “I just want to mention one Federal case that happened recently that is worthy of mention.

He went on to relate that in Iowa, “there was a kosher slaughterhouse operated by Sholom Rubashkin, and he was sentenced to 27 years in the Federal penitentiary for some financial crimes. He was initially investigated for immigration violations, and also charged with 9,311 [state child-labor] charges.”

Poe went on to recount how the immigration charges - along with the majority of the state labor charges - were dismissed, with

the state trial ending in a full acquittal.

“But the accused still went to the penitentiary partly because he violated that sacred law - the Packers and Stockyard Act for not paying cattle suppliers within two hours of delivery of the cattle. Dastardly deed!”

Sholom Rubashkin was prosecuted, Poe told the lawmakers, even though all cattle suppliers were paid in full, and the latest one was paid just 11 days late. “Rubashkin is the only person I know of who was ever prosecuted under this act that was passed in 1921,” Poe said. “But that was a felony, and they were able to get him on it.”

“This is an example of a really abusive law,” Poe said, noting that slaughterhouse operators probably don’t even know the law exists, since it’s never, in all its history, been enforced.

“I’m not going to get into the complexities of Rubashkin’s case, but his sentence was considered excessive by a lot of people. I am one of them. And it was even 2 years longer than the prosecutors had asked for.”

Poe noted the troubling inconsistency of staging a high profile trial for charges totally unrelated to the offenses for which the initial federal investigation was intended. He also stressed the absurdity of using incarceration in a federal penitentiary to punish someone “who paid his bills late” as opposed to someone guilty of actual criminal conduct.

“Shouldn’t we use that space for someone who’s really an outlaw?” Poe asked the members of the committee?

#### 18 CONGRESSMEN HAVE PETITIONED AG HOLDER

Congressman Poe is one of 18 congressmen to date who have petitioned Attorney General Eric Holder to investigate the rampant injustices in the Rubashkin case. In just the past week, Congressmen Richie Neal (D-Ma), Mike Coffman (R-Colorado) and John Culberson (R-TX) wrote letters to Holder citing the compelling evidence of unlawful communications between Judge Reade and the prosecutors in the case.

In a hard-hitting letter, Rep. Mike Coffman peppered the Attorney General with questions one now hears echoed from all sides. “Why did the judge engage in *ex parte* communications with the US Attorney’s Office?”

“Why didn’t the judge disclose those communications in the course of the trial?” Coffman pressed in his letter. “Why didn’t the judge recuse herself, in light of those communications? In what other ways, if any, did the judge give preferential treatment to the prosecutors?”

Coffman’s blistering questions attacked the excessive sentence. “Why did the judge sentence a first-time, non-violent offender to a term of 27 years? Did the Court improperly apply the Sentencing Guidelines to arrive at an unjust and unnecessary result?”

All the congressmen who have urged the DOJ to investigate the evidence of foul play have stressed in their letters to Holder the need to safeguard public confidence in the rule of the law and impartiality of the courts, features of American justice that are on trial in the Rubashkin case.

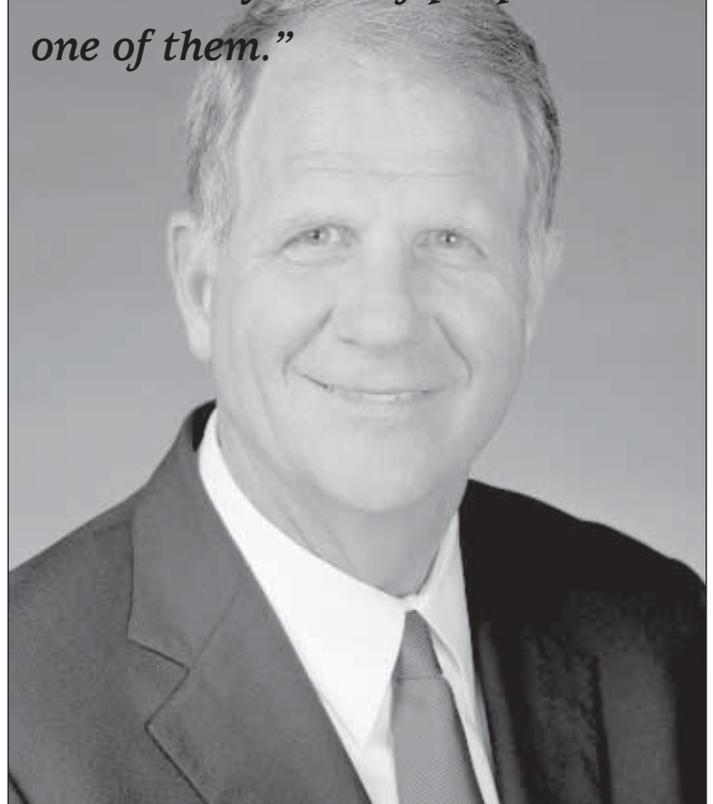
#### WHAT CAN BE DONE ABOUT OVERCRIMINALIZATION?

To return to overcriminalization, the growing blight on American jurisprudence, the Congressional hearing ended with solid recommendations for solutions. The hearing’s two most prominent participants, the Heritage Foundation and NACDL, said that these would include requiring bills that add criminal penalties to be reviewed by the House and Senate Judicial Committees for their “criminal intent” requirements.

Spokesmen said a study found that bills that cleared the committees were “more likely to have criminal intent requirements” than those that didn’t face such scrutiny. “Honest mistakes should

### Congressman Ted Poe:

*“His sentence was considered excessive by a lot of people. I was one of them.”*



not result in prison time,” The Heritage’s Brian Walsh said. Every criminal conviction must require proof beyond a reasonable doubt that the person acted with criminal intent. Federal criminal laws should require such proof.

Other changes would be to direct federal courts to give the benefit of the doubt (Rule of Lenity) to the defendant - rather than the prosecution - when faced with ambiguous criminal laws.

In addition, advocates say, bureaucrats should not be making new crimes. Congress should not “delegate” its power to criminalize to unelected officials in the scores of federal regulatory agencies that it has created.

Both common sense and constitutional principles hold that the decision as to whether something is important enough to send a person to federal prison should be made by the American people’s elected representatives.

Lastly, advocates are urging Congress, who has the power to repeal unjust laws, to exercise that power. The worst, most unjust criminal offenses should be thrown out. That includes broad, vague and unspecific laws open to the prosecutor’s interpretation and subject to his whim, and the tendency toward excessively harsh penalties that don’t fit the crime.

Advocates agree that Congress must start with offenses that allow Americans to be punished as criminals even if they did not know that they were doing something criminal and had no intent to commit harm or break the law.

Some critics say that while solid recommendations were offered at the hearing on how to curtail overcriminalization, one thing was noticeably missing: legislative measures to relieve the unjust treatment of victims like Sholom Rubashkin, who are languishing in jail due to the evils of the present system.

# One Nation Under... Arrest?

BY DEBBIE MAIMON

Most Americans are blissfully unaware of how easy it is to become a criminal today - even without the slightest intention of doing anything wrong.

The dangerous explosion in federal criminal law has produced so many new crimes and regulations, it's impossible to number them, let alone expect the average citizen to know what they're about.

Nevertheless, "ignorance-of-the-law-is-no-excuse" continues to dictate criminal proceedings, with innocent people being arrested, convicted and imprisoned for crimes they had no clue existed.

"The rest of the world is starting to notice the United States' incarceration follies," wrote *Washington Post* columnist Neal Pierce. He cited the cover story of the British-based Economist magazine, *Why America Locks Up So Many People*. The cover displays the face of a forlorn Statue of Liberty behind bars.

The article's grim statistics noted that some 2.3 million people are now incarcerated in the nation's prisons - a ratio of one to 100 Americans. "That's quadruple our 1970 imprisonment rate," noted Pierce, adding that the U.S. government "incarcerates people at a rate five times Great Britain's, nine times Germany's, 12 times Japan's."

The sheer volume of criminal laws, with new ones constantly being pumped out by legislators, makes it impossible for an average American household to stay informed. As a result, "almost anyone - especially those in business - can find themselves inadvertently on the wrong side of the law," wrote former U.S. Attorney General Edwin Meese.

But the profusion of criminal offenses isn't the only thing that might ensnare the unknowing business person, he explained. Since a vast number of new crimes are crafted by legislators without the "criminal intent" safeguard, it is far easier today than it used to be for prosecutors to win convictions.

All they need to prove beyond a reasonable doubt is the bare fact that the accused did a particular action - not that he did so knowingly or with intent to violate the law.

"The doing away with historical safeguards, compounded by over-zealous prosecutions, increase the likelihood that innocent people in the business community will be trapped by the criminal justice system," Meese noted.

"A just criminal-justice system has a twofold goal," the former attorney general said. "One is to see that criminals are prosecuted, convicted and appropriately punished. The other goal is to ensure that those who are innocent are safe from arrest and prosecution. Or, if mistakenly prosecuted, they are not convicted."

"Today, our system fails the second of those goals."

## BELOW THE PUBLIC'S RADAR SCREEN

If large numbers of innocent people are being unfairly prosecuted and punished, why hasn't this stirred public outrage? Why was this issue not a part of any politician's platform in the recent elections?

Overcriminalization is still a low-visibility issue, legal experts say, because most people are unaware to what extent it threatens them, particularly people in business. Until one faces criminal prosecution, one can't possibly fathom how easy it is today for prosecutors to turn an innocent but unwary person into a self-confessed felon - or an informer.

Under threat from prosecutors, even defendants who are convinced they're innocent may enter guilty pleas to shorten their potential sentences. A prosecutor might threaten a middle-aged man that he'll receive such a long sentence that he'll likely die in a cell, unless he gives evidence against his boss. These strong-arm tactics are hugely successful.

Most people can't afford the cost of defending themselves in a federal trial, which can run to many millions of dollars. With prosecutors threatening to indict on weighty charges that carry serious jail time, in addition to freezing and forfeiting the assets of the accused, few defendants, even those who fully believe in their innocence, insist on their right to trial by jury.

Having pled guilty, defendants no longer have an opportunity to tell their side of the story. With a complicit media churning out the government's version of things, their bitter sagas of injustice go unheard.

In addition, the public's misguided belief that more federal laws equals greater public safety helps promote overcriminalization. Politicians earn high marks for proposing legislation that promises to be tough on crime. But how many people ever actually read the new laws they write, or pause to consider what their true impact will be?

Congressional acknowledgment of the evils of overcriminalization, as a result, has been very long in coming. In the past half year, however, efforts by a nucleus of concerned officials have pushed the issue into the national spotlight.

## GROUNDBREAKING HEARINGS

The bright side, said Pierce in the *Washington Post* column, is that Congress is on the brink of the country's first national reassessment of the criminal justice department in many decades.

"Sen. James Webb of Virginia is proposing a National Criminal Justice Commission instructed to take an 18-month, stem-

***“...demand that your congressman help make this once again the land of the free  
and the home of people who have reason to be brave.”***

to-stern look at the system, its shortcomings and alternatives. The bill recently passed the House without opposition and is now poised for evaluation by the Senate.”

In addition, the House Judiciary subcommittee has held two groundbreaking hearings this year on the problem of overcriminalization. These hearings examined the roots and scope of the problem and swept aside the veils of secrecy and misinformation about the issue.

Several witnesses came forward to testify about their experiences in the netherworld of excessive and irrational prosecution. Their stories made it clear that the problem of vaguely worded laws and the erosion of criminal intent requirements are not rare, isolated episodes but are symptomatic of grave flaws in the present legislative and judicial system.

The testimony also threw the spotlight on the popular tactic, employed by prosecutors in white collar cases, of “stacking the charges,” that is, bringing multiple charges under separate counts for essentially the same act, in order to ramp up the possible sentence, as well as adding counts of “money-laundering,” a weighty offense calling for lengthy jail time, in order to coerce a guilty plea.

#### **THE ORCHID “SMUGGLER”**

George Norris, a 65-year old retiree who imported orchids, told Congress he was suddenly accosted in his home by armed police in flak jackets, frisked, and held incommunicado for four hours as officers ransacked his home.

He was eventually charged with smuggling flowers into America, a violation of the Convention on International Trade in Endangered Species.

Norris, who believed himself innocent though he admitted that some of his Latin American flower suppliers might have been sloppy in their paperwork, had never made more than \$20,000 a year in his importing business.

But he was thrown into prison with suspected murderers and drug dealers, accused of being the “kingpin” of an international smuggling ring, and sentenced to 17 months. Despite his diabetic condition aggravated by coronary complications and Parkinson’s disease, he was put in solitary confinement for 71 days for bringing prescription sleeping pills with him to prison.

He and his wife made an attempt to fight the charges. But with legal bills piling up, the complexity of the case and the difficulty of mounting a defense finally becoming apparent, Norris took the step he had been dreading: changing his plea to guilty.

“The hardest thing I ever did was stand there and say I was guilty to all these things. I didn’t think I was guilty of any of them,” Norris told the congressional committee members.

#### **A RAP HE COULDN’T BEAT**

Krister Evertson, another victim of overcriminalization who testified at the hearing, told lawmakers, “My experience is something that should scare you and all Americans.”

Evertson, a small-time inventor, faced two separate federal prosecutions stemming from his work trying to develop clean-energy fuel cells. The government prosecuted Evertson for fail-

ing to put a federally mandated sticker on an otherwise lawful UPS package in which he shipped some of his supplies.

As he testified to the House Judiciary Committee’s Subcommittee on Reining in Overcriminalization:

“The charge against me was that I hadn’t put the right label on the box when I shipped some raw sodium that I had sold on eBay. Sodium has to be shipped by ground. I carefully packaged the sodium that I sold and even checked “ground transportation” on the bill when I went to ship the packages.

“But what I didn’t know was that in Alaska, UPS actually ships its ‘ground’ packages by air! And that was against the law.

“Rather than charge me with a violation and collect a fine, the government decided to bring the full weight of the law down upon me. I refused to plead guilty, because I was not, and so the prosecution pushed for years in prison. The prosecution and trial took two years, but finally the jury acquitted me of every charge.”

*Evertson was indeed acquitted.* But in a win-at-all-costs vendetta, the government refused to allow him to escape their net. While Evertson was being tried in Alaska, he arranged for his chemical supplies to be stored in a facility back home in Idaho. And since he was behind bars and unable to visit the storage facility, the feds came up with a rap they figured he couldn’t beat: abandoning hazardous waste.

As the *Washington Examiner* reported: “Despite his acquittal in Alaska, federal authorities filed new charges against Evertson in Idaho for allegedly improperly disposing of “hazardous” waste, all based on strained readings of EPA regulations.”

Evertson claimed he had stored the materials properly and they were perfectly secure. “An expert witness at the trial said the stainless steel container could safely contain the intermediate process stream indefinitely. That means forever. The stainless steel was 3/8 of an inch thick. It was completely enclosed,” Evertson told Congress.

But the feds got their way the second time around. With a law that required no criminal intent on the part of Evertson, the man was convicted. Off to prison he went.

#### **SIX YEARS FOR VIOLATING FISHING REGULATIONS**

A star witness at the September congressional hearing on overcriminalization, 64-year old Abner Schoenwetter was once a Miami seafood importer. He spent six years in prison, paid tens of thousands of dollars in fines and legal fees, and is at risk of losing his home. His crime? Agreeing to purchase lobster tails that federal prosecutors said violated regulations - in Honduras.

His nightmare began in 1999 when federal marshals burst into his home early one morning, “herding my wife, my mother-in-law, and my daughter into the living room in their nightclothes.”

He was eventually charged with smuggling and conspiracy for making a business deal to purchase lobsters from the same supplier he had been using for more than a decade. But federal officials said the business deal violated Honduran fishing regulations - and therefore, the federal Lacey Act, which makes it a

crime to import fish that violates foreign laws.

Schoenwetter's lawyers, however, produced evidence from Honduran officials that showed that the regulations the accused was alleged to have violated related to turtles, not lobsters. The Attorney General of Honduras even sided with Schoenwetter by filing a friend of the court brief, noting that the regulations about lobsters had been declared void.

Schoenwetter, who had no previous criminal history, lost in court. He was sentenced to eight years in prison. The U.S. Supreme Court declined to review his case. But it came to the attention of the Washington Legal Foundation and the Heritage Foundation, key organizations who lobbied for the congressional hearing. They showcased the case as a prime example of over-reaching, unethical prosecution.

"We're talking about people's freedom and the way it affects people's faith in their government or lack thereof. We've got to get this cleaned up," said Rep. Louie Gohmert, R-Texas, a former judge and prosecutor, who is a ranking member of the Judiciary subcommittee that held the hearing.

"We must put an end to the notion that we need to prosecute every individual for every perceived offense," said Rep. Bobby Scott, a Virginia Democrat who chaired the hearing. "We continue to lock up people for offenses that should not even require incarceration."

#### PRISON TIME FOR GETTING LOST IN A BLIZZARD

Joining Schoenwetter at the witness table was Bobby Unser who, after getting lost in a blizzard, was prosecuted for entering a national wilderness area - off limits to the public - on a snowmobile.

Unser spend two days and two nights struggling to fight his way out of the frigid, uninhabited region. This was deemed irrelevant by prosecutors and the presiding judge. He was convicted and slapped with a six-month prison term and a \$5,000 fine. Because his offense was considered "strict liability" (conduct that is criminal regardless of whether it was done with criminal intent), the government did not have to prove Unser intended to break the law, or that he even *knew* he broke the law.

"That doesn't seem like American justice to me," Unser told lawmakers. "Why should I, who nearly died in the blizzard, have to convince a jury of the obvious, that I would never have willingly entered this wilderness in a snowmobile during a blizzard. I had no idea where I was!"

With courts swamped with backlogs and the nation's prisons overflowing, the prosecution of nonviolent offenders for charges such as those used to prosecute and incarcerate Unser and Schoenwetter is simply outrageous, legislators at the hearing said.

These and other appalling cases are profiled in *One Nation Under Arrest: How Crazy Laws, Rogue Prosecutors, and Activist Judges Threaten Your Liberty*, published by the Heritage Foundation and edited by Paul Rosenzweig and Brian W. Walsh.

Covered in the book are examples of average Americans, doing their best to be respectable, law-abiding citizens and who, despite their best efforts, ran afoul of our nation's ever-expanding criminal legal system.

"Their stories are vivid reminders of how the legal deck is presently stacked against us all," writes Brian Walsh, co-author of the book. "That is, when an innocent person sits down in a quiet room to assess his options following a federal arrest and indictment, he soon learns that he'll be broken financially if he chooses to fight and go to trial. The pressure to plead guilty - even if you are innocent - is enormous."

#### REP. TED POE: DEAD LAWS USED TO INCARCERATE RUBASHKIN

Rep. Ted Poe (R-TX) cited the case of Sholom Mordechai Rubashkin as a prime illustration of ludicrous disproportion in sentencing. After sketching the outlines of the case for the benefit of those at the congressional hearing, Poe said that Rubashkin was "prosecuted and imprisoned for late payment of checks to his cattle suppliers," based on a dead law known as the Stockyards and Packers Act, "never before used to prosecute anyone."

"He was a few days late with his checks - a dastardly deed," Poe scoffed. The congressman called attention to the twisted justice that led the trial judge to impose a 27-year sentence on Sholom Mordechai for financial lapses.

He did not discuss the complexities of the Rubashkin case, in which financial irregularities that belonged in the sphere of civil litigation were redefined, kneaded and stretched by prosecutors into federal charges of bank fraud, and money-laundering counts were then fabricated to increase prison time as much as possible.

Nor did he have the time to tell Congress about the revelations of secret meetings and collusion between the judge and prosecutors in the case, a story that makes all other tales of government misconduct told at the hearing pale by comparison.

One wonders how legislators at the hearing would have responded to a full description of the rank injustices in the Rubashkin case, particularly the denial of bail pending trial for no reason other than the defendant's Jewish faith, and the trampling of the most basic constitutional right, the right to a fair trial.

#### ALL AMERICANS ARE VULNERABLE

"The typical American holds deep beliefs in basic principles about American government, including a belief that, if you do what's right, you have nothing to fear from your own government, and certainly not from the criminal-justice system," wrote Edward Meese in an article addressing overcriminalization. "But these beliefs are no longer as well founded as they once were."

Where once the law had strict limits on the capacity of the government to criminalize conduct, those limits have now evaporated. Society is forced instead to rely on the integrity of prosecuting officers.

In effect, he said, the legislative branch has transferred a considerable amount of its authority to those who have often not been publicly elected and have no expertise in the matter: prosecutors, judges and jurors who make decisions on criminalizing conduct without the ability to weigh the broader societal impact of their decisions - or any interest in doing so.

Some prosecutors are conscientious and fair. But for many driven by ambition, bias and at times sheer mean-spiritedness, the temptation of almost unlimited power to manipulate the system to win a conviction is too great to resist.

The problem of overcriminalization calls for extensive study and debate by legal experts and policymakers, as well as average Americans. Much is at stake for individual liberty and the freedoms of future generations.

The landmark congressional hearings accomplished something important by their very existence: they encouraged and made it safe for average citizens, who were formerly apprehensive about sounding unpatriotic by criticizing the justice system, to demand change.

As Rep. Louis Gohmert put it in his jacket endorsement of *One Nation Under Arrest*, "Read this book, contact your attorney, and then demand that your congressman help make this once again the land of the free and the home of people who have reason to be brave."

# Rubbing Salt On Fresh Wounds

BY DEBBIE MAIMON

The recent arrival in Postville of 28 Guatemalan immigrants, all of whom are relatives of people who helped the government in its 2009 state labor case against Sholom Mordechai Rubashkin, has rubbed salt on still-festering wounds.

Sholom Mordechai had originally been charged with 9,311 labor violations, specifically hiring and overworking minors and exposing them to dangerous machinery and chemicals. Over 90 percent of these counts were dropped one hour before the trial began, and as the case crumbled over transparently false testimony, the jury threw out the remaining charges.

Thoroughly vindicated by the jury's acquittal, Sholom Mordechai was nevertheless irreparably harmed by the trial. Besides the emotional havoc it wreaked and the astronomical legal fees it cost, the trial reinforced a deep-rooted public prejudice against him that may affect the outcome of his appeal.

With headlines touting the special U-visas bestowed on the government witnesses who testified against Sholom Mordechai, the impression conveyed is that these individuals did something noble. The purpose behind the U-visa is to encourage undocumented workers who might be afraid to testify about suffering abuse at the workplace to muster the courage to report it.

But the witnesses in the state trial, far from helping the government's case, effectively killed it with testimony about alleged abuse at Agriprocessors that the jury did not find credible.

As the jury foreman in the state trial afterward noted, "All of [the witnesses] admitted they had lied about their ages and submitted false papers to get jobs in Postville. There were credibility issues here. In addition, none of their testimony established a direct line of guilt from the charges to the defendant."

Bluntly stated, the government's witnesses were suspected of lying under oath.

## REWARDING PERJURY

The jury's refusal to accept their accounts was a clear indictment. Yet, not only were these individuals not penalized in any way for lying in court, but they are being rewarded with the much-sought U-visa, as if they had done something heroic.

To make matters more odious, most of the witnesses admitted under cross-examination that they had maneuvered a job at Agriprocessors with false papers supplied by a parent who worked there, or with that parent's oral voucher that the teenager in question was over 18.

That means that prosecutors were fully aware of who was responsible for sneaking minors into the slaughterhouse: the parents themselves. Yet, not only did they not prosecute these parties, but they instead attempted to nail Sholom Mordechai with the responsibility.

They took hypocrisy to a breathtaking level by bestowing lavish rewards on the culpable parents, with the granting of U-visas to their teen-aged children who testified against Sholom Mordechai in court. The U-visas automatically include the child's parents and family members, allowing parents and siblings who were in the country illegally to remain with the child qualifying for the visa.

Under the U-visas provisions, those parents and family members still residing in their native countries are allowed to enter the United States.

Thus, parents who a) supplied fake birth certificates or made false statements to management to get jobs for their underage children and b) thereby exposed these children to the allegedly dangerous machinery and chemicals were richly rewarded.

At the same time, the fraudulent practices and labor violations they committed were then laid at Sholom Mordechai's doorstep. The ferocious zeal to convict the defendant apparently knew no bounds.

## COACHING THE WITNESSES

The government's case was fueled in no small measure by an immigration attorney named Sonia Perras Konrad, whose career has been boosted by her success in winning the rarely granted U-visa for the immigrants who testified in the state trial.

Perras Konrad's role was crucial to the prosecution. As the evidence in court showed, it was she who coached and primed almost all of the witnesses, to the point where they ended up mimicking each other. Confronted repeatedly with inconsistencies in their testimony, all fell back on scripted responses of "I don't know/I don't remember/I don't understand."

Perras Konrad began laying the groundwork for her mission during the first few days after the raid. A large number of immigrants who had escaped arrest had sought refuge at the St. Bridget Church in Postville, where they were being temporarily sheltered.

Several immigrants who had a family member who had been arrested sent messages to Sholom Mordechai pleading for legal assistance to gain the release of their wife/husband/son/daughter.

"We dispatched an immigration attorney to the church with instructions to offer free legal counsel to those who wanted it," Sholom Mordechai recalled, writing from prison. "The lawyer we sent met with church officials and was warmly received. The next day, the local press carried his picture along with an article praising the effort to help the immigrants."

## "OUR INTERESTS AND YOURS ARE IN CONFLICT"

However, this attorney's mandate was short-lived. He returned

to the church the next day to schedule meetings with individual immigrants, but came back to Agriprocessors within a half hour, bewildered. The warm reception he had received the day before had turned frosty.

“Our interests and yours are in conflict,” he was told by the priest.

“What do you mean?” the attorney asked in surprise.

“We have different objectives,” came the cryptic response.

The attorney told Sholom Mordechai that while at the church, he had listened to a woman, identified as Sonia Parras Konrad, making an announcement over the public address system. She was explaining to the immigrants that it was possible to reverse their plight and gain legal permission to stay in the United States if they could prove that they had suffered abuse or injury while on the job.

The woman repeatedly stressed that anyone who could offer testimony about physical or emotional mistreatment at Agriprocessors would be eligible for a special visa.

At this point, the Agriprocessors’ lawyer was approached by a church official and asked to leave because of a conflict of interest, recalled Sholom Mordechai.

“At the time, we were simply stunned,” he wrote. “Here we were offering free legal help to the immigrants and it was being thrown back in our faces. We couldn’t fathom why. It made no sense.”

#### CHURCH RECRUITED WITNESSES FOR PROSECUTION

In hindsight, there is no mystery. The church’s destructive role in encouraging Hispanic workers to badmouth Sholom Mordechai was highlighted by the testimony of Ana McCarthy, a Panamanian-Jewish native who is a Spanish language translator now living in Illinois. McCarthy testified at the state trial for the defense.

Outside the presence of the jury, McCarthy said she traveled to Postville in August 2008 after encountering a shortage of kosher meat in Chicago and hearing about the ICE raid.

She described waiting at St. Bridget Church for a meeting with a community leader and being startled to overhear someone in authority telling former Agriprocessors employees that they could get U-visas to remain in the country. All they had to do was report that they were abused by Sholom Rubashkin.

She said the man, Tom Walsh, a non-Jew who represents the Chicago-based Jewish Council for Urban Affairs, coached people to make claims against their former boss, saying that Rubashkin was a “filthy Jew” who got rich at their expense.

In an interview with the *Yated*, Ms. McCarthy said that when Walsh saw that she had overheard his remarks, he accused her of snooping and, towering over her, ordered her to leave the building. She appealed for help to a priest and nun in the room, but they merely stood by chuckling as she was aggressively ushered out.

Later, McCarthy found out that the Jewish Council for Urban Affairs had donated about \$100,000 to the Hispanic community of Postville, entrusting it to St. Bridget’s Rev. Paul Ouder Kirk (now retired) to distribute to the immigrants.

Earlier in the trial, defense attorney Brown had accused St. Bridget for not only coaching, but essentially blackmailing, the Hispanic families affected by the raid.

“As much as it pains me to say it, this Catholic church was a long-term adversary of Agriprocessors,” Brown told the jury. “There was a mantra within the church’s walls: voice complaints against Sholom Rubashkin and you’ll be financially rewarded.”

McCarthy, who spent hours interviewing many Hispanic workers, said she knew of a number of people who refused to fabricate stories of abuse. “They were in great need, but received no financial help from the church because they couldn’t ‘pay’ for it with damaging information about Sholom Rubashkin,” she said. “It seems that money from the Jewish Council of Urban Affairs was used very selectively by the church.”



#### WARPED REPORTING BY THE NY TIMES

Notwithstanding all of the coaching by Sonia Parras Konrad and her assistants, the witnesses failed to persuade the jury that they had been abused or taken advantage of at Agriprocessors.

Parras Konrad brushed aside this defeat by telling *NY Times* reporter Julia Preston that the real abusive practices “never came out in court.”

The *NY Times* article discussed Judge Linda Reade’s 27-year sentence and Sonia Parras’ enthusiastic reaction to it.

“Ms. Parras praised Judge Reade’s sentence,” Preston wrote.

“Even though these [abusive] labor practices never came out in court, the sentence sends a really good message that this kind of practice will not be tolerated,” Ms. Parras said.

The really good message for Parras is that although she should have been disbarred and disgraced for assisting witnesses to lie under oath, she got away with it.

“While state prosecutors were not able to convince the jury that Mr. Rubashkin was personally aware of minors in the plant, the trial evidence showed that at least 29 immigrants under 18 were employed on Agriprocessors’ packing lines, some working night shifts and wielding sharp knives,” the *NY Times* article outrageously stated.

The warped reporting in this article lies in the fact that the jury rejected the witnesses’ assertions about their true age and their various claims of overwork and mistreatment. What the trial evidence and the verdict show is that none of their testimony was viewed as reliable.

No matter. The government is engaged in the process of rehabilitating its image as having treated the immigrants cruelly by now bestowing U-visas on the families of 40 of them.

That tokenism is meant to close the chapter on one of the most brutal stories of government force against unarmed people, while also feeding the lie that the recipients of the wonderful U-visa helped serve the cause of justice.

# Rubashkin Attorney Speaks Out About New FOIA Lawsuit

BY DEBBIE MAIMON

An attorney from the Washington-based Jones Day law firm, in an exclusive interview with *Yated*, said he hopes a current multi-pronged FOIA lawsuit on behalf of Sholom Rubashkin will uncover significant evidence that can be instrumental in gaining relief for him.

The lawsuit was filed by Mr. Larry Rosenberg in September 2011, in a second, much broader effort to obtain full disclosure from all four federal agencies involved in the 2008 federal investigation leading up to the Postville raid, and the subsequent Rubashkin trial.

“What’s undeniable, based on the record,” Rosenberg said, “is that there was an egregious breach of judicial ethics on Judge Reade’s part. She became so deeply invested in the criminal investigation that she lost objectivity and made matters worse by failing to disclose this involvement.”

“At the time, the defense team had no idea Judge Reade was so compromised. She had refused other requests for recusal from other defendants in the case - and as every attorney knows, you antagonize a judge by asking them to recuse. It seemed the wisest route was not to alienate her.”

“Failure to ask for her recusal, however, put Sholom Rubashkin at an immense disadvantage for an appeal,” Rosenberg noted.

“The grossly disproportionate sentence Reade imposed is a clear giveaway that something suspicious is at play here,” he stressed. “That kind of sentence is so out of line with a fraud case, it automatically invites suspicion.”

“Put that together with evidence of a judge deeply embedded in the criminal investigation and the wildly inflated sentence may still be shocking—but it’s no longer so mysterious.”

## CURRENT FOIA LAWSUIT TARGETS FOUR FEDERAL AGENCIES

An initial FOIA lawsuit targeting only ICE produced materials (post-trial) that uncovered Judge Linda Reade’s leading involvement in the raid that should have disqualified her from presiding over the trial.

But the 8<sup>th</sup> Circuit Court of Appeals sidestepped the evidence of Reade’s collusion, rubberstamping the government’s position that Rubashkin’s new-trial motion should be denied. Evidence of Reade’s collusion with prosecutors was also the lynchpin of a Cert Petition to the Supreme Court, which was denied last year.

“What is different about the current litigation,” commented

Rosenberg, “is that it is far more sweeping and all-inclusive, and also more focused. It addresses the Washington ‘parent’ agencies instead of the Iowa state regional offices, with 40 paragraphs detailing the fullest possible range of information.”

All relevant documentation from ICE, the FBI, the Marshall’s Service and the Executive Office of the U.S. Attorney that pertains

to the 2008 raid and Postville prosecutions, is being sought in this FOIA lawsuit, said Rosenberg. “That includes every email and document filed with these agencies that record or report communications with Judge Reade during the time frame in question.”

The possibility of uncovering “a smoking gun with far more incriminating power than the redacted ICE documents produced,” is therefore more likely, the Jones Day attorney said.

This evidence can be used in a number of ways, one of which is a “Habeus Corpus” motion, which produces conclusive evidence that the accused has been wrongfully incarcerated. In this case, using compelling proof of a judicial lack of neutrality, the defense would petition for a review of the case before an impartial judge.



MR. LARRY ROSENBERG

## MORE GOVERNMENT STONEWALLING

Rosenberg said the government has been surprisingly aggressive in resisting the FOIA requests, dragging its feet interminably, or claiming it has already released the information when it has not. “The FBI has been the most recalcitrant of all the agencies,” he noted.

The stubborn resistance to giving over documents to which the public is legally entitled is just plain wrong, the attorney said. It means more motions, legal briefs and litigation, all of which is costly. “This suggests the government, with its unlimited pockets, could be waging a war of attrition, hoping the accused will simply run out of money and give up.”

The encouraging note in all this, said Rosenberg, is that “if we don’t get relief, the case will go to the D.C. Circuit Court of Appeals, which has a long record of vigorously enforcing FOIA. We have a strong case and I’m optimistic. At the end of the day, I’m hopeful we’ll get a significant amount of information that can be used to help Sholom Rubashkin.”

# Taking Chanukah's Infinite Power Into The Year

A MESSAGE FROM SHOLOM MORDECHAI RUBASHKIN TO HIS CHILDREN

Dear *Kinderlach*,

To begin with a *brocha*, *Hashem* should bless you, together with all *Yidden*, that the *lichtikeit* of *Chanukah* should saturate all aspects of your lives, and that we should all be *zoche* to see our *geulah protti* and *geulah kloli*, now, with *Moshiach Tzidkeinu*.

Today is the great happy day of *Zos Chanukah*. Even though it's a continuation of the previous days of *Chanukah*, *Yidden* give it its own name because this day has something special above and beyond the *kedusha* and significance of the other days.

I'm writing you during the *seudah* I made especially for this day. Everything here was locked down today, meaning we were all restricted from leaving our cells. But the spirit and *simcha* of *Chanukah* is free and impossible to force into lock-down.

Let me share with you some thoughts on how *Chanukah* was experienced here. And maybe we can take a lesson from *neiros Chanukah* which, based on our *mesorah*, we *Yidden* have always performed *mehadrin min hamehadrin*, the way we should cherish and perform all the *mitzvos d'rabonon*.

On the Fifth Light of *Chanukah*, volunteers came to inject the *simchah* of *Chanukah* for the handful of us in the prison. Dovid Folkovitch, a wonderful singer with a *geshmakeh* voice full of life joined us and was *mehaneh* us with his music. We were also *zocheh* to enjoy the humor of the famous "Yarmur Rov" and laugh along with him, and to hear the *bochur* who came to give words of *chizuk*.

Although you'd think it would be impossible to actually dance and sing in a place of pain and punishment, we did so anyway, *boruch Hashem*. It wasn't the physical person dancing, it was the *neshoma* in action.

Because when the *neshama* is saturated with *simcha shel yom tov*, it literally picks up the mind and heart, giving life to the hands to clap on and on, and energy to dancing feet to keep going tirelessly.

To all you *tiere Yidden* who came here, may *Hashem* grant that we dance together very soon at a *seudas hodo'oh*.

When *Chanukah* arrives in such a frozen, bleak place, questions seem to leap out from the darkest corners: how is it possible to bring light into such a desolate place? What is the reason for the darkness and for the difficult *nisyonos* thrown our way? How can one prevail over such profound, overwhelming darkness?

The story of *Chanukah* itself gives us the answers. The *Yevonim* were a force of ice-cold darkness whose war against the *Yidden* targeted the holiness of the *neshama*. That is why, when they entered the *Bais Hamikdosh*, they made it part of their mission to be *metameh* all the oil there, because their war was against *kedusha* and the oil was *kodesh*.

This means they battled not only on the intellectual level by introducing their Greek *apikursus*, which the *Misyavanim* adopted. Their culture also made the heart love the physical, and sought to replace *ahavas Hashem* with physical pleasures.

Their war built upon the *tumoh* they introduced to the world, contaminating even the higher dimension of *ruchniyus* in the *Yidden*, symbolized by oil.

## SEALED IN A BOND WITH HASHEM

The oil that escaped destruction by the Greeks in the *Beis Hamikdosh* was the oil that carried the seal of the *kohen gadol*, which represents the essence of the *neshama* that is "sealed" in a bond with *Hashem*. That is the part that can never be tampered with.

Counter arguments based on intellect and reason could not fight the powerful *tumoh* spread by the *Yevonim*. Only a *Yid's mesiras nefesh* coming from his deepest *neshama* - the part that is always connected with *Hashem* and knows that *ain ode milvadoh* - could wage war against that *tumoh* and prevail.

It made no difference that the Greeks outnumbered the *Chashmonaim* and were far more powerful. Because to Matisyahu and his sons and those who followed their lead, only *Hashem* exists. Everything that opposes Him is an illusion.

Armed with *ain ode milvadoh* - the conviction that there is no force but *Hashem* - the *Yidden* turned the Greek armies into what they really were, a puff of nothingness.

In the same way, *Avrohom Oveinu* who encountered a river blocking his path on his way to carry out *akeidas Yitzchok*, refused to grant it significance. He gave the river no consideration, as if it didn't exist. He walked right into the water and as he did so, it disappeared.

It never had an existence of its own to begin with. It was merely one of the *soton's* favorite tools - an illusion, a mirage.

This is the infinite *koach* of *Chanukah* that was released so long ago, and that the *rabonon* showed *Yidden* how to re-ignite in every generation. They established the *mitzvoh* of lighting *Chanukah* lights to remember the *ness* of the oil, that reminds us that the deep-down *koach* of *mesiras nefesh* and *ahavas Hashem* exists in all of us, ready to be tapped. And it recalls the lesson again and again not to let ourselves be frightened by the enemy's vast noise and numbers.

*Chanukah* infuses us with a *chizuk* to do all the other *mitzvos d'rabonon* with the same *hidur* that we bestow on *neiros Chanukah*.

In this frigid dark region of prison where keeping the *mitzvos* takes *avodah*, it is clear that *davka* by keeping all the *mitzvos d'rabonon*, *b'hidur* one is granted the ability, *b'chasdei Hasher*, to fight off the darkness and to keep alive the *simcha shel mitzvah*.

This means being extra careful not to cross the boundaries where the *rabonon* set up boundaries to separate us from things that have *tumoh*, so as not to contaminate our *neshomos*.

Even in a crisis, in the most trying circumstances, we keep our "oil" sealed with seal of the "*kohen gadol*," the *rabonon*. We focus on keeping ourselves pure. That is what strengthens the *yechidah* - our deepest, innermost *neshama* - and keeps it vibrant and in "revealed" mode throughout the year.

*Yehi ratzon* that *Hashem* should awaken our hearts to Him and free each and every *Yid* from whatever prison confines him, and from the biggest *tzoroh* of all - *golus* itself. May we be granted the *geulah protti* and *geula kloli* with *Moshiach Tzidkeinu* now, *bimheira biyomeinu*.

*A lichtige Chanukah!*  
*Besuros tovus*  
*Love, Tatty*

# Massive Asifa in Far Rockaway for Sholom Mordechai ben Rivkah Rubashkin

BY LIBA LIEBERMAN

The crowd came with a hushed sense of purpose, filling the baises of Congregation Kneseth Israel with a weighted presence rooted in the utmost concern for a fellow Yid and a gnawing fear that a terrible travesty of justice could happen in a country noted for its chessed to Klal Yisroel. Thirty seven rabbonim had signed the local call urging people to attend the rally. Rabbi Moshe Bender of Yeshiva Darchei Torah took the local lead in working to make the rally a success.

The massive *pidyon shvuyim* event on behalf of Sholom Mordechai ben Rivkah Rubashkin took place for the Far Rockaway and Five Towns communities last Wednesday evening, December 22, drawing a record crowd to support the appeal efforts to shorten Sholom Mordechai's 27-year sentence. At the emotional core of the evening, which lasted three hours, was the presence of Rav Pinchos Lipschutz, the heart and soul of the movement to redeem Sholom Mordechai, and the singular force of gravity pulling everyone to the White Shul by the sheer force of his great compassion.

The evening in Far Rockaway was preceded by similar events that took place in Monsey, Kiryas Yoel, Lakewood, Boro Park and New Square. Each event had one goal: to bring forth financial and spiritual support for Sholom Mordechai's case.

The event in Far Rockaway drew together prominent *rabbonim* from the Far Rockaway and Five Towns communities, who sat in *achdus* on the dais as each speaker pleaded for help. The program opened with introductory remarks by Mr. Dovid Scharf of Lawrence and the recital of *Tehillim* by Rav Yaakov Reisman, *rov* of Agudas Yisroel of Long Island.

The first speaker was the Novominsker Rebbe, Rav Yaakov Perlow, who stressed that it is incumbent on every Jew to love his fellow Jew. *Ahavas Yisroel*, he explained, is something that we have to practice.

"That's what we are confronted with tonight," the Rebbe remarked. "Somehow, Sholom Mordechai Rubashkin has been subjected to such a travesty of moral and legal judgment. How can we be complacent? How can we distance ourselves?"

Citing Moshe Rabbeinu's greatness, the Rebbe related how Moshe could emotionalize the pain of another Jew.

"That's what we are talking about here," he said. "The legal opinion of some of the greatest legal scholars of our country is that this sentence is a travesty of justice. What a terrible thing has happened to him, dressed up in legal judgment. I came here to speak from the heart. This (the verdict) is something we never would have expected to happen in this country. We almost can't believe it, and we are not allowed to be complacent about it. It should move you to the point where you are unable not to respond. He

knows Jews everywhere are doing something to help him," the Rebbe shared. "This is a tremendous *chizuk* for him."

Rav Eytan Feiner, *mara d'asra* of Congregation Kneseth Israel, began as the second speaker with the following statement: "Big things don't happen by coincidence." He looked to last week's *parsha*, *Parshas Shemos*, citing how Moshe saw the plight of his fellow Jews and stepped up to the plate.

"Imagine how he put everything on the line for one person. And he became branded as a fugitive, but it didn't make a difference. He stood up for his brother. That's what life is all about," said Rav Feiner.

"It's not enough to feel the pain. One also has to cry. Twenty-seven years. A large family. Why aren't tears cascading down our faces? Are we *acheinu bnei Yisroel*? Can we come together for a noble cause? Every Yid is *choshuv*. The Holocaust was about each individual life. That's what *Parshas Shemos* is about. We have to care about each individual. We have to give," said Rav Feiner.

For Rav Pinchos Lipschutz, the third speaker of the evening, the cause of Sholom Mordechai Rubashkin should be a cause of every Jew in America. The original charges were steeped in a long war fought by People for the Ethical Treatment of Animals (PETA) against the practice of *shechitah*. After a noticeable silence at the speaker's podium, Rabbi Lipschutz began. "This is the eighth time I am addressing a rally for Sholom Mordechai Rubashkin. Each time, it gets harder," he said.

Rabbi Lipschutz's mission statement portrayed Sholom Mordechai on a deeply personal level. Everyone in attendance learned how this enormously successful businessman lived in a pre-fab home, with folding chairs around his dining room table. They learned how he is a loving, caring person whose *chessed* extended to the entire town of Postville.

"He made millions of dollars," Rabbi Lipschutz explained, "and he gave it all away. Three quarters of the town lived off this person. He built and supported the only *shul* in town. He started the school and paid for all the expenses. No one paid tuition. He was like a *tzaddik* out of storybooks; he lives on *emunah* and *bitachon*. He's been vilified, locked away, and yet, he's *b'simcha*. At his sentencing, he said, '*Shehecheyanu*,' remarking, 'I have a *mitzvah* of *bitachon* like no one else.'"

The words of Sholom Mordechai's advocate reverberated around the elegant *shul*. "Why are we here? We're here to get him a new trial, a fair hearing. We are here to protest a lie. The lie that *shechitah* is inhumane. The lie that religious Jews are not patriotic and that they take advantage of other people. The lies that have taken root and continue to grow across the country. When we fight for Sholom Mordechai, we fight for ourselves. We are battling the

ugly stereotypes our people have fought throughout the ages. We are fighting because we are patriotic, because we are law abiding, and because we care about this country.

"If we sit quietly," Rabbi Lipschutz concluded, "Sholom Mordechai will spend twenty-seven years in jail. We are here to protest the demonization of *kashrus*. We are humane. *Kashrus* is humane. *Frum Yidden* are humane. We don't just preach *ahavas Yisroel*, we live it. What can we do? We can *daven* for Sholom Mordechai *ben Rivka*. And we can write a check. *Pidyon shvuyim* is the highest form of *tzedakah*. How often do we have the opportunity to do this?"

Rav Ephraim Eliyahu Shapiro, *rov* of Shaarei Tefillah in North Miami Beach, flew in from Florida to serve as the guest speaker and share *divrei chizuk* at the event. He spoke repeatedly about our need to *daven tefillas "Arvis,"* alluding to our responsibility to care for our fellow Jew. Among the many stories Rabbi Shapiro told, his final vignette, told to him by his father, Rav Mordechai Shapiro, showed how giving money to a worthy cause can have an eternal impact. In 1951, Rav Mordechai Shapiro was walking on a wide boulevard in Tel Aviv. He saw a green kiosk and an elderly *Yid* inside it learning *Mishnayos*. When people came to buy items, he would take care of them and all the while never stop learning. A man came up to him and asked for cigarettes. The elder *Yid* refused to sell him what he wanted, as it was already after midday on *Erev Shabbos*.

At this point, Rav Shapiro felt compelled to ask the man's name. They exchanged names, and life stories, and eventually the name of Rav Aharon Kotler *zt"l* was brought into the conversation by Rav Shapiro. It seemed that the kiosk man knew Rav Aharon, calling him by an affectionate nickname. "What became of him?" the man asked.

The elder *Yid* then told his story. As a butcher in Minsk many years before, he put aside money to send two *bochurim* to learn in Slabodka. He himself didn't have such learning skills, yet he wanted to assist two *bochurim* reach Torah greatness. One of the *bochurim*, it turned out, was Rav Aharon Kotler. When Rav Shapiro's father related the story years later to Rav Yaakov Kamenetzky *zt"l*, the *gadol* verified the tale. He also knew the name of the second *bochur* sent to learn in Slabodka by this elderly *Yid* who

owned the kiosk - none other than himself!

"The story is true," Rav Yaakov told him. "I was the second *bochur*."

"The money is critical," Rabbi Shapiro said in his parting words to the large crowd. "It can change the world forever."

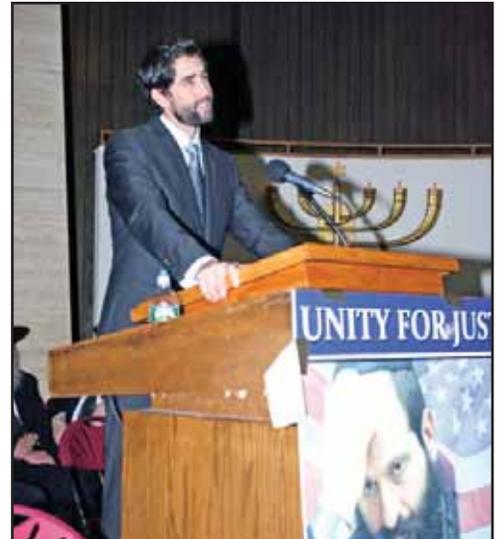
Legal aspects of the case were addressed by Mr. Brett Tolman, former United States Attorney for Utah and formerly Legal Counsel to the United States Senate Judiciary Committee. A forceful advocate for Sholom Mordechai's right to receive justice, Mr. Tolman boiled down the allegations against Sholom Mordechai to financial and immigration charges. He expressed astonishment at the aggressive prosecution in a case in which no money was taken and there were no victims of fraud. He said that the kind of sentence that Sholom Mordechai received is as great as, or greater than, those convicted of second-degree murder, kidnapping, and supplying resources for terrorist organizations.

He received a standing ovation when he said "I am not Jewish, but I know injustice when I see it."

The remarkable interaction between the judicial and executive branches of government involved in the case prompted him to publicly state, "The case is an affront to justice. This is a travesty of justice."

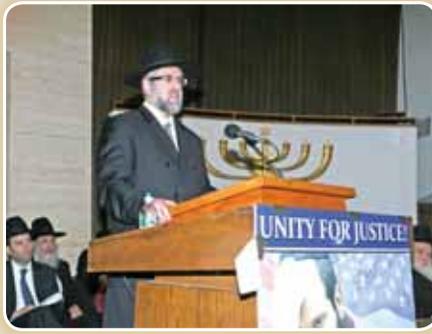
The extensive appeal process can only take place with ongoing financial support. In the merit of the efforts of *Klal Yisroel* on behalf of Sholom Mordechai *ben Rivkah Rubashkin*, may Hashem return him to his family.

*Contributions can be sent to Klal Yisroel Fund, 53 Olympia Lane, Monsey, NY, 10952.*



Photos by: Tsemach Glenn

# RUBASHKIN RALLY



Photos by: Tsemach Glenn

# Massive Turnout at Five Towns Rally for Rubashkin

BY DEBBIE MAIMON

Throngs of people packed the White Shul, Cong. Knesses Yisroel, in Far Rockaway last week in an outpouring of solidarity for Sholom Mordechai Rubashkin. With the *shul* filled beyond capacity, the crowd spilled over into the *simcha* hall, where participants watched the proceedings via live hook-up.

The massive turnout on a frigid night testified to the degree to which Sholom Mordechai's ordeal has touched all segments of *Klal Yisroel*.

The Novominsker Rebbe, Rav Yaakov Perlow, set the tone for the evening with an impassioned speech decrying the 27-year jail sentence meted out to Sholom Mordechai as "a terrible travesty of justice dressed up in legalities."

"How can we be complacent?" he cried. "How can we distance ourselves? This is not how Hashem wants us to respond."

He cited the *Rambam* in *Hilchos Deios* who explains how one must fulfill the *mitzvah* of *ve'ahava lerei'acha kamocha* not only intellectually, but *begufo*, with concrete actions.

Quoting the *posuk* in *Shemos* that recounts how Moshe Rabbeinu sought out his enslaved brothers, Rav Perlow stressed that Moshe Rabbeinu's response provides the blueprint for how we must respond to Sholom Mordechai's plight.

## HIS PAIN DROVE HIM TO ACT

Rav Perlow cited *Rashi* on the words "*vayar besivlosam*" that underscores how Moshe identified with his people's misery. "*Nosan aino velibo lihiyos meitar aleihem*," *Rashi* says. Moshe focused his eyes and heart on his brothers' suffering to the point where he was in anguish over it.

He did not content himself with assessing their situation while remaining personally aloof. He immersed himself in their pain and that pain drove him to act.

This must be our response to Sholom Mordechai's bitter fate, to a prison sentence that is synonymous with lifetime captivity, Rav Perlow said. "*Lo suchal lehisaleim*, we cannot turn our backs on our obligation to help him.

"Our *chovos halevavos*, duties of the heart, must be matched by *chovos ha'eivorim*, duties of action," he said. "Those duties can be reduced to a clear imperative: to give as much as we possibly can to help pay for the appeal that will, *be'ezras Hashem*, free Sholom Mordechai."

Rav Perlow described the outpouring of support by tens of thousands of Jews who have attended rallies for Sholom Mordechai. "People outdid themselves in their *tzedakah* to support his legal defense. Our *hischayvus* cannot be less than theirs," he said.

He reminded the assembled that six former attorneys general, and the country's top legal experts and scholars, had protested against a life sentence, and had petitioned the judge for fairness. Their pleas were ignored.

When the punishment has no relation to the crime and no *gevul*, no reasonable limit, it is a mockery of justice, Rav Perlow said. "The Unites States is a *malchus shel chesed*, distinguished by its benevolence and its system of justice. For a judge and federal prosecutors to display such corrupt thinking in an American courtroom is beyond comprehension."

The Rebbe concluded his address with a stirring appeal. "Who among us does not need *rachamei Shomayim*? There is no family and no individual in our community who has not been touched in some way by *yissurim*, *lo aleinu*. To merit Divine mercy, we must show mercy to one another. May our compassion and our efforts on behalf of others in their *ais tzarah* elicit *rachamei Shomayim* for all of us, and especially for Sholom Mordechai," he said.

## STANDING UP FOR THE VICTIM

Rabbi Eytan Feiner, *rov* of the White Shul, gave an inspirational and rousing address on the theme of *ahavas Yisroel* and responsibility for fellow Jews. He said that the Torah gave us the dimensions of Moshe Rabbeinu's extraordinary humanity in a few brief episodes at the beginning of *Pashas Shemos* as a clear roadmap for how to navigate similar challenges in our own lives.

Whether in *Mitzrayim* defending a Jew from a cruel slave-driver or in *Midyan* standing up to the shepherds oppressing *Yisro's* daughters, Moshe's driving concern was to protect the innocent, even at risk to his own safety. That conduct illuminated for all future generations the level of *ahavas Yisroel* we must aspire to.

Rabbi Feiner urged the assembled to show solidarity with Sholom Mordechai by responding to the appeal, and to continue praying for his freedom as well as for *Yehonosan ben Malka* (Jonathan Pollard), *Gilad ben Aviva* (Shalit), and the two young men from *Bnei Brak* still imprisoned in Japan, *Yaakov Yosef ben Raizel* and *Yoel Zev ben Mirel Risa Chava*.

## THE MAN BEHIND THE MYSTIQUE

In a riveting address, Rabbi Pinchos Lipschutz cut through the reams of words surrounding a high-profile case to give his listeners a profoundly personal glimpse of the man at the center of it.

People leaned forward in their seats as the speaker shared fascinating vignettes about Sholom Mordechai that opened a window into his personality, his legendary *gemillas chesed*, and how he endures *yissurim* that have wreaked such pain and destruction in his life.

Rabbi Lipschutz protested the lies used as a launching pad to destroy the former executive of *Agriprocessors*, and blatant falsehoods like those appearing in the *Forward* that continue to take aim at kosher *shechitah* and Orthodox Jewry.

## THAT CAN'T BE RUBASHKIN

In one of the most vivid vignettes, Rabbi Lipschutz related an incident in which, while chatting with a friend who had dropped by, he interrupted the conversation to take a telephone call from Sholom Mordechai in prison. The friend was impatient with the interruption and showed his annoyance.

Rabbi Lipschutz recounted the story:

*"I said, 'I don't mean to be rude, but it's Rubashkin. He can only call at certain times.' I put Sholom Mordechai on speaker so that my visitor would realize who I was talking to.*

*"Sholom Mordechai's animated voice came across the wire. He was eager to tell me a vort. His speech was so full of simcha, you would think he was sitting comfortably in his own home. He is a man so full of life, his energy and joy are contagious. He tells over his vort with relish. He laughs at the punch line. There is nothing in his speech to tip you off that he is in a dreary prison, separated from his loved ones, locked up with murderers, drug dealers and thieves.*

*"I glanced at my visitor, but his annoyance had only deepened.*

*"Sholom Mordechai and I chatted a little more until his allotted minutes ran out. I wished him a good Shabbos, he wished me the same, and then he was gone.*

*"My visitor turned to me and blurted out, 'How dumb do you think I am? You expect me to fall for that?'*

*"I was taken aback. 'Fall for what?'*

*"A guy in jail doesn't talk like that. If that was Rubashkin, he would have asked you what you're doing to get him out. He'd be asking you if you wrote about him in the paper this week. He wouldn't just be talking in learning. He wouldn't be laughing so lightheartedly. You must take me for a fool. Come on. Who was it really?'*

*"I'm serious. It was Sholom Mordechai.'*

*"He was so floored, he just stared at me. As awareness dawned, he looked away, his eyes glistening. He finally whispered. 'I always wondered what your preoccupation with him was all about... Now I understand.'"*

## THE "MISTAKE"

In another telling vignette, the audience heard how Sholom Mordechai had made a withdrawal from the bank and was walking in the street with ten thousand dollars in cash. He passed a young man whom he recognized as an Israeli *chosson bochur* in the Postville Yeshiva. The boy looked dejected and barely exchanged a greeting. Sholom Mordechai drew him out. "Life can't be that bad. Tell me what's wrong," he said.

The young man confided his tale of woe. He was supposed to have received a certain sum of money with which to pay for his chasunah and

to start his new life with his kallah, but he had just learned the money would not be coming through. He was in despair. Sholom Mordechai listened quietly. He took \$200 out of the envelope and gave the rest to the chosson. The young man peeked in the manila envelope and looked up dumbfounded.

"I think you made a mistake," he stammered.

Sholom Mordechai smiled at him warmly. He said, "You know what? You're right." He took out the \$200 he had kept for himself and placed it back in the envelope. "Here you go," he said, pressing the envelope with the full \$10,000 into the young man's hands. And off he went.

[The grateful chosson shared this extraordinary episode with a close friend in Postville, who in turn repeated it to others.]

## RUBASHKIN TRADEMARKS

Spontaneous chesed of extraordinary magnitude, performed quietly, away from the spotlight, were Sholom Mordechai's trademarks. But his largesse was not limited to needy individuals, Rabbi Lipschutz told his audience. It embraced the entire community of Postville, and far beyond the little town's borders.

"He built and supported Postville's one *shul*, Achdus Yisroel, and everyone davened there: Satmar, Lubavitch, Klausenberg, *Litvishe*, *Sefardim*, *Ashkenazim*, Americans and Israelis. Under his leadership, everyone got along. He founded an elementary school for boys and for girls and paid all the teachers' salaries. Students went tuition-free. He started a *yeshiva* in town and paid all its expenses. He singlehandedly built a state-of-the-art *mikvah*.

"With the millions he made, he could have feathered his own nest. But he poured them into the community and into countless charitable organizations worldwide. Before *Pesach*, he would send someone the visit the *shochtim*, *bodkim*, *rabbeim* and other *klei kodesh* in town to scout out what they needed for *Yom Tov*. And then the delivery trucks would arrive. One family received a refrigerator, another a stove, a third one an air conditioner.

"People streamed to him for help from all corners of the Jewish world. His greatest joy was helping people. He never asked for anything in return.

"One would expect his home to reflect his wealth. But he lived in a simple pre-fab house at the end of an unpaved street. His door was never locked; anyone could come in at any time. As busy as he was, he made time for everyone. There was nothing worth stealing in the house. He didn't even have a regular dining room set. Around his table were folding chairs."

## IN THE BEST OF TIMES AND THE WORST OF TIMES

Perhaps the most revealing vignette was one of Sholom Mordechai in



prison, stripped of his freedom, prestige and everything he once owned.

“When times are good, it’s easy to be an *ehrliche Yid*. But I got to know him after he was in jail,” related Rabbi Lipschutz. “This was after his conviction, when he was refused bail on the pretext that he might flee to Israel.

“He was going through torture that none of us should ever know. He saw everything he had built up over 18 years taken from him. He was mocked and vilified. He was cut off from his family. He was stabbed in the back by people to whom he had only done good. He was abandoned in his hour of need by fair-weather friends.

“When he heard his sentence read out in court, he made a *Shehecheyanu* for the opportunity to be *mekayeim* the *mitzvah* of *bitachon* under the most excruciating circumstances. His family was crying, and he was making a *Shehecheyanu*. He knew exactly what the sentence meant. He is a person of very deep and sincere faith. He flows with love, hope and trust in Hashem. He was that way in the best of times. And he is that way in the worst of times.

“At his suggestion, we began learning *Chovos Halevavos* on the phone. He knew *Shaar Habitachon* by heart. He doesn’t just know it. He lives it, moment by moment. We talk about *emunah* and *bitachon*. He *lives* it.”

### TO PROTEST A LIE

After briefly outlining the misconduct by prosecutors and the presiding judge who engineered the trial and 27-year sentence, Rabbi Lipschutz stressed the purpose of the evening’s event: to raise funds to pay for the costly work of the appeal, so that Sholom Mordechai is granted a fair trial and a chance to prove his innocence.

But that is not all, he said. “We are also here to protest a lie. The persecution and targeting of Agriprocessors and Rubashkin began with a lie that *shechitah* is inhumane. From there the lie mushroomed: Jews are greedy. Jews feed off the under-privileged. And as the lies took root and continued to grow, Sholom Rubashkin became the face of evil.

“When we fight for Rubashkin, we are fighting for ourselves. We are battling the ugly stereotypes which have victimized our people throughout the ages and continue to foment hatred to this day.”

### ALL JEWS ARE BROTHERS

Rabbi Ephraim Eliyahu Schapiro, who traveled from Miami, electrified listeners with a heartfelt address that hammered home the lifesaving importance of demonstrating care and concern for another Jew.

Citing the *posuk*, “*Hashmi’ini es koleich, ki koleich oreiv - Let me hear your voice, for your voice is sweet,*” he stressed the connection between the word “*oreiv*,” sweet, and “*areivus*,” responsibility.

When does Hashem have *nachas* from our *davening* and learning? When does he respond to our *tefillos*? When we ourselves respond with commitment and responsibility to a Jew in need.

When over 30 *rabbonim* and *roshei yeshiva* urge their *mispallelim* and their *talmidim* to attend a rally and set the tone for the evening by gracing the dais, that is *koleich oreiv*, Rabbi Schapiro said.

He said that the acid test for true *areivus* and *ahavas Yisroel* is when one cannot be tranquil if his fellow Jew is in dire straits.

Rabbi Schapiro concluded with a ringing tribute to Rabbi Lipschutz for his tireless crusade to raise community awareness about the injustice of the Rubashkin case and the dire need to come together to support Sholom Mordechai.

Applause swept the room as hundreds of people stood up in a heartening display of endorsement and solidarity.

### “I KNOW INJUSTICE WHEN I SEE IT”

The final speaker of the evening, Mr. Brett Tollman, former U.S. Attorney of Utah, who also served as counsel for Crime and Terrorism in the Senate Judiciary Committee, shone a spotlight on the many indications that justice was perverted in the Rubashkin case.

Although the hour was late, the audience snapped to attention. Questions about Sholom Mordechai’s guilt or innocence have roiled the Jewish community.

Tollman said that after many months of studying the Rubashkin case, his driving question is why a criminal investigation was warranted in the first place.

He said that the 163-count indictment against Rubashkin was unprecedented in legal annals of white-collar crime. Far from reflecting an extraordinary number of actual crimes, the indictment - and the act of returning to the grand jury seven times to pump up the number of counts - was unreasonable. These tactics were used to stretch just two allegations into 163.

The aim, he said, was to exert unbearable pressure on the defendant to plead guilty.

Tollman said that the two allegations against Sholom Mordechai were that he harbored undocumented immigrants - a case that would have, in all likelihood, fallen apart had it gone to trial - and that he overstated his ability to pay off his loans.

### NO GROUNDS FOR FRAUD

The former U.S. attorney challenged the grounds for pinning Sholom Mordechai with fraud charges, because fraud implies intent to cheat. With the company making timely payments on its loan to the bank and never exceeding its credit line, and with the absence of a “victim” in the case, fraud was clearly *not* the intention here.

Where there is no intent to defraud, no unlawful pocketing of funds and no victim one can point to, fraud charges are unsupportable, Tollman said. But what of the fact that the meatpacking plant ultimately defaulted on its loans, causing the bank to lose its money?

Defaulting on a loan is not grounds for a federal prosecution, he said. “I believe that a well-intentioned businessman who makes a poor business decision should not be treated as a criminal warranting federal prosecution.”

In addition, he said, the government, by raiding Agriprocessors, driving it into bankruptcy and radically lowering its market value, “forced the company into a catch-22.”

### JUDGE AND PROSECUTOR WORKING TOGETHER

Even more troubling, Tollman said, is the evidence of unlawful *ex parte* discussions between the judge and the prosecutors. The extraordinary over-involvement of Judge Linda Reade in the strategy sessions leading up to the ICE raid, and the arrest of Sholom Mordechai, cast a shadow over the entire criminal proceedings.

“In my ten years in the Department of Justice, I never encountered anything close to this level of cooperation between prosecutors and the judge in a criminal proceeding, Mr. Tollman said.

“One doesn’t have to be a lawyer to realize that the magnitude of the interactions in this case crossed permissible bounds,” he said, slamming the 27-year prison sentence as severely inappropriate.

The former U.S. attorney spoke of the right to a fair trial as central to a democracy. He stressed that “the very essence of the legal foundation guaranteeing due process and the right to a fair trial is that the executive and judicial branches of government remain separate.”

“In the Rubashkin case, the checks and safeguards that are supposed to maintain this separation were virtually non-existent,” he said. In the absence of a fair trial, a jury’s findings of guilt are meaningless.

“I am not a Jew, but I know injustice when I see it,” the former U.S. attorney concluded.

His powerful indictment of the unjust process by which Sholom Mordechai was convicted and sentenced brought the audience to its feet in spontaneous, prolonged applause.

The evening ended on a strong note of unity, hope and trust in Hashem that the final page of this bitter saga will soon be written with joy and gratitude for Sholom Mordechai’s vindication.

# Rubashkin Attorneys File Appeal

JUDICIAL MISCONDUCT, WRONGFUL CONVICTION AND PREJUDICIAL RULINGS CITED

BY DEBBIE MAIMON

Lawyers for Sholom Mordechai Rubashkin filed a 100-page appeal on Monday in the Eighth Circuit Court of Appeals in St. Louis, Mo. They argued powerfully for a new trial based on evidence of judicial misconduct, wrongful conviction on money laundering charges, and multiple judicial rulings during the trial that prejudiced the jury.

The brief also singled out erroneous instructions to the jury that conflicted with the indictment and strayed from the legal definition of bank fraud, providing strong grounds for vacating the conviction.

## “COZINESS”

The brief began its description of the fundamental flaws in the criminal prosecution by underscoring Judge Linda Reade’s “excessive coziness” with the prosecutors planning the raid.

Attorneys cited the clear impression conveyed in government FOIA documents that the judge not only played a managerial role in the raid, but concealed this from the defense, thus preventing Sholom Mordechai’s attorneys from moving for her recusal.

In her order denying Sholom Mordechai a new trial, Reade denied any undue involvement in the law enforcement action. Yet, the mere fact that government officials referred to her as “a stakeholder” in the operation should have disqualified her from presiding over the trial, the appellate attorneys said.

## STRIKING PARTIALITY

The law provides that even the *appearance* of partiality is sufficient grounds for recusal, since it undermines public trust in the fairness of the justice system. One does not have to go so far as to prove *actual* partiality. In Judge Reade’s case, however, both of these disqualifying factors were strikingly present, the brief argued.

The brief asked the Court of Appeals to remand the motion for a new trial to a different judge unfamiliar with the case. Attorneys argued at the very least for an evidentiary hearing, enabling a truthful assessment about the multiple undisclosed meetings between judge and federal prosecutors suspected of crossing permissible bounds.

## MARCHING TO THE PROSECUTOR’S DRUM

In a summary of the arguments presented by the appeal brief, attorneys described a criminal prosecution that stands out for its unreasonable and unaccountable harshness, and that an even-handed judge would have sought to temper.

“From beginning to end, the Rubashkin case has been pursued by the federal prosecutors with unprecedented aggressiveness,”

the brief said

Far from exercising balance and moderation, the judge simply marched in tune with the prosecutors, clearing the many legal obstacles in their way with one-sided rulings, the document attested.

The string of examples of prosecutorial “overkill” included:

- the denial of bail on the grounds that, as a Jew, the defendant might flee to Israel to escape justice
- pinning Sholom Mordechai with fraud charges for allegedly violating an obscure boilerplate clause in a loan agreement with a lending bank
- subjecting Sholom Mordechai to seven superseding indictments
- charging him with a criminal violation of the Packers and Stockyards Act of 1921, never before enforced against anyone
- sentencing him to virtual life imprisonment for the disproportionate crime of misrepresenting the value of collateral

“The Appellant [Rubashkin] trusted that in the open court process, the prosecutors’ harsh excesses would be fairly tempered by the presiding judge so that justice would prevail,” Sholom Mordechai’s attorneys said.

## READE “TILTED” FEDERAL TRIAL

This trust was validated in the state trial, in which state prosecutors filed an astounding 9,311 misdemeanor counts against Sholom Mordechai. After prosecutors voluntarily dismissed more than 99 percent of the charges, he was acquitted on all the counts that remained.

The federal trial, however, lacked even the appearance of even-handedness, with the judge “tilting the trial against Mr. Rubashkin” with prejudicial rulings, the brief stated.

The attorneys ascribed Reade’s one-sided rulings as a byproduct of her working so closely with the federal agents in mapping out the raid that she had lost all objectivity. She was too heavily invested in the criminal proceedings.

“It was simply human nature that a federal judge who so extensively participated in the planning of the raid... would be unable to exercise the restraining influence on the prosecutors with whom she had worked so closely...” the attorneys contended.

The brief went on to list three other cogent arguments for overturning the conviction.

## CLOAK-AND-DAGGER EVIDENCE DESIGNED TO POISON JURORS

The second ground for reversal centered on the judge’s ruling that permitted “lurid evidence” of alleged harboring of illegals to

be introduced at the bank-fraud trial.

This flew directly in the face of the judge's earlier ruling that evidence of immigration violations would "spill over" onto the financial crimes, confusing and blindsiding the jury. Nonetheless, almost three of ten trial days were devoted by prosecutors to dramatic testimony regarding alleged violations of immigration laws.

The attorneys drove home their message about the impact on the jury of sensational cloak-and-dagger testimony by quoting directly from the trial transcript.

In the quoted testimony, the prosecutor is asking jurors to give a sinister twist to an innocuous meeting between Sholom Mordechai and an employee who was begging for a loan. The prosecutor, Peter Deegan, admits that no one actually heard this conversation, so he makes up for the gaps in his "evidence" by inventing an imagined dialogue.

Prosecutor to Jury: *We're talking about hundreds and hundreds and hundreds of current employees working under bad documents. And the defendant knows about this starting in at least May of 2005.*

*And they were putting these folks on [a secret] payroll. Okay? Remember the Hunt payroll? All right. About 86 employees with the bad IDs, okay, that the defendant says, "Come in after hours and we'll put them on the Hunt payroll. Don't tell Elizabeth Billmeyer about it."*

*Remember, first, [the defendant] meets with Brent Beebe out by the barns. Okay? Carlos told you about it. Laura Althouse told you about it. Defendant meets with Brent Beebe, and they have one of those conversations that nobody can hear!*

#### **SPILOVER EFFECT CRIMINALIZED SHOLOM MORDECHAI**

"The jury surely paid more attention to, and was influenced more by, sensational testimony regarding a 'secret' meeting behind a barn," than bland, arcane information about financial transactions that basically put jurors to sleep, the attorneys argued in the brief.

The "spillover effect" poisoned the jury against the defendant and criminalized him in their eyes, the attorneys asserted. This error was aggravated when the trial judge denied the defense a full opportunity to rebut the immigration allegations.

Sholom Mordechai sought to prove that experts in immigration law had been retained by Agriprocessors to help him screen out illegal workers and were even occupied in checking the authenticity of employees' documentation when the raid occurred. This testimony was barred by Judge Reade, who called it irrelevant.

#### **MISLEADING JURY INSTRUCTIONS**

In addition, the jury instruction regarding violation of the immigration laws made "spill over" even more likely. Jurors were told to conclude that Sholom Mordechai had lied to bank officials about being in compliance with the law not because he knowingly hired illegal workers, but because he "recklessly disregarded" their presence on Agriprocessors' workforce.

"Reckless disregard" is a completely different state of mind than knowingly and intentionally committing a particular act. The jurors were misled by this revision of the indictment that charged the defendant with knowingly and intentionally harboring illegals.

## **UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

Nos. 10-2487, 10-3580

### **UNITED STATES OF AMERICA**

Plaintiff-Appellee,

v.

SHOLOM RUBASHKIN

Defendant-Appellant.

ON APPEAL FROM THE U.S. DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF IOWA

(HON. LINDA R. READE)  
BRIEF FOR THE APPELLANT

#### **FALSE MONEY-LAUNDERING CHARGES**

Another argument for reversal of the conviction is based on the erroneous labeling of certain money transfers as "money laundering."

In an answer to a special questionnaire, the jury said that the funds allegedly laundered "did not involve illegal profits." In other words, they acknowledged that customer payments that were temporarily rerouted to Postville's *yeshiva* and kosher grocery to keep the meatpacking plant and these other institutions running, did not come from illegal activities and were not used for illegal activity. They were ultimately channeled right back to the lender bank as per the loan agreement.

This important finding required the entry of a judgment of acquittal and the dropping of the money-laundering charges. Instead of dropping them, prosecutors and Judge Reade used them to add ten years to Sholom Mordechai's sentence.

"The outrageously severe sentence imposed on Mr. Rubashkin by Judge Reade must be reversed because the improper money-laundering convictions added to Mr. Rubashkin's offense level, and because the trial judge failed to calculate 'loss' correctly under the Sentencing Guidelines," the brief concluded.

*[The 100-page appeal detailed many more profound injustices and examples of twisted thinking in the way the trial was conducted and the staggering 27-year jail sentence derived. These aspects of the appeal will be discussed next week.]*

# Government Struggling To Put The Genie Back In The Bottle

## RUBASHKIN UPDATE

BY DEBBIE MAIMON

Government concern over growing support for Sholom Rubashkin among prominent advocacy groups have prompted efforts to suppress three *amicus curiae* briefs that call for a new trial.

The move betrays an effort “to shut the door” on mounting indications of questionable conduct in the case, Iowa ACLU’s Randall Wilson said in a phone interview with *Yated*.

“What this shows is that a tender, raw nerve has been struck. It’s very threatening to the Attorney’s Office that Rubashkin’s defense is gaining a surge of credibility from outside organizations that carry clout.”

A written motion filed by the government last week asked the 8<sup>th</sup> Circuit Court of Appeals to reject the *amicus curiae* briefs because they present “no new arguments” that had not been covered in the appeal filed by Sholom Mordechai’s attorneys.

The move stunned legal experts. ACLU’s Wilson said he never encountered a case where the government refused to agree to the filing of an *amicus curiae* from the ACLU. Other experts consulted by this writer say they can find no precedent for the Department of Justice opposing a friend-of-the-court brief from any respected legal organization.

“Assuming for the sake of argument that the briefs present nothing new, they surely can’t do any harm in that case. So why go to these unusual lengths to resist them?” asked the ACLU director.

He noted that something more serious is obviously at play. “This is an effort to keep at bay issues that might discredit the government. They are trying to put the genie back in the bottle. But we’re hoping to do just the opposite—we know there is more to discover and we need to bring that

information out.”

### ADVOCACY GROUPS TEAR ASIDE VENEER OF LEGALITY

Joining the ACLU, two prominent legal and advocacy groups, WLF (Washington Legal Foundation) and NACDL (National Association of Criminal Defense Lawyers) threw their support behind the appeal.

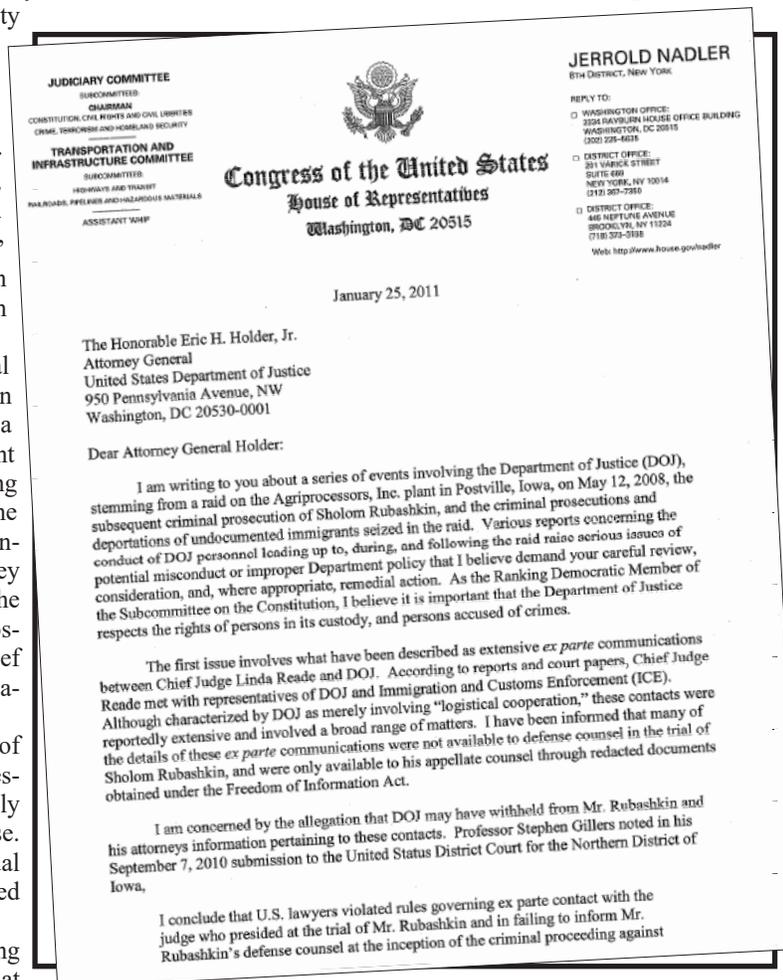
The WLF tore apart the veneer of legality masking Judge Reade’s legal opinions, sacked her sentencing calculations, and accused her of violating the Federal Sentencing Guidelines. Representing 18 prominent law professors, former federal judges and former prosecutors, the WLF urged that the case be remanded to a different judge for re-sentencing.

The ACLU highlighted Judge Reade’s active participation with prosecutors before the raid on Agriprocessors, which included e-mails in which Reade asked for a “final game plan” for the raid and a “briefing” on the operation. The brief accused her of violating the Constitution by acting as an arm of the prosecution.

The organizations called on the 8<sup>th</sup> Circuit Court of Appeals to vacate Sholom Mordechai’s conviction and grant him a new trial. “Due process demands it. The Constitution demands it,” the ACLU insisted.

The NACDL brief was uncompromising and scathing in its criticism, condemning what it called ethical misconduct by Judge Reade and federal prosecutors. The brief said that the ICE documents support the claim that Chief Judge was prejudiced in favor of the Government and thus must disqualify herself.

“She should not have discussed strategies and the ongoing investigation and other issues with prosecutors,” the NACDL brief said,



noting that Reade violated the Constitution repeatedly by attending the meetings at which these discussions were held.

### JUDGE READE'S CHARADE

The brief said that Reade compounded this wrongful conduct by concealing it from the defense. Even worse, when confronted by disclosures of her behavior in the ICE documents in Sholom Mordechai's new-trial motion, Reade sweepingly dismissed the allegations as untrue.

She was obligated by law to turn the case over to an impartial judge as requested, but refused to do so. Instead, she accorded her own denials of wrongdoing the status of "facts" even though they contradicted assertions in the ICE documents.

She thus became the key "factual witness" in the case and used her own testimony about what she did or didn't do to arrive at a ruling in favor of herself.

The NACDL brief harshly criticized this charade. It called attention to Reade's clear violation of ethical and legal guidelines in her repeated denials of wrongdoing and in insisting her behavior was above reproach.

The NACDL brief so thoroughly demolished Judge Reade's credibility that it triggered a desperate attempt by the Attorney's Office to neutralize its impact by impugning the organization's integrity.

### GOV'T EFFORT TO QUELL SUPPORT FOR RUBASHKIN

In its motion to quell support for Sholom Mordechai, the government took aim at both NACDL and defense lawyers by insinuating that NACDL consulted with the defense team and made use of their help in writing the *amicus curiae* brief.

"Counsel for defendant appears to have had some involvement in the preparation of at least one of the briefs," the prosecutors complained. In the case of the NACDL brief, the appellate counsel appeared "to have done some editing and made some small suggestions," leaving the government no option but to object to the brief, the motion said.

Since there is nothing improper about defense counsel reviewing and making suggestions for an *amicus* brief, the prosecutors realized they were on shaky ground here. Reduced to an almost pathetic last-resort defense, they argue that if NACDL's arguments had sufficient merit they would have been advanced by "the defendant's cadre of attorneys."

Since they were not included in the defendant's appeal, it's obvious that they are "devoid of merit" and are nothing but a waste of everyone's time.

In other words, since the "cadre of attorneys" working for Sholom Mordechai are such powerhouses, they doubtlessly thought of every possible angle. Any argument not included in the appeal is therefore worthless.

How flattering to the appellate team that the government regards them as brilliant and infallible. But how contradictory and comical to propose trashing an *amicus* brief for possessing the key credentials that the government earlier insisted such a brief must present—a new argument!

As all parties await the decision from the 8<sup>th</sup> Circuit Court of Appeals to accept or deny the *amicus curiae* briefs, the government's effort to put the genie back in the bottle is having the opposite effect.

"Rubashkin was fighting a very lonely battle. But the case has shifted and is now receiving increasing attention and support," one of his attorneys said. "Prominent legal advocacy groups see this as a test case with broad implications for many other defendants in similar situations. There are countless people in this country who like Sholom Rubashkin have fallen victim to judicial or prosecutorial conduct, an antiquated sentencing system and an increasingly over-criminalized society."

### Rep. Jerrold Nadler to Attorney General Eric Holder:

### ***"Prosecutorial Misconduct in Rubashkin Case Demands Your Review"***

In one of the most hard-hitting letters from U.S. congressmen to Attorney General Eric Holder about the Rubashkin case, Rep. Jerrold Nadler (D-NY) wrote Holder that "Various reports concerning the conduct of DOJ personnel leading up to, during, and following the raid raise serious issues of potential misconduct or improper Department policy that I believe demand your careful review, consideration, and where appropriate, remedial action. As the Ranking Member of the Subcommittee on the Constitution, I believe it is important that the Department of Justice respects the rights of persons in its custody, and persons accused of crimes.

His 4-page letter to the Attorney General testifies to his incisive grasp of the complex issues in the case and his concern for justice. It details four key issues that "demand [Holder's] careful review."

The first issue addressed is the evidence of unlawful *ex parte* communications between Judge Reade and federal prosecutors. Rep. Nadler argues that in addition to disqualifying the judge for potential bias, these meetings were concealed from the defense, compounding the injustice. The concealment robbed Sholom Mordechai of a cogent argument for a new trial because his constitutional rights to an impartial judge were compromised.

Nadler wrote, "In the past you have reviewed serious allegations of prosecutorial misconduct, especially when it involved the withholding from defendants information pertinent to their defense, as was the case with the prosecution of Senator Ted Stevens. I believe that these allegations are sufficiently serious to warrant your review."

The second issue the congressman raises in his letter is the disturbing fast-track justice imposed on the hundreds of immigrants arrested in the raid, in which they were forced to waive basic rights.

The congressman's letter called attention to a third issue—a shocking comment by Iowa U.S. States Attorney Stephanie Rose in a December 2010 interview. Rose stated that "the purpose of the raid was to prevent future crimes like this, as well as to punish Rubashkin... This case was important for those that are taking advantage of and employing illegal immigrants..."

"I do not believe that either the law or Department policy permit an individual to be sentenced for an offence that was neither charged nor decided by the jury," wrote Nadler, referring to the fact that all immigration charges against Sholom Mordechai were dropped prior to trial.

Nadler vigorously protested a fourth injustice—the denial of bail to Sholom Mordechai on the basis of his being a "flight risk solely because, as a Jew, he was eligible for Israeli citizenship under that country's Law of Return. I hope that is in not the position of the Department of Justice that a defendant's religion... would make him ineligible for bail."

He concluded his letter with a strongly worded plea to Holder: "There are serious issues of DOJ policy, and prosecutorial misconduct arising from these cases that are appropriate for your review. I urge you to examine these questions and let me know how you intend to handle the serious issues raised by these cases."

# AG Holder Ignoring Appeals from Congress in Rubashkin Case

BY DEBBIE MAIMON

A letter to Attorney General Eric Holder by Rep. Ted Poe (R-TX) this week pressed Holder on the Rubashkin case after close to 40 Congressional appeals to open an investigation into allegations of prosecutorial and judicial misconduct have gone unheeded.

Rep. Poe's letter asks Holder if the Department of Justice has done anything about launching an investigating into the allegations of improper communications between Chief Judge Linda Reade and government authorities who prosecuted Sholom Mordechai Rubashkin.

The letter is the second one the congressman has written urging a review of the case. In November, Rep. Poe, who sits on the Judiciary Committee and is a former prosecutor and judge, called Holder's attention to "serious allegations of misconduct by the Judge and U.S. Attorneys in this case."

He cited evidence of detailed *ex parte* discussions between Judge Reade and U.S. Attorney in the six months leading up to the raid that were not disclosed during the Rubashkin trial. The letter also chided the Attorney General for shrugging off the many inquiries into the case by concerned congressmen.

"So far, all requests for an investigation have been referred to the [Iowa] Attorney's Office...the very office that allegedly took part in the *ex parte* meetings before the raid," Poe's letter protested.

## CONGRESSMAN POE REFUSES TO BACK OFF

Rep. Poe was one of the galvanizing forces behind a landmark congressional hearing this past August on the problem of overcriminalization plaguing the nation. At this hearing, he raised the profile of the Rubashkin case by citing the government's overkill in invoking an obscure law to incarcerate Sholom Mordechai as an example of prosecutorial excess.

A growing array of congressmen, both Democrats and Republicans, have condemned the unethical conduct of Judge Reade and the federal prosecutors who, the evidence shows, worked hand in hand in prosecuting and convicting Sholom Mordechai.

Thus far, Holder has not responded to any of the letters directly. A stock reply signed by a subordinate informs the concerned congressmen petitioning Holder that "legal and ethical considerations preclude us from discussing issues currently being litigated."

Coming at the same time as the filing of hard-hitting *amicus curiae* briefs supporting Sholom Mordechai's right to a new trial, Rep. Poe's second letter pressing Holder for answers suggests he has no intention of being brushed off.

## REP. JERROLD NADLER: "U.S. LAWYERS VIOLATED RULES"

Adding a powerful voice to the growing chorus of congressional appeals for Holder's intervention in the case, Rep. Jerrold Nadler (D-NY) wrote to the Attorney General last week that "serious issues

of potential misconduct or improper Department policy...demand your careful review, consideration, and, where appropriate, remedial action."

The NY congressman minced no words in denouncing government authorities for not abiding by the laws guaranteeing a defendant a fair trial. "I conclude that U.S. lawyers violated rules governing *ex parte* contact with the judge who presided at the trial," he asserted.

"As the Ranking Democratic Member of the Subcommittee on the Constitution, I believe it is important that the Department of Justice respects the rights of persons in its custody and persons accused of crimes," Nadler wrote.

## U.S. ATTORNEY ROSE: "THE GOAL WAS TO PUNISH RUBASHKIN"

The Nadler letter raised a serious issue that has largely gone unnoticed: the government's sentencing of Sholom Mordechai to prison over immigration charges that were never presented at trial and never heard by a jury.

Nadler quoted U.S. Attorney Stephanie Rose of Iowa who inadvertently revealed the government's animus against Sholom Mordechai in a December interview with an Iowa-based paper, *The Gazette*. The interview discussed the government's immigration raid on Agriprocessors and the criminal prosecutions that followed.

Nadler cited comments by Rose that he found very troubling. "The goal of this case was to prevent future crimes like this, as well as to punish Rubashkin," Rose said in the interview. "This case was important for those that are taking advantage of and employing illegal immigrants..."

The problem with punishing Rubashkin for "crimes like this," writes Nadler, is that "[n]either the law nor Department policy permit an individual to be sentenced for an offense that was neither charged nor decided by the jury."

Nadler wants to know why Sholom Mordechai was sentenced to over a quarter of a century in jail over immigration charges for which he was never tried.

Following his conviction for bank fraud, all ninety or so immigration-related charges against him were dropped. And in the state labor trial which brought up the far more serious charges of exploitation and mistreatment of minors, Sholom Mordechai was totally acquitted.

Yet, here is the respected Iowa U.S. Attorney - a year after a jury declared Sholom Mordechai innocent - blandly asserting that he needed to be punished "to prevent future crimes like this."

Despite his acquittal on child labor counts, and despite the fact that the government dropped all other immigration charges against him, Rose still insists on his guilt. In publicizing these sentiments,

she betrays an abiding prejudice against Sholom Mordechai that explains the travesty of justice her office has engineered.

#### ROSE LAMENTS "MISINFORMATION" CAMPAIGN BY RUBASHKIN SUPPORTERS

Rose admitted in the *Gazette* interview that her office has taken heavy flak for its handling of the Rubashkin case. "She said the Rubashkin case was frustrating for her because his conviction and wrongdoing were overshadowed by accusations of wrongful prosecution," the article noted. "The defense put out many facts that were not accurate and any attempt we made to tell the truth ... it just didn't help, so we stopped," Rose said. [*Translation: "We had no way to refute the allegations, so we dug in and prayed the whole thing would just die down."*]

One is reminded of the instance Stephanie Rose chose to break her silence in order to set the record straight. This was in a June 2010 open letter published in the *Des Moines Register* and quickly leaked to leading newswires.

#### LEWIN-COOK LETTER CHALLENGED ROSE TO PUBLIC DEBATE

Sholom Mordechai's attorneys, Nathan Lewin and Guy Cook, responded to Rose's lame excuses and fabrications in a scathing rebuttal, challenging the U.S. Attorney to a public debate:

"U.S. Attorney Stephanie Rose has decided that 'silence is no longer in order' and has opted to defend her prosecution of Sholom Rubashkin in an open letter, Lewin and co-counsel Guy Cook wrote.

"Rose has opened the propriety of her conduct to discussion in the media, particularly since her letter makes many assertions that are false and were never proved or tested in court.

"We now challenge US Attorney Rose to debate Mr. Lewin on the propriety of the prosecution in a public session, hopefully televised, in Des Moines at a mutually agreeable date with a mutually agreed moderator.

"Since we are not sure she will accept this challenge, we will

highlight in this response a few errors in her published defense."

The Lewin-Cook article went on to challenge Rose's laments about being maligned by "vicious and false" accusations.

"Ms. Rose claims that the accusations against her office are "vicious and false" and "ill-informed." But there are many critical accusations that she has failed to answer.

Wasn't Mr. Rubashkin handcuffed and arrested in October 2008 only to generate national publicity? He had stayed in Postville for almost six months after being notified that he was a "target" of the federal investigation. When a suspect has made no attempt to flee over a lengthy period, the routine procedure is to tell the defendant's lawyer to bring the client in to plead to the charge.

Why was Mr. Rubashkin imprisoned for 76 days before trial on the Office's bogus claim that he would flee to Israel under Israel's "Law of Return?"

Why were the charges against Mr. Rubashkin deliberately multiplied by the Office through an unprecedented seven superseding indictments that fragmented one immigration charge and one bank fraud charge into a total of 163 counts? Wasn't this to impress the media, the public, and the jury?

Why was a 1921 law that has never in U.S. history been used for criminal prosecution added to the bank fraud counts?

Why did the Attorney's Office prevent sale of the Agriprocessors business to any purchaser who might employ any member of the Rubashkin family in a managerial capacity, thereby making a sale of the business - which needed expertise in the kosher meat industry - virtually impossible?

Needless to say, U.S. Attorney Rose never responded to the Lewin-Cook offer of public debate. As she told the *Gazette* interviewer, "Any attempt we made to tell the truth ... it just didn't help, so we stopped."

Sholom Mordechai, in his appeal to the 8<sup>th</sup> Circuit Court of Appeals, has asked for a court-ordered evidentiary hearing to discover the deeper story behind the government's conduct and tactics in this sordid story. Since "telling the truth" is obviously important to Rose, she ought to welcome an opportunity to do so under oath.

*Despite his acquittal  
on child labor counts,  
and despite the fact  
that the government dropped  
all other immigration charges  
against him,  
**Rose still insists on his guilt.**  
In publicizing these sentiments,  
she betrays an abiding prejudice  
against Sholom Mordechai  
that explains the travesty of justice  
her office has engineered.*



# Judge's Denunciation of Postville Prosecutions

RUBASHKIN UPDATE

BY DEBBIE MAIMON

A fascinating twist in the Rubashkin saga has the media revisiting the 2008 Postville ICE raid through the eyes of a judge who said he was forced to mete out unjust jail sentences to many defendants against his will.

"I was embarrassed to be a United States District Court Judge that day," Judge Mark Bennett of Sioux City, Iowa, said of his actions in sending 57 of the arrested immigrant workers to jail.

His stinging comments were made in an interview with the producer of a documentary on the Postville raid. The film, "*Abused*," chronicles the abuse of power that characterized the federal immigration raid as it shattered the lives of hundreds of immigrants and collapsed the town's infrastructure.

The article quoted Bennett as saying that he had no option but to agree to plea deals that called for him to imprison 57 immigrants for five months and deport them afterwards. That punishment deprived needy families of their breadwinners and drove them deeper into poverty and despair.

## "I ASK THAT YOU DEPORT US AS SOON AS POSSIBLE"

"My family is worried in Guatemala," one defendant, Erick Tajtaj, entreated Bennett. "I ask that you deport us as soon as possible, that you do us that kindness so we can be together again with our families."

Bennett did not comply with the man's request. "My hands were tied by the Department of Justice," he explained to Luis Argueta, the filmmaker who interviewed him.

The judge noted that court hearings in which 57 people in a row "don't have even a single misdemeanor among them" is unheard of in federal court. "If anybody deserved mercy and compassion and fairness and justice, these 57 did. And I don't believe they received it, even though I was the one who imposed the sentence," Bennett said regretfully.

He added that the prosecutors were out of line in pushing immigrant workers to sign binding plea agreements that included prison time. "I thought their insisting on each of the defendants serving a five-month sentence was a tragedy," he said.

"But it's an executive branch decision, and I didn't have the power to do anything about it other than not agree to the plea agreement. But if I did that, they would have been held in custody much longer."

## STILL HAUNTED

Prosecutors threatened immigrants who did not agree to the plea deal with aggravated identity theft - charges that carry a mandatory minimum 2-year jail sentence. Virtually all the immigrants succumbed to the threats and agreed to a five-month jail sentence followed by deportation.

In his comments to the filmmaker, Bennett said he found the plea

deals "offensive, professionally and personally." Being co-opted into agreeing to them appeared to still haunt him.

"I thought it was a travesty. And I was embarrassed to be a United States District Court judge that day," he said.

Defense lawyers and immigrant advocates have long contended that the Guatemalan and Mexican workers were unfairly pressured into waiving their rights to a trial and pleading guilty to criminal charges in mass hearings a few days after the raid.

After other such raids across the country, most illegal immigrants without previous criminal records were quickly deported. But after the Postville raid, most workers were charged with felonies and served five months in prison before being sent home.

## Government's Game Plan

Critics say the prosecutors used the forced plea deals to coerce the immigrants into testifying in court against other defendants, including Sholom Mordechai Rubashkin.

For the plea deal to be ratified, the immigrants had to pledge to cooperate with the government investigation in any way required of them. The five-month incarceration period served the government's scheme of keeping a pool of witnesses on hand to testify in the trials that were being planned ahead of the raid, critics said.

In return for "cooperating," the witnesses were promised shortened sentences. Had the illegal workers been immediately deported, both the government and the state would have been severely hampered in building its case against Sholom Mordechai Rubashkin.

[This was the case in the state labor trial, in which Sholom Mordechai was charged with knowingly hiring minors. Since all the supposed "minors" had been deported, authorities were forced, at great expense, to travel to Guatemala and Mexico and lure them back to Iowa with promises of U-visas, so they could testify against their former employer.]

## I FELT I WAS "WITNESSING THE BIRTH OF A TOTALITARIAN STATE"

The government received heavy flak afterwards for the brutal tactics carried out in the ICE action, for rampant human rights violations and the trampling of due process in the criminal proceedings that followed.

Civil rights groups, immigration advocates and defense lawyers cried out about justice run amok and demanded an investigation by the Department of Justice.

One observer at the criminal proceedings at which 17 defendants were assigned to a single lawyer and hundreds of cases were fast-tracked according to pre-scripted plea deals said he felt he "was witnessing the birth of a totalitarian state."

"Through the unjust criminal prosecutions and their aftermath,

ICE, along with the U.S. Attorney's Office, overwhelmed and co-opted the Court, judges, community, defense attorneys, interpreters, and other personnel "into railroading justice," an article in the Washington College of Law journal said.

Others felt the Court, far from being "co-opted," was in fact *orchestrating* things behind the scenes.

#### "THE COURT WAS DRIVING THE TRAIN..."

"The Iowa federal district court [Judge Linda Reade] was driving the train, fatally compromising its own integrity as an independent branch of government," wrote American Immigration Lawyers Association [AILA] President Charles Kuck.

*[AILA wrote this long before the discovery of ICE documents that described in detail a pattern of close collaboration and information-sharing between federal prosecutors and Judge Reade.]*

"The tracks laid down to carry this new 'enforcement train' were designed to force rapid guilty pleas under the threat of serious jail time, avoid the inconvenience of trials, limit access to immigration counsel, eliminate the prospect of all future relief, and impose criminal sentences simultaneously," the AILA attorney said.

The ACLU, which vigorously protested the government's tactics, obtained the pre-scripted plea bargain handbooks presented by the court clerk to defense lawyers in a secret "orientation meeting," and posted them on its website. They can be reviewed today - case studies in legalized blackmail.

One criminal defense lawyer describes them as a handbook for "How-To-Get-Your-Client-Jailed-And-Deported-In-A-Few-Easy-Steps."

#### OFFICIAL SPIN WON THE DAY

The protests did succeed in empanelling a congressional subcommittee to delve into the details of the government's tactics and policies in the raid, which kept the issue in the headlines for a time.

But the official spin on the story won the day. Federal authorities in Washington testifying at the hearing portrayed the operation as compassionate and humane. They denied all allegations of verbal and physical abuse, as well as all charges of civil rights violations. With hundreds of immigrants jailed or deported and unavailable for interviews, the protests and clamor gradually died down.

Even the documentary's electrifying interview with Judge Bennett, who denounced the legal proceedings as a "travesty," received scant attention.

How strange, then, to witness the sudden media fanfare over Judge Bennett's scathing remarks that were uttered a year ago when the film

was first launched. How did this become a fresh headline in the *Des Moines Register* and in a rash of other papers, as if Bennett had just spoken up? Who or what is behind this renewed interest in the case?

"The dynamics of this case are changing," ACLU legal director Randall Wilson said in an interview with the *Yated*. "The FOIA documents that revealed all these secret communications need to be studied. We need more information. The public - and especially the defendant - are entitled to it."

The same article that quotes Bennett levels criticism at the Iowa Attorney's Office, with "honorable mention" given to Stephanie Rose, who at the time of the raid was the lead prosecutor.

Revisiting the subject of Stephanie Rose recalls the absurd denials from her spokesmen that she had a leadership role in the raid and its aftermath. The ICE raid was planned by federal authorities in Washington, Iowa Senator Harkin said at the time. Rose was too busy to be involved. She was "engaged at the time in a high profile drug-related prosecution."

Rose was Chief Deputy of the Criminal Division, third in the chain of command in the U.S. Attorney's Office. Is it plausible that she was unaware and uninvolved in the biggest law enforcement operation in Iowa's history?

#### SPEAKING TRUTH TO POWER

To criminal defense attorneys summoned the day of the raid to the secret orientation meeting led by Rose, it certainly appeared as if the Chief Deputy of the Criminal Division was running the show. Testimony presented to the Congressional Hearing by attorney Rockne Cole attests to her central role.

An Iowa City lawyer who found the process repellent and walked out in the middle, Cole subsequently penned a letter describing Rose's pivotal role together with that of Linda Reade in the Postville prosecution plan. His letter, addressed to Congresswoman Zoe Lofgren, who chaired the 2008 Congressional committee, was read at the hearing.

Cole's words, frozen in time, describe the legal maneuvers by the U.S. Attorney's Office and the facade of propriety that put into place what Bennett later slammed as a travesty of justice. At the time, Cole's audacity in speaking truth to power turned him into a pariah in some circles.

Various parts of his testimony have been quoted in the three *amicus curiae* briefs filed by legal advocacy organizations supporting Sholom Mordechai's appeal.

"In spite of the financial repercussion for taking this position, I simply could not stay silent on this issue," Cole wrote. "From what I can infer, Judge Reade and the U.S. Attorney's Office, coordinated the mass detention, roundup, representation plan, plea deals, and sentencing prior to one single attorney consulting with a client.

"I hope I am wrong, but the overwhelming facts suggest a breathtaking level of coordination between the United States District Court Judge (Reade) and the Department of Justice.

"I nevertheless strongly encourage the committee to keep an open mind, and afford all officials involved a fair hearing, which unfortunately was not given to the defendants in Postville."

Whether the officials who deprived so many others of a fair hearing are entitled to one is open to discussion. One thing, however, is clear. The ugly stain on the country's justice system from the Postville travesty will never be fully eradicated. Despite this, one hopes that when the government's scapegoat, Sholom Mordechai Rubashkin, now languishing in prison, is finally granted a fair hearing, justice will prevail.



Parading the workers the day of the raid.

# Scandal Upon Scandal

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BY RABBI AVI SHAFRAN

The other day, a reporter contacted me at Agudath Israel of America - I serve as the Agudah's public affairs director - about the Conservative movement's planned offering of an "ethical seal" of approval for kosher foods, intended to assure consumers that labor, animal welfare, consumer rights, and environmental impact standards are being adhered to by the producer. Why, he asked, hasn't the seal been endorsed by the Agudah?

I politely explained that, while anyone can pursue whatever "seal of approval" they wish, there are government regulations regarding the things the ethical certification would cover, and agencies charged with enforcing the rules.

In any event, though, I added, labor, consumer and environmental concerns exist regarding all products and services. And since the seal at issue is being offered only for food (and only for kosher food), it misleads Jews by giving the false impression that kashrus is dependent on such social concerns. It has in fact been described by some of its advocates as a "redefinition of kashrus."

The reporter then asked how I could believe that governmental regulations are enough "even in light of the Agriprocessors scandal."

Maybe when a slaughterhouse is at issue "seeing red" isn't the best metaphor to use. But I had to make an effort to remain polite.

"The only 'Agriprocessors scandal'," I replied, "is the scandalous way the government prosecuted the company and its CEO" - how, after all sorts of wild accusations, including abuse of workers, cruelty to animals, and drug manufacturing, the only charges successfully brought against Sholom Mordechai Rubashkin in the end involved misstating his company's assets" in the process of obtaining loans (which he always repaid fully, at least until the government onslaught bankrupted his company). Similarly scandalous, I added, is the wildly excessive 27-year prison sentence he received.

I pointed the reporter in the direction of civil and legal rights organizations - including the American Civil Liberties Union - that have filed "friend of the court," briefs in support of Mr. Rubashkin and his demand for a new trial.

Whatever backers of the "ethical certification seal" may claim, I explained, the Rubashkin case provided it no warrant. Evidence failed to show that Mr. Rubashkin had knowledge that any of his workers were illegal immigrants, or that he knew that any of them who turned out to be underage were anything but what their documentation represented them to be (and what they physically seemed to be).

And so, invoking an "Agriprocessors scandal" to justify some need for an extra-governmental "ethical certification seal," I asserted, is cynical opportunism, a scandal upon a scandal.

The reporter had been treating allegations as facts, having swallowed whole what colleagues of his have served up over the course of the Agriprocessors saga - in particular, the journalist who in 2006 first shone a harsh light on the slaughterhouse. In a series of articles for a Jewish newspaper, his front-page stories cited shocking allegations of worker abuse. The reports were followed in 2008 by a federal raid on the plant, the deportation of hundreds of illegal aliens who had presented false documents, and the filing of criminal charges against Mr. Rubashkin and others.

In a 2009 Wall Street Journal column, that reporter righteously reveled in his "scoop," and, his cloak of ostensible objectivity falling to his ankles, revealed his antipathy for the "bearded Orthodox rabbis" who "buzzed around the Agriprocessors plant" making sure kashrus laws, but not ethical norms, were being observed.

He has since moved on, to a large West Coast newspaper. Reminded of all the misery his reportage brought in its wake, I wondered if, at this point, he has any regrets about the focus he brought on Mr. Rubashkin. And so I located his new e-mail address and posed the question.

The message didn't bounce back, so the address must be correct. So far, though, I've received no reply.

But maybe he's on vacation.

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# Government Undermines Justice Blocks Amicus Curiae for Rubashkin

BY DEBBIE MAIMON

The government's attempt to silence the voices of friends-of-the-court [*amicus curiae*] in the Rubashkin case undermines the American justice system, argues an influential publication, *Bloomberg Law Reports*.

The authors sound the alarm about an unprecedented move by federal prosecutors in Iowa that should concern all Americans.

In their scathing report, "The Troubling Implications of the Government's Recent Effort to Block *Amicus Curiae* Briefs," the authors criticize the government for trying to block three prominent legal organizations that argued powerfully in separate briefs for Sholom Mordechai Rubashkin's right to a new trial.

The briefs by the ACLU and the Washington-based NACDL and WLF accuse the Iowa U.S. Attorney's office and Chief Judge Linda Reade of engaging in months of improper *ex parte* discussions.

In a stunning array of arguments citing constitutional violations by federal prosecutors and the presiding judge, the *amicus curiae* briefs expose the flaws and misconduct in the prosecution, trial and sentencing of Sholom Mordechai. The briefs unanimously call on the Eighth Circuit Court of Appeals to vacate his sentence.

## "KNEE-JERK REACTION BY AN ISOLATED U.S. ATTORNEY"

The practice of filing *amicus curiae* is a time-honored feature of American justice and has traditionally been respected and valued by federal courts. Brazenly disregarding this tradition, federal prosecutors in Iowa argued that the briefs filed in support of Sholom Mordechai are a waste of the court's time, because they present nothing new and merely repeat arguments raised by the appeal.

Unable to defend this assertion in their Motion to Resist, the Iowa U.S. Attorney's office resorts to a clumsy U-turn, admitting that yes, new arguments have in fact been presented, but they do not justify the briefs, because they are "so lacking in merit that they were deliberately passed up by the other party's lawyers."

The authors of the Bloomberg article, Anthony Franze and Stanton Jones of the prominent Arnold and Porter LLP firm, dismiss the government's motion as a defensive,

"knee-jerk reaction by an isolated [Iowa] U.S. Attorney smarting from allegations of misconduct."

"This is just the latest twist in a prosecution that has already garnered national criticism," the article said. "We do not know whether anyone at main Justice approved or even was informed of the government's resistance to Rubashkin's *amici* [briefs]."

## SWEEPING POLICY SHIFT?

The authors cite concerns that should the government's resistance be endorsed by the Eighth Circuit Court of Appeals, that precedent could instigate a troubling departure from accepted norms of jurisprudence.

An *amicus curiae* educates the court on points of law that are in doubt, or raises awareness about some aspect of the case that the court might otherwise miss. The practice has traditionally played a role in shaping federal legislation in many high-profile cases.

The filing of an *amicus curiae* has to be with the consent of both parties in the litigation. It operates not as a legal right but as a privilege granted by the court. Even in rare cases when one party withholds consent, in the case of a brief filed by a respected organization, the court generally grants permission to file the brief.

According to the article, the three advocacy groups that weighed in on the Rubashkin case have all played an important role in providing valuable assistance to the federal judiciary in the past.

"The ACLU often is singled out for its *amicus* contributions in landmark cases; the NACDL's briefs likewise have helped shape modern Supreme Court jurisprudence and the WLF is cited as one of the organizations whose briefs receive the most attention from Supreme Court law clerks," the authors stressed.

The move to silence the friends-of-the-court in the high profile Rubashkin case "raises the specter of a sweeping policy shift away from the government's traditional open door approach to *amicus* briefs."

It could ultimately "shut the courtroom doors to organizations and individuals who have proved themselves capable of contributing valuable legal assistance," thus altering the judicial landscape in this country.

## THE UNITED STATES GOVERNMENT IS THE MOST FREQUENT CONTRIBUTOR OF AMICUS BRIEFS

The *Bloomberg Law Report* article went on to shred, one by one, the arguments offered by the Iowa U.S. Attorney's office for opposing the *amicus briefs*. It exposed the hubris of federal prosecutors who show disdain for time-honored legal norms.

It also uncovered the hypocrisy of federal officials trying to eliminate a practice in which the United States government itself engages more frequently than any other party. The U.S. government takes full advantage of the rules allowing it to freely participate as an *amicus* (friend of the court), without consent of the other party, the article explained.

The United States is "the most successful as well as the most frequent *amici* before the [Supreme] Court." It is widely recognized that the United States is "in a class by itself in terms of its influence as an *amicus* filer."

In the Supreme Court's 2009-10 term alone, for instance, the government filed *amicus* briefs in more than half of the cases [in which it was not one of the litigants].

The restrictive standard advocated by the Iowa U.S. Attorney's office, if adopted by the Eighth Circuit, could have serious ramifications. It could ultimately result in the *amicus curiae* practice becoming the exclusive domain of the United States government, resulting in the undermining of an important feature of the adversarial system upon which the American legal system rests.

## TURNING JUSTICE INTO A CHARADE

The Bloomberg article reviewed some of the strongest arguments raised respectively by the ACLU, the NACDL and the WLF. Of the three, the harshest one was the NACDL [National Association of Criminal Defense Lawyers].

The brief asserted that the ICE documents support the claim that Judge Reade was prejudiced in favor of the Government and thus must disqualify herself.

"She should not have discussed strategies and the ongoing investigation and other issues with prosecutors [and then presided at the trial]," the NACDL brief said. The brief said that Reade compounded this wrongful conduct by concealing it from the defense.

Even worse, when confronted by disclosures of her behavior in the ICE documents in Sholom Mordechai's new-trial motion, Reade sweepingly dismissed the allegations as untrue.

She was obligated by law to turn the case over to an impartial judge as requested, but refused to do so. Instead, she accorded her own denials of wrongdoing the status of "facts" even though they contradicted assertions in the ICE documents.

She thus became the key "factual witness" in the case and used her own testimony about what she did or didn't do to arrive at a ruling in favor of herself, the brief said.

The NACDL brief harshly criticized this charade. It called attention to Reade's clear violation of ethical and legal guidelines in her repeated denials of wrongdoing and in insisting her behavior was above reproach.

It so demolished Reade's credibility - and, by association, that of the Iowa prosecutors - that the government's response in trying to block the brief can be viewed as a desperate exercise in survival.

If Reade is found to have violated the constitution by collaborating with federal prosecutors, what does that say about the Iowa Attorney's office who enabled and colluded with it?

Legal advocacy groups like the above-mentioned groups and a growing number of congressmen have rallied behind Sholom Mordechai's appeal because they see it as a test case with broad implications for the American public.

Like Sholom Mordechai Rubashkin, many have fallen victim to prosecutorial or judicial misconduct and an unbalanced sentencing system. If left unremedied, the failure of judicial safeguards in the prosecution, trial and sentencing phases of this high profile case has chilling implications for all Americans.

*In a stunning array of arguments citing constitutional violations by federal prosecutors and the presiding judge, the amicus curiae briefs expose the flaws and misconduct in the prosecution, trial and sentencing of Sholom Mordechai.*

# Government Removes Opposition to Amicus Curiae for Rubashkin

The U.S. government has done an about-face after initially attempted to silence the voices of friends-of-the-court - *amicus curiae* - in the Rubashkin case. The unprecedented move by federal prosecutors in Iowa to block three prominent legal organizations that argued powerfully in separate briefs for Sholom Mordechai Rubashkin's right to a new trial was roundly criticized. This week, the government changed its tune, granting permission for briefs by the ACLU and the Washington-based NACDL and WLF to be submitted to the Eight Circuit Court of Appeals.

Among other contentions, the briefs accuse the Iowa U.S. Attorney's office and Chief Judge Linda Reade of engaging in months of improper *ex parte* discussions.

The *amicus curiae* briefs expose the flaws and misconduct in the prosecution, trial and sentencing of Sholom Mordechai and unanimously call on the court to vacate his sentence.

The practice of filing *amicus curiae* is a time-honored feature of American justice and has traditionally been respected and valued by federal courts. Brazenly disregarding this tradition, federal prosecutors in Iowa first argued that the briefs filed in support of Sholom Mordechai presented nothing substantially new and merely repeated arguments raised by the appeal.

In their Motion to Resist, the Iowa U.S. Attorney's office stated that any new arguments presented did not justify the briefs because they are "so lacking in merit that they were deliberately passed up by the other party's lawyers."

The motion of "Withdrawal of Objections to Filing Amicus Curiae Briefs" was filed by Attorney Mr. Peter E. Deegan, Jr. on Monday, March 7. In its motion, the government contended that since it was decided that a three-judge panel would review whether the appeals court would see the briefs, there was "the possibility the briefs may be considered by the Court without the benefit of any government response" and "the United States withdraws its objection to the filing of amicus briefs by the Washington Legal Foundation, et al. (Entry No. 3743162), American Civil Liberties Union of Iowa (Entry No. 3743169), and National Association of Criminal Defense Lawyers (Entry No. 3744356). This will allow the United States to include any response to those briefs in its brief on the merits due March 11, 2011."

An *amicus curiae* educates the court on points of law that are in doubt, or raises awareness about some aspect of the case that the court might otherwise miss. The practice has traditionally played a role in shaping federal legislation in many high-profile cases.

The filing of an *amicus curiae* has to be with the consent of

both parties in the litigation. It operates not as a legal right but as a privilege granted by the court. Even in rare cases when one party withholds consent, in the case of a brief filed by a respected organization, the court generally grants permission to file the brief.

The NACDL brief accuses Reade and federal prosecutors of "ethical misconduct." It states that Reade acted "as an arm of the prosecution" and "shows that the Chief Judge was prejudiced in favor of the government and thus must disqualify herself."

"She should not have discussed strategies and the ongoing investigation and other issues with prosecutors [and then presided at the trial]," the NACDL brief says. The brief states that Reade compounded this wrongful conduct by concealing it from the defense.

Even worse, when confronted by disclosures of her behavior in the ICE documents in Sholom Mordechai's new-trial motion, Reade sweepingly dismissed the allegations as untrue.

Legal advocacy groups like the above-mentioned groups and a growing number of congressmen have rallied behind Sholom Mordechai's appeal because they see it as a test case with broad implications for the American public.

The WLF brief calls for the Court of Appeals to remand the case to a new judge for re-sentencing. It says that the 27-year jail sentence reflects serious errors in Judge Reade's sentencing procedures as well as violations of the Federal Sentencing Guidelines.

The brief slams the arbitrariness and "unreasonableness" that tainted Reade's calculations and led to a grossly disproportionate sentence.

The ACLU brief argues for vacating the conviction, insisting that Judge Reade was wrong to preside over Sholom Mordechai's trial after helping to plan the raid of Agriprocessors and the arrests that led to his prosecution.

The brief says that the likelihood of bias was enough to require her to recuse herself from the case, and therefore justifies a new trial for the defendant.

With the heightening of legal and congressional protest against what took place, a growing list of congressmen are petitioning Attorney General Eric Holder to investigate the Rubashkin case.

To date, 42 members of the US House of Representatives have sent letters. Many of these letters protest the judge's secret meetings with prosecutors in the months before the raid, as well as the unreasonably severe sentence.

# Government Contests Rubashkin Appeal

SMARTING FROM ALLEGATIONS OF MISCONDUCT, IOWA PROSECUTORS SLING MUD

BY DEBBIE MAIMON

With their professional reputations at stake in this high-profile case, federal prosecutors have spared no effort to twist the facts and recycle old lies and innuendo in their attempt to undermine the appeal filed by Sholom Mordechai Rubashkin.

The government's response leans heavily on mudslinging in the form of fabricated "obstruction of justice" charges that have previously been discredited by the defense. The character assault against Sholom Mordechai fills many pages in this government document, describing a lineup of "crimes" that were first devised by prosecutors in the 2009 bank fraud trial.

The obstruction of justice charges in many cases lack even the pretense of evidence. Yet, they are cloaked as "facts on record" that paint the defendant as a chronic lawbreaker with "utter disregard" for the law.

## SMEAR TACTICS ACCOMPLISHED THEIR GOAL

These smear tactics, backed by exhibits and cloaked in legal lingo, accomplished their objective at the trial. They were also used to great success in denying Sholom Mordechai bail pending sentencing. They are now apparently aimed at swaying the court of appeal judges.

All of these inventions were given sanction by Judge Linda Reade in her sentencing order and used by her to add a two-level enhancement to Sholom Mordechai's prison sentence. They are now being trotted out once again to bolster a government document riddled with devious arguments and willful lies.

Although the obstruction charges apply only to the government's defense of its sentencing calculations at the end of the Response brief, the litany of charges are listed for maximum effect at the beginning of the document as well.

Sandwiched between the orgy of mudslinging at the beginning and end of the brief are the government's legal arguments through which the prosecutors attempt to dodge the Rubashkin appeal's "bullets."

The appeal aims its firepower at the misconduct of both the prosecutors and the presiding judge who, by engaging in extensive ex parte communications, robbed Sholom Mordechai of a fair trial. The appeal also thrusts under the spotlight serious breaches of due process in the way the trial itself was conducted and in Sholom Mordechai's sentencing.

## FLAGRANT DISDAIN FOR TRUTH

Before discussing the government's dodging maneuvers and reliance on denial of the facts in its response brief, this article will tear aside the veil on two of the most blatant lies in the obstruction of justice charges. None of this information is new, although many un-

familiar with the history have never heard of it.

The exhaustive documentation of the government's flagrant disdain for the truth was presented over a year ago in the defense team's Reply Supporting the Motion For Bail Pending Sentencing.

In addition, shortly after Sholom Mordechai was denied bail based on these libels, attorney Nathan Lewin brought evidence of the prosecution's dishonest tactics to the attention of the Department of Justice.

In his letter to Criminal Justice head Lanny Breuer, Lewin described a prosecution marked by vindictive excesses, grossly apparent in the prosecutors' willful falsification of the record. Lewin urgently requested a Department of Justice review of a prosecution that had clearly gone off the rails.

His early whistle-blowing unfortunately went unheard and had no restraining effect on the Iowa U.S Attorney, who went on to brandish the trumped-up charges at Sholom Mordechai's sentencing. As mentioned above, the invented charges were used to jack up his sentencing range several years. Now they are being used again to savage his character to the court of appeals.

## WEB OF LIES RECYCLED

In examining two of the lies up close - including that Sholom Mordechai "interfered with material witnesses" (people the government wanted to question) - one can see the blueprint for the government's other inventions as well.

Lacking eyewitnesses or evidence of any sort to back up the majority of its obstruction charges, the government substitutes vicious insinuation. The jury or judges are expected to draw the obvious conclusion. Given the human susceptibility to innuendo, it's a remarkably effective technique.

Here's how it works: One of the people sought as a witness was an Agriprocessors supervisor, Shlomo Ben Chaim, who relocated to Israel shortly after the raid. Ben Chaim had been planning the move for several months, first liquidating his assets by selling his real estate property to Sholom Mordechai.

Although airtight documentation proved that Ben Chaim's plans to return to Israel preceded the May 2008 raid by almost a half a year, Prosecutor Deegan told the judge that Ben Chaim's move was orchestrated by Sholom Mordechai with the intent of obstructing justice by helping a witness "disappear."

## PROSECUTORS IGNORE EXCULPATORY EVIDENCE

Prosecutor Deegan knew the truth, because bank employees who handled the transference of the real estate, which was finalized before *Pesach* of 2008, had been questioned by government investigators. In case the prosecutor had somehow "forgotten" the time frame

to which they testified, a sworn affidavit from a real estate developer, Gabay Menachem of Postville, presented by defense counsel at the bail hearing, confirmed that time frame.

Gabay Menachem testified that he and Sholom Mordechai often competed in bidding for real estate properties. He said that Sholom Mordechai sought to buy property that he could resell or rent out at below-value rates to his employees.

“Mr. Rubashkin wanted to build the Postville community,” Menachem said in his affidavit, and “would keep property and rental prices low so that his employees could find affordable housing.”

The affidavit also testified that to provide additional incentive to rabbis and *shochtim* to purchase their homes, “Mr. Rubashkin would promise to buy back their property if and when they encountered financial difficulty or chose to move from the area.”

Menachem said that Sholom Mordechai often outbid him on real estate just to keep the prices down so that his employees could afford to purchase or rent out the property.

“Between the end of 2007 and January or February of 2008, Mr. Rubashkin and I competed to buy properties that belonged to Shlomo Ben Chaim, who was then planning to return to Israel with his family,” wrote Menachem. “At that time, Ben Chaim informed me that he and Sholom Rubashkin had closed a deal on his properties,” Menachem testified, adding that an executive named Mike Kruchenberg from the local Freedom Bank had confirmed this.

The Gabay Menachem affidavit threw a monkey wrench into the government’s fanciful narrative about Sholom Mordechai scheming to get Ben Chaim out of the country. But prosecutors were undeterred. They acted as if the exonerating information simply did not exist and proved themselves expert at spinning the facts.

#### TELLTALE TESTIMONY

In the following excerpt of telltale testimony from the Detention Hearing Transcript below, listen to Prosecutor Deegan questioning Sholom Mordechai in order to get his obstruction-of-justice fabrication into the court record. He will afterward use this discredited story in his Sentencing Memorandum to justify ramping up the defendant’s jail sentence for “interfering with material witnesses and obstructing justice.”

Judge Reade will eagerly comply by using these charges to sentence Sholom Mordechai to additional years in prison.

And the government will use them again, along with other lies, in attempting to poison the appeals court judges by casting the defendant as an “utterly remorseless” criminal who obstructed justice at every turn.

Although the record is clear that the transference of Ben Chaim’s property took place long before the ICE raid and Ben Chaim left the country on his own, take note of how Prosecutor Deegan uses innuendo and twists around the sequence of events.

Note how he implicates Sholom Mordechai in Ben Chaim’s departure as though it were a conspiracy between the two men to evade the government, with Sholom Mordechai first paying for Ben Chaim’s tickets to Israel to get him out of the country and out of reach of prosecutors, and *only then taking over his properties*.

**Deegan (to Sholom Mordechai, pages 45-50 of Detention Hearing Transcript):** Let’s talk about Sholom Ben Chaim leaving the country. You certainly knew that he was going to leave, didn’t you?

**Sholom Mordechai:** No. If you want to know exactly what I knew, I think it was Saturday (before he left). He came over to me and said “Good-bye.”

**Deegan:** Bottom line, though, you know that his tickets were purchased on your credit card, right?

**Sholom Mordechai:** My credit card was a number in a travel agent’s office that lots of [Agriprocessors] people used. It was public. I didn’t take it out of my pocket and give it to him.

[The owner of the Kupczyz Travel Agency, Tovia Kupczyk, submitted a sworn affidavit to the court that Agriprocessors employers routinely used a Rubashkin/Agriprocessors business credit card that was deposited permanently at his travel agency. Kupczyk testified under oath that this card paid for all flights out of the country by Agriprocessors’ management. In using this credit card for his and his family’s travel to Israel, Shlomo Ben Chaim was simply following standard protocol.] [See graphics.]

**Deegan:** Prior to Shlomo Ben Chaim leaving, you had an arrangement where you were going to take over his properties, isn’t that correct?

**Sholom Mordechai:** That was not prior to his leaving. That [agreement] was way before he left.

**Deegan:** But after the raid, isn’t it true that you actually took over his properties?

**Sholom Mordechai:** Nevel Properties [a real estate company] did that.

**Deegan:** But you own Nevel Properties?

**Sholom Mordechai:** I own 50 percent.

**Deegan:** But this was discussed before Shlomo Ben Chaim left the country, correct?

**Sholom Mordechai:** Way before.

**Deegan:** It was after the raid that you took over the properties?

**Sholom Mordechai:** I’m trying to explain to you: [Our arrangement] was way, way before any trouble started. It was a deal arranged long before with [bank vice president] Mike Kruckenber in Freedom Bank.

As if he hadn’t heard a word of this testimony, and without any evidence to counter it, Deegan later urged Judge Reade to deny bail due to Sholom Mordechai’s “efforts to obstruct justice by paying for flights out of the country for Sholom Ben Chaim and his family, and then taking over his properties.”

#### THE HOSAM AMARA LIBEL

Hosam Amara, a naturalized Arab-American, worked as a supervisor at Agriprocessors and was wanted for questioning after the raid. He was discovered to have blackmailed workers into buying used cars from him in return for which he would obtain better jobs for them at the plant.

Before prosecutors could question him, Amara fled to Israel on a doctored passport.

In their memorandum opposing bail for Sholom Mordechai, prosecutors alleged that the defendant obstructed justice by “assisting and funding” Amara’s flight to Israel.

This fantastic, wholly unsupported allegation was cut from whole cloth.

The “evidence” relating to Amara consisted of a tape recording of telephone conversations between an ICE special agent and Amara while Amara was in Israel. Amara asked that the agent “do something for me and help me” [return to the United States without having to face prosecution.]

After the agent said that the U.S. Attorney’s Office would “help you to help yourself,” Amara offered the information that “everybody told me” that it was easier for him to leave the United States. Then, following a few-second overlap of voices in the conversation, Amara added “including Mr. Rubashkin.”

At the bail hearing, defense attorneys cross-examined the ICE agent, suggesting during the few inaudible seconds of “voice overlap” that the government investigator on the phone prompted Amara to say something specific about Sholom Mordechai. Amara, trying to curry favor with prosecutors, apparently complied by hastily including the afterthought “including Mr. Rubashkin.”

“Did he buy you a ticket?” the ICE agent wanted to know. Amara is recorded as answering that Sholom Mordechai did not buy him a plane ticket but that he had received \$4,000 from him.

This money, Sholom Mordechai affirmed under oath, came from an interest-free loan maintained by Agriprocessors to assist employees with family or medical emergencies. Amara had come pleading for financial help due to his wife's medical and psychiatric problems.

The tacked-on words "including Mr. Rubashkin" were used to support the government's allegation that Sholom Mordechai had urged Amara to flee. That invention was embellished by a second one: "On June 3, 2008," the government response brief states, "defendant gave Amara \$4,000 for airline tickets and told him it would be better if he just left and forgot about what had happened at Agriprocessors."

### MUDSLINGING SHIFTS ARGUMENT AWAY FROM THE REAL ISSUES

The sheer audacity of the willful lies used to paint Sholom Mordechai as a lawless scoundrel takes one's breath away. These were compounded by many other devastating innuendos.

Most followed the pattern of reporting that the defendant [according to testimony by witnesses who had bought themselves leniency by testifying against Sholom Mordechai] had done something suspicious, followed by the heavily weighted innuendo: "*The [evidence] was never seen again.*"

Examples: "Defendant gathered immigration I-9 forms for employees with false identification documents. Those forms were never seen again."

"Defendant took a thumb-drive containing [evidence of falsified records]. The thumb-drive and records have never been recovered."

"Defendant took copies of false invoices... Those documents have never been found."

Sholom Mordechai had no motive to destroy or dispose of the thumb-drive, his attorneys pointed out, because its information was duplicated in other computer files and records the government had taken possession of during the raid. The same was true of "fake invoices" and other documents prosecutors alleged he had taken.

In fact, during his bail hearing, when grilled by prosecutor Deegan about where the thumb-drive was, Sholom Mordechai looked his interrogator in the eye and answered candidly, "I bet you have it."

His intent was clear. If prosecutors had no qualms about inventing charges in order to justify a life sentence against him, they obviously had no scruples about claiming he had purposely hidden or destroyed evidence that in all probability was sitting right there in government offices. Who was going to prove them wrong?

Now these same toxic libels and innuendos, along with other trumped-up charges enshrined as "facts on record," are being used to shift attention away from the legal issues at the heart of the appeal.

Unable to overturn the appeal's explosive evidence of prosecutorial and judicial misconduct, the government's strategy is to fall back on tactics that couldn't have worked better in the bank fraud trial.

The expectation of the Iowa federal prosecutors, that the honorable jurists of the Eighth Circuit Court of Appeals are no less vulnerable to emotional manipulation than the trial jury, is about to be tested.

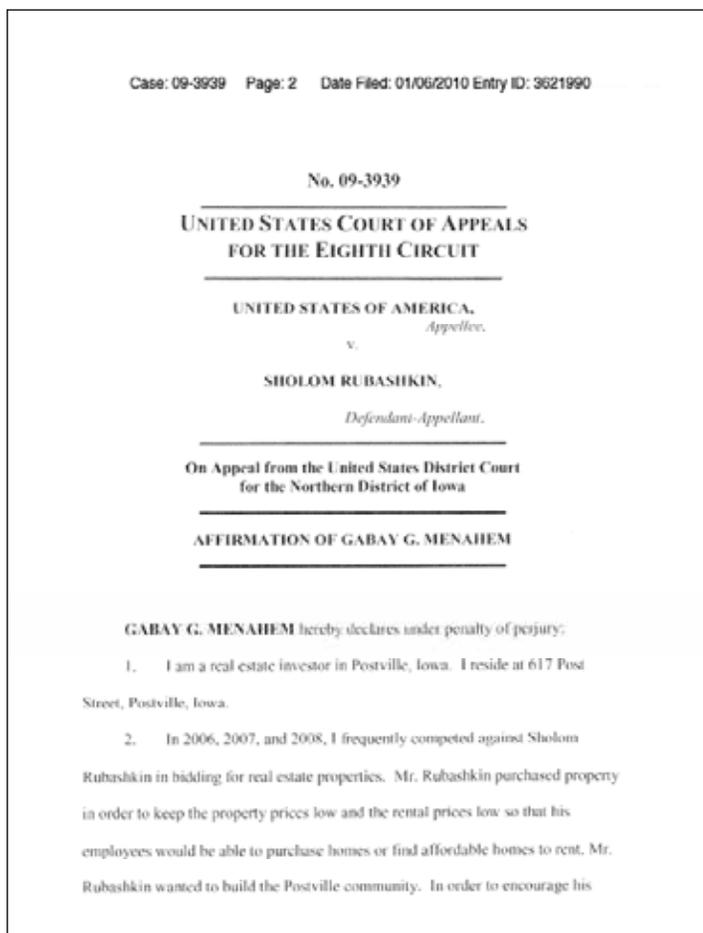


Exhibit1: Affidavit of Gabay Menachem of Postville Iowa He exposed the government libel that Sholom Mordechai obstructed justice by paying a material witness to leave the country and then taking over his real estate properties.

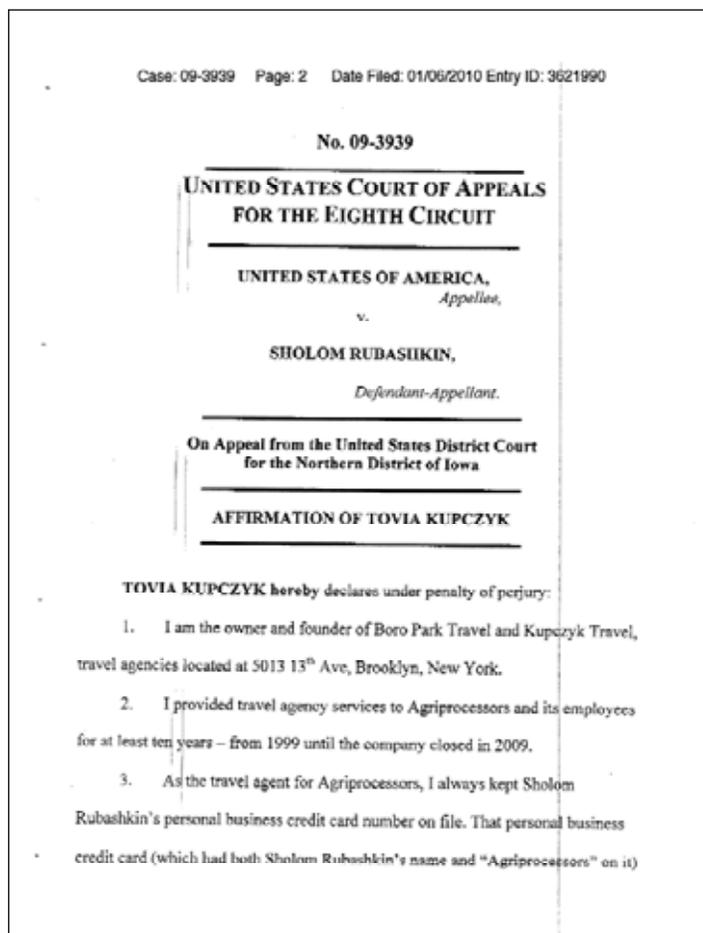


Exhibit2: Affidavit of Tuvia Kupczyk of Brooklyn, NY. He exposed government libel that SM obstructed justice by buying tickets to Israel for an Agriprocessors employee and his family after the raid.

## DODGING THE APPEAL'S BULLETS

One of the appeal's lynchpins was the motion for a new trial under Rule 33, which states that "the court may vacate any judgment and grant a new trial if the interests of justice so requires."

Calling for Sholom Mordechai's conviction to be vacated, the appeal cited the disclosures of months of *ex parte* communications between the U.S. Attorney's office and Judge Linda Reade, as revealed by government documents not available at the time of trial.

Sholom Mordechai argued that these communications, and the failure to disclose them to the defendant to give him the opportunity to request Reade's recusal, disqualified the judge from presiding over his trial. He was thus deprived of due process.

The government response seeking to discredit this argument rested on two weak claims: a) any "new evidence" supporting a request for a new trial must be capable of winning an acquittal in a new trial and b) proof must be presented that the judge "abused her discretion" at the trial itself, not merely that the judge "appeared" to have lost neutrality due to *ex parte* communications.

Legal experts who have studied the appeal as well as the new-trial motion that was consolidated with the appeal, say that "abuse of discretion" (bias) is inherent in the judge's very act of ineligibly presiding over Sholom Mordechai's trial while so entwined with the prosecution.

Furthermore, the appeal spells out specific ways in which Judge Reade's emotional identification with the prosecution led to rulings that gravely harmed the defendant.

The appeal cites Supreme Court rulings that where there are grounds to show that a judge is ineligible to preside, it is not necessary to demonstrate his or her actual bias at the trial itself and how precisely it harmed the defendant.

That would render meaningless the constitutional safeguards that are meant to prevent such harm in the first place. We might as well do away with the judicial code altogether.

In any case, the appeal makes it eminently clear that judicial bias is the core issue in this case. After uncovering the hidden linkage between the judge and the prosecutors, the appeal argues that due to Judge Reade's emotional investment in the prosecution bolstered by months of collaboration, she was psychologically unable to fulfill her mandate as a neutral judge.

A neutral judge would have been able to correct the extremism and overzealousness of the prosecutors in the interests of guaranteeing the defendant a fair trial. Reade was wholly unequipped to fulfill this vital function.

## DENIALS RING HOLLOW

The government sought to defend itself and Judge Reade by insisting that Reade's months of involvement concerned matters of "logistics" and had nothing to do with "prosecutorial" functions.

To any careful reader, the denials that fill the pages of the government's Response brief ring hollow. They fail to address the fact that Judge Reade was referred to in the FOIA documents as a "stakeholder" in the raid. She was so central to the government's operation that she felt entitled to demand "a final game plan" two weeks before the raid.

She also asked for a rundown of charging strategies (the specific crimes the arrestees would be charged with) and other vital information connected with the prosecution to which a presiding judge should not be privy.

Experts who have combed through the documents say that Reade's protestations, echoed and quoted repeatedly in the government's Response, that she "had no idea" who the target of the raid was, or even where the raid would be carried out, defies credibility.

## EXPERTS: GOVERNMENT CONDUCT "UNCONSTITUTIONAL"

This judge's conduct was clearly unconstitutional, say the na-

tion's most prestigious authorities in legal and judicial ethics, Professor Steven Gillers and Mr. Mark Harrison.

Weighing in on this debate several months ago, the two sharply criticized Judge Reade and the Iowa U.S. Attorney for crossing the bounds of judicial and legal ethics.

In a written legal opinion addressed to the Eighth Circuit Court of Appeals, Mr. Harrison, one of the key architects of the Code of Judicial Conduct - the country's standard judicial ethics guidebook - asserts that Judge Reade repeatedly violated the Code's provisions.

The renowned legal authority studied the defense's Motion for a New Trial filed in August 2010 and the government's response to that motion. His scrutiny included the newly released FOIA documents.

Those documents, he said, showed that Judge Reade had initiated and authorized private meetings with federal prosecutors and law enforcement agents regarding the planned raid on Agriprocessors.

In his affidavit to the Eighth Circuit, Harrison said that Reade's meetings with these government authorities violated the Judicial Code. "Meetings or communications about impending litigation between a judge and only one side, to the exclusion of the other parties or their lawyers, are prohibited," Harrison wrote, stating his belief that Sholom Mordechai's conviction should be vacated.

## IOWA PROSECUTORS: THERE WERE NO EX PARTE MEETINGS

The government's response tries to neutralize the stinging allegations of *ex parte* discussions between the judge and the prosecutors with a limp argument. At the time of the ICE investigation, no criminal proceedings were yet underway, and therefore accusations of *ex parte* (one-sided discussions) do not apply, the brief said.

Anticipating this argument, Harrison, in his affidavit attached to the new-trial motion, wrote: "The meetings in question all concerned an impending matter - the Postville raid and the arrest of Agriprocessor employees and officials - and therefore clearly involved what the Code of Conduct defines as *ex parte*."

The ACLU of Iowa and the NACDL, two of the nation's most respected legal advocacy groups, have both condemned the blurring together of the executive and judicial branches in this case. The NACDL brief said that Reade conducted herself as an arm of the prosecution. The ACLU wrote that Sholom Mordechai must be granted a new trial: "Due process demands it. The Constitution demands it."

## WITH ITS BACK AGAINST THE WALL

That the government has its back against the wall was obvious from the Iowa U.S. Attorney's efforts to bar three *amicus curiae* briefs supporting Sholom Mordechai's right to a new trial, a brazen move that affronted the legal community.

The government argued that the briefs should not be admitted because they presented no new arguments. Trying to suppress those "friends of the court," however, only made their voices louder.

The government's motion to resist the briefs was condemned as a "knee-jerk attempt by an isolated U.S. Attorney smarting from allegations of misconduct" to tamper with a time-honored feature of appellate litigation.

Realizing its mistake, the U.S. Attorney's Office withdrew its opposition, excusing its about-face with the claim that it wanted the opportunity to answer the arguments raised by the ACLU, WLF and NACDL.

It's more than likely, however, that the prosecutors' flip-flop was made under pressure from their superiors in Washington, because in the end, the government offered no challenge to the cogent arguments raised by the legal advocacy groups.

The prosecutors limply echoed an earlier posture that the briefs present nothing new and "do not warrant further discussion here."

The *amici's* well-aimed bullets had obviously hit home.

# Magen Tzedek: The Sham Behind The Shield

BY DEBBIE MAIMON

A new “ethics” certification by Conservative rabbis that sponsors say will soon appear alongside familiar *kashrus* logos, threatens to undermine the integrity of *kashrus* in America.

The so-called *hechsher* was devised by a Conservative clergyman, Rabbi Morris Allen of Twin Cities, Minnesota. Magen Tzedek will certify companies that meet ethical requirements in their treatment of workers, animals and the environment—with the ethical standards determined by Allen and Conservative colleagues, aided by labor and environmental experts.

Because this program grew out of the smear campaign that brought about the destruction of Agriprocessors, the origins of Magen Tzedek and the saga of Sholom Mordechai Rubashkin are inseparable.

At the height of a full-throttled campaign by the labor unions to unionize Agriprocessors, Rabbi Morris Allen entered the picture. The story of his infiltration of the meat-packing plant, collaboration with the labor unions, and the relentless Rubashkin-bashing that catapulted him into media limelight and boosted his career, has yet to be told.

Like a pit bull refusing to release its quarry, Allen continues to slur both Agriprocessors and Sholom Rubashkin, proudly building his new “ethics” program on the ashes of the company he did so much to destroy.

Most recently he appeared on a national TV program, *American Greed*, with labor consultant and fellow opportunist Avram Lyons of New Jersey. Stringing together lies, fantasy and doctored up history, both men pitched the program’s message to millions of viewers, vilifying Sholom Rubashkin as an evil, greedy criminal who ruthlessly exploited poor immigrant workers.

## ‘I WAS SICKENED’

“The ranting and lies were so patently false, I was sickened,” said former city councilman Aaron Goldsmith in an interview with *Yated*. Goldsmith had met Lyons and Allen previously while accompanying Sholom Mordechai and another Agri manager in 2007 to a meeting in a Minnesota, at Allen’s request.

Weeks later, Goldsmith says he was visited by Lyons while the labor consultant was trying to break down Agriprocessor’s resistance to being unionized.

“Avram Lyons would come to the office and talk about how he could help revamp Agri’s image,” Goldsmith recalled. “What was absolutely clear to me from his comments was that the company’s issues to him were basically problems of image not ethics. There was no mention of abuse of workers, filthy work conditions, and the like.

“Yet he had the audacity on national TV to invent a completely different narrative. He described the plant as a ‘cesspool within a cesspool,’ citing stories of assault, exploitation and major injuries. He had the gall to paint Sholom Rubashkin as cruel, heartless and greedy

when he knew how far this was from the truth.”

## INCITEMENT IN POSTVILLE

In addition to participating on American Greed, Morris Allen also stars in a recently released documentary about the Postville raid, in which he is portrayed leading a demonstration against Agriprocessors for its inhumane treatment of immigrant workers, and denouncing Sholom Rubashkin for terrible labor crimes.

The occasion was the first anniversary of the Postville immigration raid which had prompted residents to protest the devastating law enforcement action that destroyed the town and surrounding region. Allen turned that event into an anti-Rubashkin demonstration, busing in hundreds of people, including youngsters from the Conservative Movement’s Camp Ramah in Wisconsin.

Allen first attended an assembly in a church, afterwards playing to the cameras as he threw a protective arm around a young boy whose father had been deported in the 2008 immigration raid, promising to forever care for him. He then led demonstrators from the church down the street to the entrance of Agriprocessors.

Allen never retracted or apologized for his accusations after Sholom Mordechai was fully acquitted in the state labor trial. He continues to downplay the acquittal, and to pounce on every opportunity to promote his “Shield of Righteousness” program by casting the now defunct Agriprocessors as a house of horrors and the kosher food industry as plagued by “systemic abuse,” in dire need of the ethics regulation he stands ready to provide.

While Sholom Rubashkin languishes in jail, facing a 27-year sentence, and amid intense efforts in the Jewish community to win him a fair trial, Morris Allen continues his incitement and slander. At his recent official launching of Magen Tzedek, he talked about the vile impact on the water system the flushing of tons of slaughterhouse waste products produced in Postville.

“As Jews, we have to be stewards of the earth,” he intoned.

Allen was apparently counting on the fact that few in the audience would have any clue that Sholom Rubashkin built a state of the art \$10 million water treatment facility in Postville that rendered the affected waste water so clean as to be drinkable.

At this launching event, Allen was asked by a participant why he felt the need to continue maligning Sholom Rubashkin. Startled, Allen responded curtly, “I’ve moved on from there.”

Perhaps Allen realized it wasn’t good for his ethics business to continue bashing a beaten man, torn from his family, stripped of all his possessions and demonized by the world.

## EARLY EXPERIMENTS AT TAMPERING WITH KASHRUS

The Minnesota-based clergyman tried for a number of years with-

out success to launch his program. He pitched his notion of food-industry ethics to the American Jewish public as emanating from the Torah, and holding the same binding authority and sanctity as *kashrus* laws. He originally called it *Hechsher Tzedek, Al Pi Din*.

Allen had been campaigning for several years to win adherents to his self-styled notion that *kashrus* is defined not only by *halachic* criteria, but also by social justice criteria. How can *kosher* can't be truly *kosher*, he scoffed, if workers are not getting decent pay and benefits, if the industry environment is being polluted, or if animals at kosher slaughterhouses are not treated humanely?

Allen's attempt to redefine the *halochos* of *kashrus* along social justice and labor platforms rendered him irrelevant among Torah-observant Jews. But Hechsher Tzedek had targeted a much broader constituency, including all streams of Conservative, Reform and unaffiliated American Jewry. Here, too, the program flopped.

In the public mind, "kosher" is equated with cleaner and healthier food, and the present *hechsherim* such as OU have won the public trust. People were simply not interested in a new *kashrus* certification that had no track record. Others were concerned about Allen's motives.

### ATTACKING STATE LAWS

The JTS-ordained rabbi had been trying for several years to win entry into *kashrus* supervision in his home state of Minnesota. Blocking his efforts were stringent state laws that made *kashrus* supervision in Minnesota the exclusive province of the Orthodox rabbinate. Allen and his colleagues, following the example of Conservative clergymen in other states, found a way to remove these roadblocks.

Over the past two decades, Conservative leaders have worked to change the kosher laws in states where exclusive authority was granted to Orthodox *rabbonim* to define and regulate *kashrus*. The Conservative clergymen enlisted the ACLU (American Civil Liberties Union) which readily filed lawsuits on their behalf, complaining that the states' kosher laws constituted government interference in religious matters.

In almost every case, the courts agreed that the existing laws favored the Orthodox rabbinate, and overturned them. The net effect was to remove *kashrus* regulation from the domain of Orthodox *rabbonim*.

The laws that once safeguarded *kashrus* now only require that establishments advertising themselves as kosher disclose their *hashgacha*, so that the consumer can determine which denomination—Orthodox, Conservative or Reform—is behind it.

Allen and his colleagues succeeded in 2004 in implementing these same changes in Minnesota's kosher laws. With the old kosher laws struck down, the way was clear for him to launch his own Conservative *hashgacha* to local companies.

### CONSUMERS REJECT HECHSHER TZEDEK

Emboldened by success, Allen set his sights even higher, promoting his Hechsher Tzedek as a vehicle offering something wonderful and revolutionary to American Jewry. "No one in the Jewish world has ever really tried to marry the laws of how we treat workers with the laws of how we should eat," he wrote proudly on his blog site.

He presented his program as a landmark innovation, a hybrid "*hechsher*" mixing kosher laws with ethical requirements. When *Hechsher Tzedek* abruptly fizzled out, the message was clear. Consumers were not interested in digging deeper into their pockets to pay for a superfluous, tag-along *hechsher* angling for a piece of the pie. [The kosher food industry is a \$250 billion business accounting for about 40% of all packaged foods in the country, making *hashgacha* a profitable enterprise.]

Still determined to crack open the market, Allen tried a different tack, now taking pains to recast his new-old *hashgacha* as a supplement to kosher standards, rather than a replacement for standard *hech-*

*sherim*. The Conservative rabbinate, the Rabbinical Assembly, gave him a boost by adopting the initiative, arranging press releases and public relations blitzes to pump up Magen Tzedek as the Conservative Movement's most exciting and promising initiative.

### ETHICS TALK SEEN AS A FOIL

Those who suspect the "ethics" talk is merely a foil for the movement's true designs to gain a foothold in the *kashrus* industry, point to Magen Tzedek's own web site. The slogan for Magen Tzedek is "*Kashrut* for the 21st Century." In a pitch to manufacturers, the site defines Magen Tzedek "as the gold standard of *kashrut*."

The site, in fact, solicits contributions with the line: "Built on the principle that ethics must be an intrinsic component of our ritual observance of *kashrus*, Magen Tzedek is already changing the kosher food industry."

"The Conservative movement's ethical kosher initiative may not have been intended as a wedge into the Orthodox monopoly over kosher supervision," writes JTA. "But the planned rollout this summer of Magen Tzedek, coincides with...growing activism in the Conservative movement around the issue of *kashrut*. The Conservative rabbinate seems to be moving into the *kashrut* business like never before."

"Our rabbis are as knowledgeable about *kashrut* as their Orthodox colleagues, and care about it as much as they do," asserted Julie Schonfeld, executive vice president of the Rabbinical Assembly, the movement's main rabbinical group.

A look at Magen Tzedek proposals quickly reveals the opposite is true. The author is either grievously misinformed or intentionally twists the meaning of Biblical and rabbinic texts to suit his obvious agenda, pompously affirming them as "*al pi din*".

One example out of dozens: In an attempt to invoke Torah authority for imposing industry standards on company's pay policies, the author cites a number of *talmudic* and rabbinic sources to suggest that Jewish law requires providing benefits to workers based on what is customary in a given locale.

Yet he ignores the fact that this is only true in the absence of an articulated understanding between employer and employee.

### RIDICULING HALACHA

Although the Torah establishment has been slow to react to the Conservative leadership's newest bid for legitimacy, the historically established danger in singling out the kosher industry for special scrutiny and standards should sound an alarm here.

Those who have led the assault on *kashrus* in the past have ridiculed Orthodox adherence to *halachic* minutiae, just as Allen does, while preaching that the value of Jewish dietary laws lies in their ethical values.

Allen's original Hechsher Tzedek web site sums up this skewed thinking with the following pronouncement: "If we don't connect *kashrut* to the world and the values we hold, then we fail to take *kashrut* at its core level."

What exactly is the "core level" of *kashrus*? To Torah-true Jews, the core is a direct communication from G-d to the Jewish people to scrupulously uphold the timeless, eternal *mitzvah* of *kashrus* in all its sacred minutiae.

For Allen, the core is apparently akin to what Paul, one of Christianity's founders, might have had in mind when he called for the abolishment of *kashrus*, urging Jews to "Worry not about what enters your mouth — but with what comes out."

Here is Allen in a recent interview with a local Jewish paper voicing his disdain for the stringencies of *halacha*:

"In recent years we've seen *kashrut* essentially be hijacked by people who are much more concerned about infinitesimally small bugs living on broccoli than about the purpose of the rules in the first place, and that's not how it's supposed to be."

## UNNECESSARY AND DIVISIVE

“In my conversations with dozens of kosher manufacturers, retailers, and consumers of all backgrounds, the message is clear,” said Menachem Lubinsky of Kosher Today. “Magen Tzedek is unnecessary, divisive, and a collective indictment of an entire [kosher food] industry.”

Rabbi Menachem Genack of the Orthodox Union, said he and other officials at the OU restated their long standing position that social justice issues are amply covered by government agencies and do not require a new certification.

He recalled that the Magen Tzedek certification was launched on the ruins of Agriprocessors, commenting on the tragedy of the company’s demise and calling the 27-year sentence for its CEO, Sholom Rubashkin for bank fraud “a travesty of justice.”

In a 2010 article in the Jewish Week, Rabbi Genack harshly criticized the government’s handling of the case, calling attention to the pattern of “overreaction” throughout the prosecution and trial. “They destroyed a company. They destroyed the economy of the region. ... Asking for a life sentence was an absolute outrage. I think the one that should be in the dock is the U.S. Attorney. That’s where I think there’s an ‘ethical outrage.’ What they called justice is more reminiscent of Soviet jurisprudence.”

## BUILT ON FRAUD

One of the most perceptive commentaries on Hechsher Tzedek/ Magen Tzedek comes from a Minnesota-based *rav*, Rabbi Asher Zeilingold of Aath Israel.

Responding to a July 2010 query from Steward Ain, a staff writer for the *Jewish Week*, Rabbi Zeilingold questioned the Conservative leadership’s denial that the new ethics “*hechsher*” was designed to compete with standard *hechsherim* already in place.

Rabbi Zeilingold graciously shared his letter to the *Jewish Week* with *Yated*.

**Dear Mr. Ain,**

One of the major problems I have with Hekscher Tzedek is that the Conservative Movement is very obviously promoting the seal as a kosher insignia. I do not have to read further than the title of the session at the Rabbinical Assembly convention, “Moving Magen Tzedek in the Marketplace: How the Conservative Movement is Seating Itself

at the Kosher Table.”

It seems to me that the Conservative Movement is talking out of both sides of its mouth.

You asked me why I stated that the Hekscher Tzedek was “born and bred out of the pain and anguish of an innocent Jew.” Let me make the following statement: The Conservative Movement announced a boycott of all Rubashkin meat products, and strongly promoted this boycott among its constituency.

Further, the Conservative Movement organized public demonstrations against Rubashkin/Agriprocessors. In August of 2008, there was a demonstration in Postville which had been called to protest the US government’s policy on immigration.

The Conservative Movement turned that demonstration into a protest against Rubashkin. They brought in busloads of people from the Twin Cities and Chicago, as well as busloads of children from Camp Ramah in Wisconsin. They all marched from a Postville church to the Agriprocessors plant. A Minnesota rabbi, standing outside the plant, addressed the crowd and told them of the “atrocities” that he claimed went on at the plant.

On several Sabbaths at Twin Cities’ Conservative synagogues, the rabbis distributed pamphlets telling of their recent trip to Postville where they had interviewed Agriprocessors workers at the labor union offices. They spread horrible stories of abuse -- including sexual abuse, harassment, and exploitation of workers.

Thousands of our people were deeply troubled, and I know for a fact that many who had been keeping kosher, stopped doing so because the only kosher meat available to them was Rubashkin’s.

The Conservative Movement claimed that what had to be done now was create Hekscher Tzedek.

My intention in writing last week’s article was not to proclaim Sholom Rubashkin’s innocence. The verdict in Iowa had already done that. My intent was to proclaim that the Hekscher Tzedek is built upon fraud. In my opinion, it is nothing more than a symbol of the most unethical and contemptible standard of human behavior.

Therefore, I say that the Conservative Movement needs to be honest and search for true tzedek.

*With best wishes,  
Rabbi Asher Zeilingold  
Aath Israel Synagogue  
St. Paul, Minnesota*

# The Stain That Won't Wash

BY DEBBIE MAIMON

One day before Pesach, an important brief on the Rubashkin case was filed with the Eighth Circuit Court of Appeals. This document was not only a trenchant rebuttal of government arguments that contested the Rubashkin appeal. It also unmasked a pattern of abuse of justice driving the case against Sholom Mordechai Rubashkin from the very beginning.

The allegations of prosecutorial and judicial misconduct that allowed these abuses have prompted 45 congressmen to write letters of complaint to Attorney General Eric Holder, demanding an investigation.

Holder chose to ignore the congressmen, apparently hoping, along with the Iowa U.S. Attorney's Office and the presiding judge, that the noise would die down, that time would wash away the stain on American justice.

But the stain has proved stubborn. Last week, May 3, during a lengthy oversight hearing on the Justice Department conducted by the

House Judiciary Committee, AG Holder found this out. He shifted uncomfortably in his seat as he was asked about the case in live hearings streamed to the American public.

Rep. Debbie Wasserman Schultz (D-Fla), the newly appointed Democratic National Committee Chairwoman, and Rep. Sheila Jackson Lee (D-TX), used their three-minute speaking allotment to press the highest Justice Department official in the country on what he has done about the injustices in the case.

Rep. Jackson Lee had penned one of the strongest letters about the case from a House Judiciary Committee member. Now she used the oversight hearing to confront him directly.

"The Rubashkin case raises issues of questionable legal ethics, excessive sentencing and a potential miscarriage of justice," she had written in her June 2010 letter, citing "a series of ex parte communications between the trial judge and federal prosecutors [that] were held and never disclosed to the defense."

The congresswoman, as a member of the House Judiciary Committee, had urged Holder to investigate why Sholom Mordechai was denied bail pending sentencing. At last week's oversight hearing, Ms. Jackson Lee went even further.

Stressing that Sholom Mordechai was a first-time non-violent offender and father of ten children, she questioned why he was not free on bail for the past 18 months "while his case was on appeal." She called on the attorney general to take her concerns seriously and get back to her with answers.

Judge Linda Reade's conduct drew scathing criticism from Rep. Wasserman-Schultz as well, who described the judge as "[having] been accused, accurately, of ex-parte communication and excessive sentencing."

Repeating the charge, the Florida congresswoman told Holder, "If we can follow up with you and get a response from the Department, I would appreciate it very much. Because it appears that the sentence is incredibly excessive and the judge who levied the sentence engaged in inappropriate ex-parte communications."

## A SCANDAL NEVER LAID TO REST

Evidence of "the stain that won't wash" was on display in the remarks of yet a third congresswoman, Rep. Zoe Lofgren (D-CA), who reminded AG Holder of the widely criticized Postville prosecutions following the 2008 ICE raid.

Judge Reade had played a pivotal role in these proceedings, working with the U.S. Attorney's Office to prepare plea deal scripts, and afterwards serving as the sentencing judge for hundreds of the arrestees.

The uproar generated by the "fast track" criminal prosecutions that railroaded hundreds of immigrants into waiving their right to trial sparked a 2008 congressional subcommittee hearing chaired by Lof-

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gren.

The committee conducted inquiries into the actions of federal officials and the district court, but ran into an impasse when government officials in Washington insisted that all reports of civil rights violations were false.

But as evidenced by Lofgren's remarks last week to Holder, the allegations of federal misconduct surrounding the Postville prosecutions were never laid to rest.

"The factory workers there were literally rounded up and herded into a cattle area and then figuratively treated like cattle," Lofgren reminded the Attorney General. "They had group hearings with shared counsel, no translation services, and very questionable guilty pleas and prison time.

"Judge Mark Bennett, who sentenced a number of the immigrants, said this about that proceeding and I quote: 'I found the plea agreements [that the immigrants were asked to sign] professionally and personally offensive. I thought it was a travesty. I was embarrassed to be a United States District Judge that day.'"

As the Rubashkin appeal proceeds, and as the Postville-Rubashkin scandal continues to reverberate in political and legal circles, a duel of a different sort is being waged in Otisville prison, where Sholom Mordechai is incarcerated.

In excerpts from his letters to his children below, graciously made available by the family, one catches a glimpse of a heroic struggle to reach beyond steel bars and the excruciating isolation from family to retain sanity, normalcy, faith and hope for freedom.

## ZEMAN CHEIRUSEINU IN OTISVILLE PRISON

*Excerpts from Letters from Sholom Mordechai to His Children*

*Dear Kinderlach,*

*A gutten mo'ed, a freilechen mo'ed un a kosher mo'ed v'yom tov.*

As much as I wanted to be home with you, Hashem obviously wanted me to have my *Seder* here in Otisville... We'll speak to each other tomorrow, but for now, let me share with you a few of the insights we had by this very unusual *Seder*.

If you could somehow have peeked inside the prison, you'd have been astounded. There I was, attired in a fancy silk, jet-black *beketche* and a *kasketel*, a black felt cap. (I can hear you giggling. Were we celebrating *Purim* or *Pesach* here?)

The chaplain was able to obtain this *yom tov levush* for me. I was very happy to have it. We know that *levushim* help with the *avodah* and setting the proper atmosphere. Wearing these garments instead of the orange prison clothes certainly helped created a sense of *cheirus*. I brought a pillow and had a chair with arms that I could make *heseibah* with.

We had been given a small room off the chapel where a Sephardic *Yid* named Refael worked very hard to set up three folding tables for about 13 people, himself included. The rule was that anyone who wants to, whether they are Jews or not, can attend the *Seder* by signing up for it.

Of those who came, most were *Yidden*, with only one who is *shomer Shabbos* - this Refael, who was born in Morocco and is now a citizen of Canada. He and I decided to say "*Korban Pesach*" from the *Siddur* after *Minchah*. Something happened then - one of those things that seem "random" but carry special meaning when you are in a place like this.

[First, as a *hakdamah*, let me mention that I had received from someone who mails me different *inyanim* in learning a wonderful letter written by Rav Shimshon of Astropla *Hy'd*, which is a *segulah nifla'ah* to learn any time, especially *Erev Pesach*.]

Getting back to Refael, he's flipping through his *siddur* looking for the *Korban Pesach*, and suddenly he comes across this piece of Torah from Rav Shimshon of Astropla! It was like a beautiful ray of sunshine lit up the room.

I asked him if he wants to learn it and he was happy to, so we sat and learned together. His face lit up as we got into the actual *limud*... Then more people started to come in and it looked like we might have a *minyán* for *Maariv*.

In the end, we didn't. I *davened* aloud, and we said the *Shema* together. When it came time for *Hallel*, those of us who knew it sang it together slowly. I closed my eyes and pictured myself in *shul davening* together with a roomful of *Yidden*. What power the imagination has. The words of *Hallel*, so full of longing, carried me far away.

*Lo lonu, Hashem, ki leshimcha.* Not for our sake, but for Your Name! *Min hameitzar korosi.* From the depths of despair I call out to You... *Anah Hashem, hoshiah nah.* I beg of You Hashem, save us! I beg of You, Hashem, grant us success!

I came to the end of *Hallel*, finishing the *brocha*, "*Ki lecha tov lehodos uleshimcha na'eh lezamer* - It is so good to thank You, Hashem! It is so sweet to sing to You!"

And how good it will be to make a great *seudas hodaya* very soon, and be *meshabei'ach* You for my personal *geulah* and that of all of *Klal Yisroel*...

I was lost in these exhilarating thoughts, miles away from everything in the prison. Suddenly, I opened my eyes. There I was, back in Otisville, with a bunch of people staring at me in silence. The quiet in the room stretched on - something extraordinary for this place.

I swallowed my emotion and started arranging the *matzos* on the *kaarah* with all the other items, as questions flew around the table. Why three *matzos*? Why those strange foods? Why the four cups of grape juice?

Besides for the *Yid*, no one knew about a *kaarah* and most knew nothing about the Four Questions. One guy from Massachusetts said his *Seder* was basically a rush to get to the dinner and the delicious brisket they had for the main course.

I started by explaining to everyone present that I was not making myself the leader of their *Seder*. There was plenty of *matzah* and grape juice to go around and everyone was free to do their own thing. I said that my intention was to make a *Seder* for myself the way I did at my home, and if anyone wanted to join my *Seder*, they were welcome to do so.

(This prevented problems later on, when someone got impatient and wanted me to finish up. "Hey, Sholom, it's late. Let's cut it short!" he called out. I reminded him that I was conducting my own *Seder* and I wasn't holding him there.)

I explained according to a *vort* from the *Maharil* the purpose of the different stages of the *Seder* and why every act and every

nuance is important. We discussed that the very act of eating *matzah* that night energizes a *Yid* with the ability for *emunah*. That is where the *Yidden* at *Yetzias Mitzrayim* received their tremendous energy and faith to march into the desert.

That led to a discussion of what *matzah* is and how a physical thing like food can bind a *Yid* to Hashem.

It may seem strange that I was talking about concepts that are so remote to most of these people. But every *Yid* has a *neshomah* that is sensitive to *kedushah* and that *neshomah* is more alive on *yom tov*.

When we came to *maror*, someone asked why the *maror* is at the center of the plate. Is “bitterness” the essence of life? Is that what it all comes down to?

There was the kind of silence you “hear” when people really want an answer. I talked about the bitterness of our own situation, each of us suffering in his own way. I said that some people here deal with the pain by covering it up with a fake show of high spirits. This creates a numbness that keeps them from feeling anything. If you can’t feel anything, you don’t feel completely human.

As we were talking, the idea seemed to settle in that it’s better to let yourself feel bitterness but not to let that become the focus. The point is what you do with it. I talked about how the purpose is to open up our hearts to show Hashem the bitterness of our plight and plead with Him for His help. This, more than anything, has the power to arouse His mercy.

That led to the topic of how we yearn for freedom, but while locked up in prison, many people don’t dare to voice these longings - even to themselves. Like when Moshe Rabbeinu came to the *Yidden* to tell them about the imminent redemption, they could not pay attention to what he was saying. The *posuk* says, “*Mikotzer ruach umei’avodah kasha.*” Lack of energy plus exhausting labor.

Here, too, exhausting monotony and degradation drains hope for freedom in people. Two of the inmates at our *Seder* were from *Eretz Yisroel*. One is a son of Holocaust survivors who is *nebach* in jail for

21 years! Another is a Sephardic *Yid* who grew up in a kosher home. He’s been in jail for about 9 years. So there at our *Seder* table in Otisville, this feeling of slavery being “forever and ever” was very much the mood at first.

But that slowly started to change as we read the *Haggadah* and related the message of the *matzah*, how the redemption came so quickly that there was no time even for the dough to rise. And how Hashem did not send a *malach* or messenger to save us from the *Mitzriyim*. He Himself came to take us out of our slavery, because He cares about every single *Yid*. People started warming up to the idea of redemption and its reality.

During the meal, I gave a *brocha* for *cheirus* and we all drank *lechaim* with a heartfelt *bakasha* to Hashem that we be granted our personal *cheirus* as the *Yidden* experienced *cheirus* at *Yetzias Mitzrayim*.

Normally, I would get mocking looks and irritation if I tried to give such a *brocha*. “Ah, what are you yapping about? Leave me alone with your *brachos*,” people would say. But now it was different. We actually had a second *lechaim* and I invited them all to come to my house for the *Seder* next year!

You could see that inside each and every *Yid*, even a hardened inmate, there is a child who wants to know he has a Father in Heaven Who cares for him. If you can give a *Yid* the gift of knowing this and believing this, it’s like giving him life.

I can almost hear your question about *Eliyahu Hanovi*: Yes, *kinderlach*, two of the *Yidden* went to the door and opened it for *Eliyahu Hanovi*, welcoming him into our *Seder*. Yes, even here. We said *Shefoch Chamoscha* with deep emotion, with shivers.

May Hashem be *mekayeim* this *tefillah* said with so much *hartzigkeit* by so many *Yidden* throughout the world on *Seder* night.

And may Hashem bring me *cheirus* from prison and unite me with my beloved family very soon.

*B’avavah,  
Tatti*



to: M. Serraf

# Doubts About Federal Judge Haunt Case

BY DEBBIE MAIMON

“At 1:30 p.m. this Wednesday, June 15th, in the Federal Court-house in St. Louis, Missouri, an appeal will be argued before three judges on the Eighth Circuit Court of Appeals in one of the most bitterly contested and controversial criminal trials in many years,” a searing article on the Rubashkin case begins.

The authors, noted legal experts Bennett Gershman of Pace University and Joel Cohen of Fordham Law School, air their concerns in the *Huffington Post* over a startling twist in the case that they say “raises fresh questions about the integrity of the federal judiciary.” The two have previously written about injustices in the case in the *National Law Journal*.

In their most recent article, “When A Judge Stumbles, Do Appearances Matter?” the authors criticize the decision of the Eighth Circuit to draft Judge Linda Reade as a temporary fill-in, to hear a number of cases with two of the same judges who will hear the Rubashkin appeal later in the day.

Reade will be sitting with Judges Lavenski Smith and Diana Murphy a few hours before these judges, together with a third colleague, Chief Judge William Riley, are scheduled to hear oral arguments in the Rubashkin case.

Law professors Gershman and Cohen find this arrangement very disturbing.

“Judge Reade was the trial judge who secretly met with the prosecutors in planning and carrying out the raid and arrest of Rubashkin, presided at his trial without ever disclosing those meetings, and sentenced him to more jail time than even the prosecutors asked for,” Gershman and Cohen point out.

They cite internal government documents that portray Reade as playing a key managerial role in the raid, and along with federal prosecutors, concealing this activity from the defense. This clandestine behavior prevented Sholom Mordechai’s attorneys from moving for her recusal, the appeal argues.

“The question that many observers have asked-- and that figures prominently in Rubashkin’s appeal,” the authors write, “is whether Judge Reade was guilty of misconduct by meeting secretly with the prosecutors; being “briefed” on the investigation; discussing “charging strategies;” seeking from the prosecutors a “final game plan,” as well as the likelihood that she may have received extra-judicial information about the case.

“These serious allegations, particularly in a case that has drawn such national attention, deserve a careful and objective review by impartial judges,” Gershman and Cohen state.

## ‘EXTRAORDINARILY BAD JUDGMENT’

But an objective review of the allegations that will satisfy the public is likely to be hampered, the authors say, by Judge Reade’s participation at the court.

The natural camaraderie and *esprit de corps* between colleagues would seem to defeat the emotional detachment and spirit of objectivity that must define the appellate proceedings.

Sympathy for a colleague under fire with whom one is working closely is all but inevitable. Even if people are capable of rising above their natural instincts, the problem of the *appearance* of partiality remains, Gershman and Cohen point out.

“The overarching principle of judicial ethics is that a judge must be impartial not only in fact, but also in appearance,” they stress.

In view of the allegations of judicial misconduct shrouding the case, scheduling Judge Reade as a fill-in within the same time frame as the Rubashkin hearing is at minimum “extraordinarily bad judgment,” the article asserts.

“At worst, it raises serious questions about the impartiality, fairness, and integrity of the adversarial criminal process.”

The authors note the fact that the last time Reade traveled to St. Louis, Missouri to join the eighth circuit judge as a “substitute” was five years ago. Observers wonder why she chose the time frame surrounding the Rubashkin appeal to do so again.

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## UNDERMINING PUBLIC TRUST

Regardless of her reasons, designating Judge Reade to sit with the Eighth Circuit at this time risks undermining public trust in the fairness of the justice system, the authors reason.

“The concern here,” they write, “is not only whether Rubashkin will believe that he got a raw deal if the appeal goes against him. Defendants who lose always think they got a raw deal. The real concern is whether the public will lose faith in the justice system’s ability to do justice.”

Just as “close interactions” with federal prosecutors tainted the federal trial, similarly close interactions between Reade and the Eighth Circuit judges might compromise the appellate proceedings in the eyes of the public, the authors reason.

“There is also the theoretical concern that Judge Reade would defer to her eighth circuit colleagues on the cases she hears with them so that they will consider her conduct in Rubashkin more favorably. Yes, that may be only a theoretical concern, but that’s what “appearances” are all about,” the article argues.

### **DES MOINES REGISTER: NEW QUESTIONS SURFACING**

Concerns about Judge Reade temporarily joining the Eight Circuit Appeals Court on the day of the Rubashkin appeal hearing were raised earlier by the *Des Moines Register* in an article, “New Questions Surface About Impartiality Of Federal Judge.”

“The court schedule of a federal judge who faces allegations of bias in the financial fraud trial of Sholom Rubashkin has raised fresh questions about judicial impartiality,” the article noted.

“Judge Linda Reade—a judge in the Northern District of Iowa temporarily filling in on the appeals court—will hear cases with two of the three judges who will later listen to arguments in Rubashkin’s appeal. Reade is also scheduled to sit with the same judges a day earlier.”

The article went on to quote law professor Steven Lubet of Northwestern University who observed that “the scheduling is unfortunate because the subject of the appeal is judicial impartiality.”

A court clerk for the 8<sup>th</sup> Circuit who had a hand in the arrangements told the *Des Moines Register* that the court does not view the schedule as a problem because judges “studiously avoid discussing pending cases.”

“I’m sure if the two judges who were sitting on the case thought it presented a problem, they would have directed me to make other arrangements,” the court clerk said.

Many feel that questions about judicial bias are too sensitive to ignore.

“Reade’s decision to sit on Rubashkin’s 2009 fraud trial, in which he was convicted of 86 fraud charges, has drawn criticism from many legal experts,” the *Des Moines Register* article reminded readers. “Many also questioned the 27-year sentence she handed down, two years more than the prosecution requested. Before sentencing, six former U.S. attorneys general signed a letter expressing their concern about the sentence sought by prosecutors.

The article cited the support for a new trial that has come from prominent legal advocacy groups, including the American Civil Liberties Union of Iowa, the Washington Legal Foundation in Washington, D.C., and the National Association of Criminal Defense Lawyers.

These groups filed *amicus* briefs that focus on the constitutional and ethical impropriety of Reade’s participation in the Postville raid and prosecutions, as well as her erroneous application of the sentencing guidelines.

The WLF brief in particular slammed the grossly disproportionate 27-year jail sentence imposed on Sholom Mordechai, saying

it reflects serious errors in Judge Reade’s calculations as well as violations of the Federal Sentencing Guidelines.

## **FORTY-FIVE CONGRESSMEN PROTEST TO HOLDER**

The *Des Moines Register* article cited letters from forty-five members of Congress who petitioned U.S. Attorney General Eric Holder to investigate the evidence of judicial and prosecutorial misconduct in the case. And last month, the article said, “three members of the House of Representatives asked Holder about the case when he testified before the judiciary committee.”

The reference was to an oversight hearing on the Department of Justice conducted by the House Judiciary committee, at which Holder was peppered with questions from committee members on issues of outstanding public concern.

Rep. Sheila Jackson Lee (D-TX) and Democratic National Committee chairwoman Rep. Debbie Wasserman Schultz (Fla) used the occasion to press Holder to investigate the injustices in the case.

Another committee member, Zoe Lofgren (D-CA), reminded Holder that the entire subject of the Postville raid and prosecutions were a stain on American justice due to the subversion of constitutional rights and other flagrant abuses of government power.

The Rubashkin case is seen as emblematic of those abuses. It is increasingly viewed as testing the American criminal justice system in the unprecedented blurring of the lines between the executive and judiciary functions that allowed a federal judge to virtually become an arm of the prosecution.

“Looking at all the facts in the Rubashkin case, the average member of the public has cause to be concerned about whether Judge Reade’s conduct created an appearance of partiality toward the government, as well as an appearance of prejudice against Rubashkin that would require a new trial, the *Huffington Post* op-ed summed up.

“And most disturbingly, the same member of the public has further cause for concern, because the crucial question of improper appearances is going to be decided by an appellate panel composed of judges collaborating on cases together with the judge they will be judging the same day.”

Lubet, the law professor quoted in the *Des Moines Register*, said “he can’t imagine why Reade decided to preside over the federal trial. She became a judge who made a point of assisting the prosecution in at least the initial stages of the case.”

Echoing a growing chorus of public sentiment as well as one of the appeal’s key arguments, Lubet said, “Why not have a judge who had nothing to do with the prosecution, instead of one who had devoted significant time and energy into facilitating it?”

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# “Appearance Of Partiality” Sufficient To Wipe Out Trial

RUBASHKIN APPEAL HEARING

BY DEBBIE MAIMON

The defense’s oral arguments in the Rubashkin appeal hearing in St. Louis last week hammered away at the overwhelming “appearance of partiality” on the part of the trial judge that defense attorneys contend are grounds to vacate the trial.

The oral presentation was based on the defense team’s 100-page appeal that brought to light a series of weighty legal errors in the trial of Sholom Mordechai Rubashkin. Those errors collectively invalidate the trial, attorneys said. In the brief 30-35 minutes of oral argument, however, only the appeal’s key arguments could be presented.

The hearing capped many months of research and intense legal work during which the defense team filed major briefs. Now the fruits of that work were to culminate in the final phase of the appeal process.

Family, friends and supporters of Sholom Rubashkin filled the gallery shortly before the hearing began in the Thomas Eagleton Courtroom in St. Louis. One could sense hearts beating in unison and almost hear the silent prayers in the emotionally charged courtroom.

Sholom Mordechai’s father, Reb Aharon Rubashkin, and four of the older Rubashkin children were joined by a number of other relatives; *askonim* from Monroe, N.Y. members of the media and representatives of the St. Louis Jewish community.

Whispered words of Tehillim in the gallery were no doubt echoed by tens of thousands of people across the country and throughout the world who have been watching the case. All recognize the high stakes the outcome carries for Sholom Mordechai and his family.

The case was argued before a three-judge panel of the Eighth Circuit Court of Appeals that hears federal appeals from the states of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

Sitting on the panel were Chief Judge William Riley, a 57-year-old native of Nebraska and a Bush appointee; Diana Murphy, a 77-year-old native of Minnesota and Bill Clinton appointee; and Lavenski Smith, a 53-year-old Arkansas native and Bush appointee.

## THE SECRET MEETINGS

Flanked by his daughter and law partner Alyza Lewin, and counsels Mark Weinhardt and Guy Cook, attorney Nathan Lewin began his oral presentation. He briefly called attention to an aggressive prosecution that climaxed in a staggeringly high prison sentence using a scheme of “fragmenting” the charges [essentially charging the defendant for the same crime over and over under different names].

Lewin then came to the heart of his presentation. He argued that the trial judge’s failure to recuse herself after multiple off-the-record meetings with prosecutors, and her failure to disclose these meetings

to trial counsel, violate the Judicial Code at Section 455(a), and are grounds to vacate the trial.

He cited government documents that were surrendered after the trial which show that the judge had at least 12 separate meetings with the U.S. Attorney’s Office and with ICE officials, beginning 7 months prior to the raid on Agriprocessors.

Reade is quoted in the documents as twice pledging “to support the operation in any way possible,” as well as requesting “a final game plan” before the law enforcement action is launched. ICE documents refer to her as “a stakeholder” in the investigation and raid.

“Charging strategies” (determining what crimes the arrestees would be charged with) were discussed with the trial judge at some of these meetings. In addition, conferences with a multitude of law enforcement personnel and ICE officials in the months leading up to the raid were called at Reade’s specific request.

Lewin argued that at the very least the judge should have transcribed these private meetings that appear to cast the judge in a managerial role. He cited the opinions expressed in sworn affidavits by leading law experts that the information “blackout” surrounding the meetings deprived the defendant of the opportunity to file for the judge’s recusal, effectively robbing him of a fair trial.

## JUDICIAL MISCONDUCT HITS RAW NERVE

Reaction from the judges who broke in with questions that consumed at least 15 minutes of the oral presentation, betrayed the extreme sensitivity of the subject matter.

Censoring a judge for breach of ethics, not to mention throwing out a trial because of it, is an extremely rare occurrence. This is especially so in the Eighth Circuit, considered “pro-government” in the context of the vast majority of cases in which it upholds government criminal convictions.

Yet the judges hearing the case exhibited fair-mindedness and a willingness to probe for the truth, even according Lewin several more minutes than his “quota” to lay out the salient facts of the case. They asked questions that enabled him to open the field of discussion and to elaborate on important points.

Chief Judge Riley wanted to know why, in view of the ex parte meetings, the defense failed to ask for the judge’s recusal before the actual trial.

Lewin responded by citing a legal opinion written by Judge Riley himself in 2003, in which the judge affirmed that a recusal claim is proper even when first raised in the appeal, as long as it was filed “at the earliest opportunity after obtaining the facts.”

“This is exactly the situation here,” Lewin told the court. He went on to explain how the ex parte meetings were never disclosed by the judge or the prosecutors, but came to light only in July 2010,

*It was only in the last five minutes of his argument that Lewin was able to address the extraordinarily harsh and unreasonable prison sentence.*

after FOIA documents were finally surrendered by ICE officials. In sworn affidavits, trial counsel Guy Cook and Montgomery Brown testified “they hadn’t the slightest inkling” about these meetings and would have filed for recusal had they known about them.

### **CAN YOU POINT TO PREJUDICE?**

Judge Riley wanted to know if the defense was prepared to show evidence of prejudice on the part of Judge Reade. Lewin replied that his client did not have to show prejudice, but that according to the law as explained by several Eighth Circuit rulings, the controlling issue was whether the judge’s neutrality would be doubted by the average person hearing about the obvious conflict of interest.

“You may be right,” Judge Riley countered, “but you could make your case stronger if you could point us to any evidence of bias in Judge Reade’s rulings as a result of her pre-raid meetings.”

His question echoed the government’s argument against Shalom Mordechai’s “new-trial” motion filed in January of this year, in which Deegan, writing for the U.S. Attorney’s Office, claimed the motion had no merit because the defense failed to show prejudice on the part of the judge.

Lewin countered with a quote from a defining Eighth Circuit ruling on the subject that states, “What matters is not the reality of bias or prejudice but its appearance.” Since the law is designed to promote public confidence in the integrity of the judicial process, “the existence of actual bias is irrelevant,” the ruling makes clear.

How much confidence would the average person on the street have in a justice system that allowed a judge, who participated for months in the planning of an immigration raid on a company, to preside over the trial of that company’s senior manager? Lewin asked.

In a case tainted by the appearance of partiality, the applicable standard is that even without proof of bias, the trial must be vacated, he told the court.

### **JUDGE PSYCHOLOGICALLY JOINED THE PROSECUTION TEAM**

He added that while the defendant could not prove that bias emanated from the pre-raid meetings, the draconian 27-year prison sentence—two years more than the prosecutors requested—rested on one-sided rulings that pervade the entire trial transcript.

Foremost among these was Reade’s fateful decision to honor the government’s wish to hold the financial trial before the immigration trial. After severing the two trials, Reade then allowed “lurid immigration-violation” testimony to dominate the financial trial for three days, poisoning the jury against the defendant, the appeal argues.

“This was death by a thousand cuts,” Guy Cook said about the toxic effect of the testimony on the jury.

When a judge has psychologically joined the prosecution team as happened here, Lewin told the court, she can—and did—use her enormous leeway in discretionary rulings to influence the trial’s outcome.

### **WHY DID OTHER DEFENDANTS FILE FOR READE’S RECUSAL?**

Judge Smith asked whether trial counsel was aware of another Postville defendant, former Agriprocessors manager Martin DeLarosa, who had sought Judge Reade’s recusal long before Shalom Rubashkin stood trial. This defendant, too, had charged that Judge

Reade was excessively involved in the Postville prosecutions related to the immigration raid.

The judge’s implication, echoing one of the government’s key arguments, was that after the DeLarosa motion, how could Rubashkin’s attorneys claim they did not know about Judge Reade’s alleged involvement in the raid at the time of his trial?

Lewin responded by explaining that the two cases were completely different.

DeLarosa had pleaded guilty under an agreement with prosecutors to harboring undocumented immigrants. According to the *Des Moines Register*, his attorney, Thomas McQueen, said that despite the plea agreement, his client was calling for Judge Linda Reade to step down from his case before sentencing.

McQueen filed a motion questioning Reade’s impartiality. He argued that Reade worked with the federal government in organizing fast-track judicial proceedings for hundreds of defendants, and then presided over the cases. Her involvement with prosecutorial functions should have disqualified her from presiding, he said.

Reade refused to recuse herself, insisting that her cooperation with the U.S. Attorney’s Office did not compromise her impartiality.

The time frame in which this took place was several months after the 2008 raid. DeLarosa put up a good fight for Judge Reade’s recusal, but all he had to go on were his distinct impressions of collusion between the judge and law enforcement officials driving the criminal proceedings.

It would be almost two more years before the FOIA documents recording Reade’s extensive and secret pre-raid interactions with prosecutors would come to light, too late to help DeLarosa.

### **CONFUSING COOPERATION WITH COLLUSION?**

At the time, Lewin told the court, no one had any clue about Judge Reade’s profound involvement in the planning of the raid. No one suspected she was regarded as a “stakeholder” in the operation; and was routinely given updates about the “final game plan,” charging strategies and other subjects that went far beyond “logistics.”

Besides DeLarosa, another Agriprocessors defendant, Ms. Karina Freund, filed for Judge Reade’s recusal through her attorney, Mark Brown. Reade denied this motion as well. In her response, Reade said she was “simply performing her official duties,” and that the defendant “repeatedly confuses cooperation with collusion.”

It is telling that the attorneys for these two defendants, no doubt aware that motions for recusal tend to antagonize a judge and might unfavorably dispose her to their clients, went ahead with their motions for recusal.

Based only on what they observed of the judge’s zealous involvement in organizing the criminal prosecutions and then presiding over the trials, the attorneys felt she had compromised her neutrality.

What does this say about the likely reaction of the “average person on the street” confronted with a judge who has, in addition to orchestrating the criminal proceedings, helped over many months in planning the enforcement action that led to the arrests?

### **HOW IMPORTANT ARE WRITTEN RECORDS?**

Lewin stressed that while appearances suggested the judge was aligned with the prosecution, only a transcript would reveal precisely what was said at the meetings and that judicial experts consulted on the matter said the failure to record the meetings was a serious

breach of ethics.

Riley challenged that argument, saying that “judges often meet with prosecutors on matters relating to search and arrest warrants and no transcripts are kept on these meetings. “You’re asking us to write an opinion that would turn the system upside down. What distinguishes this case from others?”

The distinction, responded Lewin, is that in standard cases, even when no transcript exists, an affidavit showing “probable cause” is presented to a judge, is open to the public and is available for review. The complete “blackout” of information about what was said at the 12 meetings with Judge Reade is what distinguishes this case, Lewin said.

### HOW MUCH DID READE KNOW?

Judge Smith wanted to know what evidence existed that Judge Reade knew that the government raid would target Agriprocessors.

Lewin said that while the defense had no absolute proof, clear implications arise from statements in the ICE memoranda that Reade was informed of the raid’s target. One of the documents states that the U.S. Attorney’s office advised Judge Reade of the October 2007 “opening of a government worksite investigation of Agriprocessors, located in Postville, Iowa.”

Another document discusses an “Executive Summary” naming Agriprocessors as the target of the investigation that was to be shown to Assistant U.S. Attorney Richard Murphy and Judge Reade.

Later, when Assistant District Attorney Peter Deegan was presenting the government’s oral argument, Judge Smith asked him point blank whether Judge Reade knew that Agriprocessors would be targeted. “No, she did not,” said Deegan.

“How many meetings were there, in fact, between Judge Reade and the government prosecutors?” Judge Riley asked him. “I don’t know, I don’t know,” Deegan said, adding in the same breath, “I know there weren’t 12.”

It’s noteworthy that in contrast to Deegan’s denials, Judge Reade never challenged the factual assertions about the multiple meetings. In her order rejecting the defense’s new-trial motion, she denied only one of the “get-togethers”—that she had accompanied officials from the U.S. Attorney’s office to scout out the cattle fair grounds in Cedar Rapids as a possible makeshift courtroom.

On the rest she was silent, refusing to explain why so many meetings were necessary or what was discussed.

### FIRST TIME IN A HALF CENTURY

Lewin told the court that the Rubashkin case is the first time in fifty years of legal practice in which he has ever criticized a federal judge for the kind of ethical lapses for which the defense has condemned Judge Reade.

He said he is sensitive to the ramifications of putting a judge on the witness stand to defend her actions. The implications of improper conduct found in the government documents are so overwhelming, however, they call for an evidentiary hearing at which the facts surrounding the ex parte meetings can be made known.

At the very least, Lewin said, the appearance of partiality arising from the disclosure of these meetings mandate the remanding of the case to an impartial judge for review, and if necessary, re-sentencing.

### THE 27-YEAR SENTENCE

It was only in the last five minutes of his argument that Lewin was able to address the extraordinarily harsh and unreasonable prison sentence. He first argued that the money laundering counts that prosecutors used to ramp up the sentence an additional ten years should rightfully have been dropped.

Lewin cited the landmark Supreme Court “Santos” decision that ruled that only unlawful profits obtained from criminal activity can

be labeled money laundering.

There was no dispute, Lewin said, that payments to FBBC lender bank, despite being temporarily re-routed at times to keep the company viable, ultimately arrived at their proper destination. The jury ruled in a special interrogatory that the defendant did not benefit from any “proceeds” of the re-routing. Moreover, there were no claims that the bank suffered loss due to the brief delays.

### REDEFINING BANK’S LOSS AS FRAUD

Lewin also argued that the trial judge had made serious errors in the loss calculation that more than doubled the defendant’s sentence. As argued in the appeal brief, the trial judge, when calculating the sentence, erroneously used the figure \$26 million—the entire loan balance that the bank was unable to recover when Agriprocessors went bankrupt.

By redefining the bank’s loss as “fraud,” and prosecuting the defendant for the full loan balance, the judge arrived at a sentence that is grossly disproportionate with the crime, and with the sentences imposed on defendants in similar situations.

The loss figure should have been no more than the amount corresponding to the inflated collateral (false invoices) which totaled about \$10 million. The guideline range would then have been vastly lower.

Lewin argued that the judge’s refusal to take into consideration the defendant’s motive in the alleged offense as well as the many mitigating factors in the case, was unreasonable and a violation of the law.

“No matter the defendant’s motive, he committed the crime,” Judge Reade wrote in her sentencing order, effectively dismissing motive and other mitigating factors as of no consequence.

Lewin cited Sholom Mordechai’s legendary record of benevolence and community service, his desperate efforts to keep Agriprocessors from bankruptcy so that he could continue supplying kosher meat to Jewish communities; as well as his unusual family circumstances—being the father of ten children including an autistic son emotionally dependent on him. None of these factors were given any weight in the sentencing.

“In fact, Judge Reade in her Sentencing Order declared her intention, even if the appeals court would find her in error, to factor other “crimes” into her calculation,” Lewin told the court. “In the event she would be instructed to re-sentence the defendant, she resolved to calculate the same sentence, if not an even higher one.”

“If that’s the case, we are entitled at the very least to ask for a review of the case, or at least re-sentencing before an impartial judge who will approach the case with fairness,” Lewin concluded.

### BLUFFING HIS WAY THROUGH

Peter Deegan, Assistant United States Attorney from the Northern District of Iowa, then argued on behalf of the government. As if he hadn’t paid attention to or absorbed the earlier discussion that had left the government’s arguments discredited, Deegan blandly repeated them.

His presentation followed the style of his briefs—leaning heavily on obfuscation of the facts, as in misstating legal rulings and omitting the parts that contradicted his position.

“Defendant was given an opportunity to file for recusal and did not do so,” he began, trying to repackage the “motion-is-not-timely” argument that had moments before been left in tatters. “Under Rule 33, the motion for recusal has to be based on truly new information. And it has to show prejudice.”

The judges were not playing along. Chief Judge Riley broke in with, “The question is, did the defendant have sufficient information to move for recusal at the time? If he didn’t then but does now, according to my Fletcher opinion [cited earlier by Lewin], this is his

second chance to do it.”

Deegan tried his argument that “defendant’s new information is not new; it was raised by the DeLarosa motion,” but that too had been discussed earlier. Judge Riley drew on Lewin’s argument in disputing Deegan. “We’re talking about a case where you might know some things at the time, but you don’t know the depth and extent of it,” Riley said.

“Defendant doesn’t dispute that he knew about at least one meeting between the judge and law enforcement long before his trial,” Deegan rolled on, “If he knew about that meeting, he should have assumed there might be more.”

Judge Riley interjected that “one meeting is certainly different from 12.”

Deegan then cited a Supreme Court ruling which he said “does not authorize the re-opening of closed legislation using a recusal motion.” Judge Smith countered by stating that defense counsel was relying on a different “mechanism” to file a late recusal motion. “Why is that improper?” he challenged Deegan.

“Well, it seems to be at odds with what this court has said,” Deegan answered lamely, without elaborating on how that was the case.

### CAUGHT IN HIS OWN WEB?

Judge Riley wanted to know if Reade had the benefit of the Executive Summary cited in the ICE documents that named Agprocessors as the target of the immigration raid.

“No, you honor, there is no evidence that she did.”

“What is this Summary? I haven’t seen it,” Judge Riley said.

“I don’t know. I don’t know. I haven’t seen it either,” Deegan said, casting doubt on his assertion moments before that Judge Reade had not seen the document in question. If he hadn’t seen it and purportedly did not know what it was, how would he know whether or not Judge Reade had seen it?



Judge Murphy then asked, “If this was all just a matter of logistics as Judge Reade stated, then why could the government not have just dealt with an administrative clerk?”

Chief Judge Riley asked Deegan to address the claim that the sentence was excessive, adding that “the sentence does seem a bit high... After all, it wasn’t a violent crime and no one is claiming any potential for violence.”

Deegan responded that the sentence was high, but that it was consistent with the sentencing guidelines and, because of Rubashkin’s conduct, was well deserved.

With his other arguments in tatters, Deegan fell back on demonizing the defendant and inflating the facts. He claimed the defendant had obstructed justice by lying and destroying documents, and had also committed “tons of stuff” that Judge Reade could have used to even increase the sentence “but didn’t need to, because the 27-year sentence was sufficient.”

Judge Riley wanted to know if immigration violations “drove the sentence” as implied in Reade’s sentencing order. Deegan admitted they were very much a factor. “But he wasn’t convicted of immigration charges; the trial was over bank fraud,” Judge Riley asked.

“Because it was all part of the fraud,” Deegan said, lending weight to the defense claim that the immigration charges had hijacked the financial trial, wrongfully creating a trial within a trial.

### ‘SO MUCH SUPPORT .... SO UNJUSTLY MALIGNED’

With his five minutes of rebuttal, Lewin took Deegan sharply to task for quoting a paragraph of a Supreme Court ruling out of context to wrongfully bolster his claim that re-opening closed litigation with a recusal claim is not permitted.

“I’m sorry to have to say this about my colleague,” Lewin said, “but he clearly misled the court.” Lewin went on to read the full text of the Supreme Court ruling, which, in the interests of justice, clearly authorizes a late recusal motion.

Lewin concluded with a passionate plea for the court to view the case in its rightful light. He said that in his fifty years of legal practice he had “never defended someone with such overwhelming community support who had also been so unjustly maligned.”

“The Jewish community is very sensitive to actions of its members which bring it dishonor,” Lewin said. “It is not forgiving of conduct that casts it in a bad light. The community has nevertheless rallied behind Sholom Rubashin because they recognize that he has been dealt a terrible injustice.”

Far from being the terrible criminal painted by the prosecution and trial judge, the defendant is a person about whom even the government’s witnesses had only good things to say, Lewin told the court.

“Sholom Rubashkin was described in the trial record by a conglomerate of witnesses as kind, trustworthy, good to his word, honorable, compassionate, well-intentioned and hard-working,” Lewin told the judges, a tremor in his voice.

Lewin advised the court that in view of the substantial questions of law now raised about the case, he would submit a motion for bail pending the court’s decision on the appeal. The hearing concluded with Lewin’s heartfelt plea for Sholom Mordechai’s release pending the appeal’s outcome.

# Bail Motion Denied; Appeal Still Under Consideration

RUBASHKIN APPEAL UPDATE

BY DEBBIE MAIMON

Sholom Mordechai Rubashkin's motion for bail pending the outcome of his appeal has been denied by the 8th Circuit Court of Appeals. The Court handed down its decision in a brief sentence, before the defense could file its response to the government brief contesting the bail motion. The judges have not yet ruled on the appeal itself.

Although the 8th Circuit very seldom grants bail pending an appeal, the news dashed the hopes of many who felt this case had unusual merit and would justify a departure from routine.

Prosecutors had fought the motion for bail by insisting that the defendant's "flight risk" status had not changed, and by lifting from its earlier briefs a list of falsified obstruction-of-justice and witness-tampering charges. These cast Sholom Mordechai as a chronic lawbreaker who could not be trusted to honor the conditions of bail.

The fictitious allegations did not appear in the seven superseding indictments against Sholom Mordechai, nor was he ever charged in court with obstruction of justice or witness tampering. In addition, defense lawyers pinpointed the distortions of truth, the devious innuendos and the outright inventions in the allegations.

Nevertheless, these charges were incorporated into the government's sentencing memorandum and thereby enshrined as facts in the record. Judge Reade used them to add on additional years to Sholom Mordechai's sentence.

Subsequent government briefs challenging the "new-trial" motion and the appeal have consistently exploited the false charges in the attempt to paint Sholom Mordechai as an incorrigible criminal. This has proved extraordinarily effective in deflecting attention from the merits of his case.

"Although [the character defamation] has no relevance to the appeal and to the issues before this Court, the government's brief deliberately besmirches the Appellant at every turn with refuted, unsubstantiated and incredible allegations," the Rubashkin appeal brief of January 2011 had protested.

The character-lynching dominates the latest government brief as well. Here, too, vicious character defamation, lifted word for word from the March brief, was employed to cast the defendant as a remorseless criminal who could not be trusted.

## GOVERNMENT UNABLE TO CHALLENGE KEY ARGUMENT

Calling the Court's decision "disappointing," the defense still trusts that the 8th Circuit judges will weigh the appeal on the merits. The lawyers note that mudslinging aside, the government's brief offered no challenge at all to the bail motion's key argument, and was reduced to quibbling over semantics.

The bail motion argued that a defendant with no history of violence, and no danger of being a flight risk, should be released on bail when the appeal raises "a substantial question of law" likely to result in a new trial.

The "question of law" may be allegations of serious legal errors in how the trial was conducted, or claims of prosecutorial or judicial misconduct that invalidate the trial.

The defendant's oral arguments satisfied these conditions, the motion for bail said, citing at least 12 private, unrecorded meetings between Judge Linda Reade and law enforcement officials, as well as erroneous rulings during the trial that prejudiced the jury against Sholom Mordechai.

Faced with irrefutable evidence of ex parte meetings in the ICE documents, the government could not contest them, and instead quibbled absurdly over the word "meetings."

"Defendant is wrong," the government brief protested, noting that in five places in the ICE documents where private communications between prosecutors and Judge Reade are cited by the defense, the actual word "meeting" is not specified.

How then could attorney Nathan Lewin have told the Appeals Court that there were at least 12 meetings, when the reference is to "briefings," "discussions" and "communications"?

## CLASSIC RED HERRING

This is a classic "red-herring": creating a diversion from the true issue by throwing in an irrelevant, and, in this case, ludicrous objection. Where does the government want us to imagine these private, unrecorded ex parte communications happened if not at "meetings?"

Suppose they were by phone, teleconference, email, web cam or any other conceivable format or venue. Does it make the slightest difference?

Furthermore, briefings and interactions between the judge and the U.S. Attorney's Office about the planned raid that were not transmitted at official meetings, actually invite even more suspicion.

If classified information that should not have been transmitted to the trial judge at all was delivered by the U.S. Attorney's Office in private and secret talks in an informal setting, that is even more troubling.

The government objects to the word "meetings" as a catch-all term. Yet this actually casts them in a more benign light than they perhaps warrant.

## A CLOSER LOOK AT THE SECRET MEETINGS

The same government brief that attempts to cast doubt on the

five places where “meeting” is not specified, is silent about the remaining 7 ex parte interactions explicitly recorded as meetings in the ICE documents. That silence is akin to admission.

The government’s implicit admission is very important because the ICE documents in a number of places contradict Judge Reade’s statements about her participation in planning the raid, and what she knew about the raid’s intended targets.

Reade denied having performed any functions that fall within the executive branch [i.e. law enforcement]. She denied being told where the raid would occur and who it would target. She insisted her involvement was limited to cooperation and logistics.

Statements in the ICE memoranda tell a different story. They project an image of a federal judge taking an organizational role in the immigration raid; attending weekly meetings; personally requesting a meeting with personnel from the many branches of law enforcement who would participate in the raid; and requesting updates and final game plans.

Judge Linda Reade is seen as working very closely with the U.S. Attorney’s Office which in turn had joined forces with ICE in carrying out the operation against Agriprocessors.

Most troubling, the documents suggest that Judge Reade was involved in the crafting the final plea deals that the arrestees were virtually coerced into signing.

Below are some of the statements recorded in the ICE memoranda that cast doubt on Judge Reade’s credibility:

### **MARCH 17, 2008**

“On March 17, 2008, RAC Cedar Rapids (special agent in charge of raid planning) met with the U.S. Attorney’s Office, U.S. Probation, the USMS, and with the U.S. Magistrate Judge and Chief District Court Judge Linda Reade.

“The parties discussed an overview of charging strategies, numbers of anticipated arrests and prosecutions, logistics ... and other issues related to the [Agriprocessors] investigation and operation.”

### **MARCH 20, 2008**

“We have been advised of several developments that require us to get together. The Chief Judge has indicates she wants a final game plan in two weeks. (April 4)”

### **MARCH 31, 2008**

“There was a meeting today regarding the Agriprocessors operation. The First Assistant U.S. Attorney Richard Murphy indicated that he has a meeting this Friday (April 4) with the Chief Judge Linda Reade who has requested a briefing on how the operation will be conducted. Murphy has conducted an operation plan with ICE ... so that he can incorporate it into his presentation.”

### **APRIL 2, 2008**

“What is the status of our operational plan? Where are we on the documents for the U.S. Attorney’s Office Rich Murphy for his presentation to the Judge?”

### **APRIL 2, 2008**

“The Executive Summary of the operation will satisfy Richard Murphy’s requirement to brief the judge.”

### **SMOKING GUN**

The documents above indicate that six weeks before the May 12 immigration raid, Judge Reade was demanding an overview of

the entire law enforcement operation from the U.S. Attorney’s Office, which in turn, requested the same from ICE officials.

This report is referred to in the ICE documents as the Executive Summary, singled out in the appeal as highly incriminatory due to its explicit, detailed information about the planned raid on Agriprocessors.

If the Executive Report was shown to Judge Reade, as the documents indicate it was meant for, her claim that she had no knowledge of whom the raid was targeting and where it would occur is patently false.

Asked by Chief Judge Riley at the June 15 appeal hearing what the Executive Summary referred to in defense papers is about, U.S. Attorney Peter Deegan, who gave the government’s oral arguments, said he didn’t know.

Judge Riley: What is this Executive Summary? I haven’t read it.

Deegan: I don’t know. I haven’t either. Neither has Judge Reade.

Here are excerpts from the opening paragraphs of the Executive Summary:

“On October 1, 2007, the RAC Cedar Rapids opened a worksite investigation relating to Agriprocessors, Inc. located in Postville, Iowa. Agriprocessors is a kosher and non-kosher meat processing plant.

“In coordination with the U.S. Attorney’s Office, and the U.S. District Court in the Northern District of Iowa [presided over by Judge Reade], the RAC Cedar Rapids is planning a worksite enforcement operation at Agriprocessors, Inc. This operation is in furtherance of the criminal investigation and prosecution of the corporation for knowingly hiring and harboring undocumented workers.

“The operation will include the execution of criminal arrest warrants for at least one corporate official. In addition, the U.S. Attorney’s Office has indicated they will prosecute every individual amenable to criminal prosecution...”

How plausible is it that U.S. Attorney Deegan never read this “smoking gun” document, attached as an exhibit in Sholom Mordechai’s Rule 33 motion and in the defense appeal? And how likely is it that even if, as he told Chief Riley, he didn’t know what it is and never read it, he could be certain that Judge Reade had never read it?

Imagine a scenario in which Deegan tells Reade: “The defense brief says you must have known about Agriprocessors because it’s in the Executive Summary that the ICE people gave Rich Murphy, in response to your request for a final game plan. Did you ever read it?”

What would Judge Reade have answered? “No, and I have no intention of doing so. Who cares what it says?”

Or “Show it to me. I missed it in the defense papers.”

Or, “Of course I read it. But let them try to prove I read it back in 2008.”

Even with all that we do not know about the hidden interactions in the Rubashkin case, there is enough that we do know today that reeks of something rotten at the core. The only way the public will ever learn the truth is if the façade is ripped off the duplicity, falsehood and implausible claims in the government’s representations.

That will only happen if the Appeals Court decides to order “discovery” and evidentiary hearings, at which all those in possession of the facts will be required to testify under oath. Let us hope that this will indeed happen, opening the door to a fuller understanding of, and resolution to, the bitter Rubashkin saga.

# Making the Appeal Count

BY DEBBIE MAIMON

Dubious claims made in the government's oral arguments before the 8<sup>th</sup> Circuit Court of Appeals at the Rubashkin appeal hearing continue to roil followers of the case.

Key assertions by Assistant U.S. Attorney Peter Deegan in response to questions from Chief Judge Riley replay in one's memory, raising troubling doubts about the credibility of the statements.

**Judge Riley:** Mr. Deegan, this Executive Summary that identified Agriprocessors as the target of the raid....Did Judge Reade have the benefit of that information?

**Deegan:** No, your honor, there is no evidence that she did.

**Riley:** What is the Executive Summary? I haven't seen it.

**Deegan:** I haven't seen it either. I don't know. I don't know.

The government had asserted in its brief to the 8<sup>th</sup> Circuit that the Executive Summary, which contained ICE's operation plan for the Agriprocessors' raid, was never shown to Judge Reade, and that she therefore did not know the target of the raid.

This is improbable, appellate attorney Nathan Lewin pointed out at the June 15 appeal hearing, because the ICE memoranda report that Judge Reade frequently asked for this document. Implicit in the ICE records is the fact that Reade's requests for detailed information about the operation plan spurred the U.S. Attorney's Office to press ICE officials for the document.

According to the ICE memoranda, ICE officials complied with the U.S. Attorney Office's request. Higher-ups directed subordinates to show the Executive Summary, which included the operation plan, to Assistant U.S. Attorney Richard Murphy so that he could "incorporate it into his report to the judge."

Yet Assistant U.S. Attorney Deegan (echoing the assertions of both his superior, Richard Murphy and Judge Reade) explicitly denied that Reade was aware of information about Agriprocessors that was splashed all over the operation plan. Deegan denied that she had read the Executive Summary.

Will the public ever learn the truth about what Judge Reade knew and when she knew it? Much depends on the 8<sup>th</sup> Circuit's ruling on the Rubashkin appeal.

As the public awaits the Court's ruling, hopes for a favorable decision remain strong in the Rubashkin family. This is evidenced by the vibrant trust in Hashem flowing through letters from Sholom Mordechai to his children and his deep belief that His rescuing help is imminent.

Letters leading up to the June 15<sup>th</sup> appeal hearing are infused with uplifting thoughts about the upcoming *yom tov* of *Shavuos*. Letters following the disappointment of the bail denial a few days later flow with loving encouragement and certainty that Hashem is in complete charge, that everything He does is for one's good, and that the most important

The following excerpts have been shared with *Yated*.

## 'IN YOUR HANDS IS MY TIME'

Dear *Kinderlach Sheyichyu*,

It's *erev Shavuos*, and we are about to receive Hashem's most precious gift, the *Torah Hakedosha*. This year, *Shavuos* falls out on exactly the same days as last year, which makes the memories of what happened to me last year at this time extremely vivid. I don't want to make you sad by reminding you but I do want to express my overwhelming gratitude to Him.

Thank You, *Hakodosh Boruch Hu* for the infinite *chesed* and *rahamim* you showed me one year ago, at this exact time. I remember being in the hospital, where I was treated for a serious infection that spread from cuts and wounds on my hand caused by being beaten and dragged through the county jail. My *yarmulke* and *tzitzis* had been forcibly removed... there was no kosher food... I was put into a dirty solitary confinement cell for being "defiant."

Preliminary hearings for the trial had already started but I was in terrible shape for the trial itself. As I lay in the hospital, with my feet chained and one hand connected to intravenous... it seemed that I was totally alone, because nobody in the family knew where I was and what had happened to me. I had no *siddur* or *tikun* for *leil Shavuos*.

I thought about how the state had charged me with 9311 counts of employing minors and exposing them to dangerous conditions. Shortly before the trial started, they dropped over ninety percent of the charges. All this was going through my mind over *Shavuos* as I lay in the hospital. I had no phone and could not even talk to Mommy and consult with her about my medical situation.

A Yid who has *bitochon* is never alone. *Boruch Hashem*, I was healed enough by the Friday after *Shavuos* to be released. They took me straight from the hospital to the court to continue the trial. Days and weeks passed. To our great rejoicing, the outcome was a verdict of "not guilty" on all counts. The victory healed me spiritually, because the child labor charges were an attack on my humanity.

I believe the *achdus* and *ahavas Yisroel* among Yidden who were *davening* and doing *hishtadlus* for me was directly responsible for this part of the *yeshua*. It is always so *mechazek* me.

Now a year has passed. I have complete *bitochon* in Hashem that I will be released from prison very soon, and we will be reunited to serve Hashem at home, in freedom. And that we will be able to greet *Moshiach Tzidkeinu* together *b'simcha*, *bm'hairah biyomeinu*.

*Kinderlach*, the important thing to keep in mind on *Shavuos* is that on this *yom tov* we became complete *avodim* of Hashem *Yisborach*. The most important *midah* in being an *eved Hashem* is *bitachon*, so let's learn about this wonderful *midah* and force in the life of a Yid.

Our *bitachon* and trust in Him is in direct proportion to our leaning

*Will the public ever learn  
the truth about what  
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when she knew it?*

Torah and coming to recognize His protective care over every aspect of our lives.

The *Chovos Halevovos* teaches us in *Shaar Habitachon* that when we become too involved with what seems to be the immediate cause or instrument afflicting us, we don't realize that the closer the instrument is, the weaker it is and the least able to help us out of the *tzoroh*. Yet we often appeal to that instrument instead of to the only One who can help us.

Here's a *moshol*: If a king wants to punish one of his servants, he gives an order to his deputy; the deputy orders the commander; the commander gives it over to the officer; the officer orders the sergeant, the sergeant orders the policeman and the policeman inflicts the punishment with instruments reserved for this purpose.

The punishment seems to come from the instruments, yet it would serve no purpose to appeal to them—they are inanimate with no will of their own.

The policeman has some power and the sergeant even more. The commander is higher than both, and the deputy king who is very far removed from the punishment and less visible than the subordinates, is much more powerful than all of these.

Yet it is only the king who can bring about the servant's total rescue from punishment. He alone can grant a full pardon. This is how we must perceive things when troubles overcome us. We have direct line of appeal to the One Above and must use it.

This is the lesson of *Shavuos*; we need to study Torah and the mitzvah of *bitochon* until we know in our deepest hearts that it is only Hashem we are turning to for help and Him alone whom we trust. We will not become distracted with the "instruments" and the many ministers the king uses. They have their uses but only Hashem has power.

*A guten yom tov, besuros tovos,  
B'ahava,  
Tatty*

Dear Kinderlach Sheyichyu,  
In this week's *Parshas Behaloscha*, we

learn how the *Yidden* traveled from place to place as they went through the dry, desolate *midbar* on their way to Eretz Yisroel. The *pasuk* points out that some stops were as short as one day and some encampments were much longer, as long as 8-19 years.

What determined the length of the time spent was the will of Hashem. The *posuk* says, *Al pi Hashem yachanu, al pi Hashem yiso'u*. The *Yidden* were following Hashem's direction in terms of the time needed at any single place.

Take a minute and imagine the type of work that went into every place they stopped. They had to construct the *mishkan* and put in all the *keilim*, prepare the *korbonos* and more. All of this effort was done immediately upon arrival, and they never knew on one day if they would be there the next. Yet the *Yidden* knew that in whatever place they found themselves, however short or long a time, they must make it a place where they could serve Hashem and make sure that it

would be a place where He would rest his *shechinah* with them.

The lesson is clear. The length of time a *Yid* remains in any place is in the hands of Hashem. In *Tehillim*, Dovid Hamelech says, "*Beyodcha itosai*," in Your hands is my time.

The only concern a *Yid* has is to make the place he finds himself in, a place where the *shechina* could be there with him. Even in this dark cold desert filled with *klipah* where I am now, a *Yid* must serve Hashem in the same full measure, with all the *keilim* of his personal *mishkan*, with every fiber of his being. Hashem will then guide him and take him out of the desert and bring him to *tohav urchovoh*.

*Yehi ratzon* that the time here in this desert should be finished and Hashem in His *chesed* and *rachamim* should lift me up and bring me home together with all of you, and together with Klal Yisroel.

*B'ahava,  
Tatty*



# When The Media Circus Came To Town

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BY DEBBIE MAIMON

The world has just witnessed a sensationalized murder trial in Orlando, Florida, in which the American justice system has been vindicated in a most dramatic way.

The Casey Anthony debacle is a cautionary tale about the power of an uncurbed press and the social media networks to make a mockery of the justice system.

Thinking people applaud the fact that in the face of overwhelming pressure to convict, a jury found the courage to uphold the Constitution that grants every citizen the presumption of innocence, and obligates the state to prove guilt beyond all reasonable doubt.

In the face of a media lynching so vicious and relentless that it transformed a local case about an unknown defendant into a national fixation, a guilty verdict was declared all but certain. Yet, the jury did not follow the script. It found the defendant, a young woman accused of murdering her two-year old, not guilty.

The verdict stunned hundreds of thousands of trial watchers. The 22-year-old defendant, exposed as a practiced liar, would have faced the death penalty had she been convicted. Instead, she will now walk free.

## A LURID NARRATIVE UNSUPPORTED BY EVIDENCE

Driving the not-guilty verdict, despite indications of foul play on the defendant's part, was a simple truth: the absence of evidence. No witnesses, DNA or fingerprints linked the woman to the child's death. And no conclusive evidence was brought to prove the death was a murder, as opposed to a horrible accident.

The case was purely circumstantial, with prosecutors forced to weave a lurid narrative based on speculation to fill in the gaps where facts were missing.

The news and social media sold that narrative to the public with live-streaming coverage of the trial and inflammatory commentary that abandoned all pretense at neutrality. Pervading the coverage was a knee-jerk presumption of guilt.

The public seethed with outrage at the verdict. Journalists and commentators who had gone out on a limb by siding with the prosecutors were especially infuriated. Angry crowds mobbed outside the courthouse after the verdict was read, howling that justice had been denied.

The spectacle was a chilling reminder of the power of a hate-spewing media to manipulate the masses for its own ends - higher ratings and surging profits for its advertisers. It was also a barometer showing how dangerously close to lunacy otherwise normal people can be driven.

## DEATH THREATS

The media had incited the public to such a fever pitch that au-

thorities say death threats aimed at the defendant and her parents, and even at the jurors in the trial, were being taken seriously. One commentator wrote that the ugly excesses "were reminiscent of the hate-spewing propaganda of Joseph Goebbels, Hitler's evil propaganda minister."

In the face of such a massive incendiary rush to judgment, it is truly extraordinary that a jury found the courage and integrity to arrive at their verdict.

"The verdict does not mean we think the defendant is innocent," one juror explained in a media interview. "It means that the evidence was not sufficient to prove she was guilty of murder beyond a reasonable doubt."

In a free society, journalists have no business becoming self-appointed jurors or judges. Nor do the rabble in the streets. Yet, even before the jury retired, cable TV hosts and panelists, mainly lawyers, former prosecutors, judges and defense attorneys who dominate America's airwaves nowadays, reached their verdict before tens of millions of viewers: guilty.

## SKEWED NOTIONS OF JUSTICE

In the courtroom, minutes after the not guilty verdict was read, the defense attorney pinpointed the danger of trial by media in a searing critique: "We have the greatest Constitution in the world, and if the media and other members of the public do not respect it, it will become meaningless."

The protestors outside the courtroom as well as media mouthpieces all claimed to be clamoring for justice. But for thinking people, a criminal justice trial is not about doing justice to the wronged. It is about proving guilt beyond a reasonable doubt.

"A criminal trial is never about seeking justice for the victim," wrote Professor Alan Dershowitz in a *Wall Street Journal* op-ed. "That's because only one person is on trial in a criminal case, and if that one person is acquitted, then by definition there can be no justice for the victim in that trial."

"In a murder trial, the state accuses an individual of being the perpetrator of a dastardly act against a victim. The state must prove that accusation by admissible evidence and beyond a reasonable doubt."

The noted legal expert drew a distinction between a proper legal result and a morally correct one. "Even if it is 'likely' or 'probable' that a defendant committed the murder, he must be acquitted," Dershowitz wrote, "because neither 'likely' nor 'probable' satisfies the daunting standard of proof beyond a reasonable doubt."

But shouldn't the law ensure justice? How can a law that does not administer justice to the victim be moral and proper? The obvious answer is that absolute justice is solely G-d's domain. Human beings, with the best of intentions, can only judge by the evidence. It is thus

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often impossible for justice and the law to coincide.

#### **IT'S ABOUT THE EVIDENCE**

Underpinning Western justice is the conviction that it is better for 10 guilty defendants to go free than for one innocent defendant to be wrongly convicted. So if juries have to err, better to err on the side of exonerating a guilty defendant rather than imprisoning or executing an innocent one.

“[In the Florida murder trial], there was no evidence of a cause of death, the time of death, or the circumstances surrounding the actual death of this young girl,” Dershowitz wrote in his op-ed. “There was sufficient circumstantial evidence from which the jury could have inferred homicide. But a reasonable jury could also have rejected that conclusion, as this jury apparently did.”

At the end of the day, a criminal trial is not about who is the better lawyer - at least it shouldn't be. It should be about the evidence. “The evidence in this case left a reasonable doubt in the mind of all of the jurors. The system worked,” concluded Dershowitz.

#### **THE ANTHONY TRIAL AND THE RUBASHKIN CASE**

Although factually utterly different, the Casey Anthony trial and the Rubashkin case share an alarming element: the rush to judgment amid a vicious public smear campaign.

Long before Sholom Mordechai Rubashkin stood trial for bank fraud, the public “knew” he was someone who exploited his employees and willingly hired adolescents to wield knives and lug heavy carcasses of kosher slaughtered animals.

The public also “knew” that he was someone who disdained the law; after all, he had the audacity to finance the purchase of false immigration papers a few days before his meat-packing plant was raided, did he not?

#### **GOVERNMENT MEDIA LEAKS**

How did the public “know” all this? Months of character assault by a union that had unsuccessfully tried to represent the workers at Agriprocessors; malicious and false reports by a Jewish weekly; and

a string of lies peddled by Conservative rabbis aiming for a piece of the *kashrus* industry succeeded in engraving in the public's mind a perverted portrait of Sholom Mordechai Rubashkin.

Government media leaks built on this perception in the months leading up to his trial.

At the trial, Prosecutor Peter Deegan had merely to wave before the jury a cancelled check for \$4,500 signed by Sholom Mordechai. Jurors were asked to infer that this was payment made by the defendant to purchase false documents for some employees “after a secret meeting behind the barn.”

Sholom Mordechai himself, on the witness stand, explained that the money was a loan to help a number of employees through a financial crunch. But months of media leaks had done their job. Deegan's closing remarks to the jurors cemented the impression of Sholom Mordechai as a conniving lawbreaker.

Let's recall Deegan's closing remarks: “Remember, ladies and gentlemen, first defendant meets with Brent Beebe out by the barns. Okay. Carlos told you about it. Laura Althouse told you about it. Defendant meets with Beebe and they have one of those conversations that no one can hear.”

If no one could hear, how does anyone know what was said? Tellingly, Brent Beebe, the individual who met with Sholom Mordechai, was never called by the government to testify about what they spoke about. His narrative would not have fit the prosecutor's script. As for former employees Carlos and Althouse, both testified they did not know what was discussed.

Yet, the government's sinister allegations about Sholom Mordechai pushing money at employees to finance false documents fell on fertile ground. The jury relied on this “evidence” in its findings of fraud. This totally unsupported allegation was repeated in every government brief about the case.

#### **“MEETINGS THAT NO ONE CAN HEAR”**

One is tempted to use Deegan's own suggestive language about “meetings that no one can hear” when it comes to the many meetings that the U.S. Attorney's Office had with Judge Linda Reade during the months leading up to the ICE raid on Agriprocessors.

These secret, unrecorded meetings between the executive and judiciary are the basis for the defense's argument that Sholom Mordechai is entitled to a new trial with an impartial judge.

Imagine the appellate team telling the 8<sup>th</sup> Circuit judges that the ICE documents report meetings between Judge Reade and the Assistant U.S. Attorney's Office on October 10, 2007; October 17, 2007; November 14, 2007; January 25, 2008; March 17, 2008; and April 14, 2008. All these meetings are on the subject of the planned raid on Agriprocessors.

The documents call Judge Reade a “stakeholder” in the raid, and cast her in a supervisory and managerial role.

Appellate attorneys did in fact call the attention of the 8<sup>th</sup> Circuit justices to these clandestine meetings in their appeal brief. Attorney Nathan Lewin focused his presentation on them at the June 15 appeal hearing. He cited the pages on which this information can be found in the ICE documents.

Yet, when the judges asked Peter Deegan, who gave oral arguments for the government, if Reade knew that Agriprocessors was the target of the raid, Deegan emphatically denied it.

He insisted that nowhere in the ICE memoranda can one find the “slightest inference” that Reade knew this information.

From all those meetings that ICE inadvertently recorded, never realizing that these memoranda would open a window into the collusion between Judge Reade and the U.S. Attorney's Office, one can find not “even the slightest inference” that Judge Reade was in the know?”

Does the government take everyone for complete fools?

# Anti-Immigration Bill Could Drive Farmers Out of Business

RUBASHKIN'S CATCH-22

BY DEBBIE MAIMON

With thousands of Americans out of work, the mood in the country is increasingly hostile toward illegal immigrants, who many say are taking jobs that Americans need.

Urged on by these sentiments, Republican legislators are pushing a controversial new law that critics say threatens farmers - and American freedoms.

The bill, about to be taken up by the House, would require employers to confirm the legal status of every applicant, using an electronic system known as E-Verify, with the aim of rooting out undocumented aliens.

The law would require employers to use the federal government's Social Security databases to determine if an applicant is authorized to work in this country. It's a simple procedure on the surface. Employers type in the person's Social Security Number to verify that he or she is legally eligible for employment.

Instead of curbing illegal immigration by tightening border and visa control, the bill would be putting the burden of control almost exclusively on business owners.

Proponents hail the measure as a promising tool to uncover illegal aliens and open up jobs for unemployed Americans. But critics say the E-Verify system is flawed and inaccurate, and will likely cause more harm than good.

## PLAGUED BY INACCURATE DATA

They say the bill signals the emergence of a "surveillance state," in which the federal government would be allowed an unprecedented level of monitoring over citizens' lives.

This would be bad enough if the E-Verify program were reliable, opponents say. But experts who have studied the internal Social Security apparatus on which E-Verify is based say it is plagued by inaccurate records and is vulnerable to identity theft and employer fraud.

A study by the Department of Homeland Security found that E-Verify was only able to ferret out undocumented immigrants 46 percent of the time, as it is unable to determine when a worker is using fraudulent identity information.

If E-Verify is implemented, many eligible workers would find themselves unauthorized to work due to glitches in the system that could take days and even weeks to correct. The legislation allows an applicant who has been disqualified by E-Verify only eight days to prove the system was in error, or be subject to being fired or rejected for employment.

The wide margin of error, with the financial losses it forces on individual workers and their families, is wholly unacceptable, opponents say.

## DO IMMIGRANTS STEAL JOBS?

The E-Verify bill was introduced in May by U.S. Rep. Lamar Smith (R-Texas), chairman of the House Judiciary Committee. The system has been in use since 1986, but on an optional basis. Smith's bill would make it a requirement, and there could be criminal penalties for employers.

"With unemployment at 9%, jobs are scarce," Smith said in a statement when he introduced the bill. "Despite record unemployment, 7 million people work in the U.S. illegally. Those are jobs that should rightfully go to legal citizens," he said.

Although Congress has yet to pass the E-Verify bill - and with Democrats in control of the Senate, passage is doubtful - some states are going ahead on their own. The U.S. Supreme Court recently upheld Arizona's E-Verify law. Other states, such as Georgia, Mississippi and Utah, have enacted their own E-Verify laws.

Opponents say that until the federal government closes all the loopholes, there should be no legislation mandating the use of E-Verify. Employers should not be saddled with a verification tool that doesn't work. And thousands of Americans should not lose their jobs because of data errors.

How sound is the claim that immigrants are stealing American jobs, a key complaint of anti-immigration forces?

Many scoff at this notion, saying that regardless of high unemployment, few American workers are willing to do the work performed by undocumented workers, even if wages were to be raised.

Farm owners and advocates in the agriculture industry are adamant on this point. "Americans - even people desperate for a job - don't want to do strenuous farm work under a blazing sun," Paul Wenger, president of the California Farm Bureau, said in a *New York Times* article. "They don't want to pick berries. They don't want to pick lettuce. They'll show up for a week and two and then quit. They just don't want to do the work."

A recent Oregon University study concluded that a removal of large numbers of undocumented workers, supposedly clearing the way for jobless Americans to find work, would not significantly reduce the unemployment rate. As one member of the committee put it, "Your average American who finds himself unemployed will not milk cows or dig ditches."

## FARMERS FIGHT

Farmers across the country are rallying to fight the bill. They say the E-Verify law would drive them out of business by causing serious labor shortages. The farmers say the proposed new law could cripple a \$390 billion industry that relies on hundreds of

thousands of willing, low-wage immigrant workers to pick, sort and package produce.

“This would be an emergency, a dire, dire situation,” Nancy Foster, president of the U.S. Apple Association, is quoted as telling the *New York Times*. She said the prospect of an E-Verify check would scare off immigrant workers. “They would simply not show up to work. We will end up closing down.”

Thousands of farmers nationwide who rely on illegal labor to harvest their crops are in the same situation.

In an article in *The Columbian*, a Washington-based paper, Steve Sakuma, co-owner of Sakoma Brothers Farms, candidly admitted that about 80 percent of his largely Mexican workforce are in the country illegally, even though they had provided him with the necessary documents.

Like countless other farmers nationwide who rely on illegal labor to harvest their crops, Sakuma fears that he’d promptly go out of business if Congress forced employers to electronically verify the legal status of their employees.

“These illegal immigrants are here doing what other people won’t do,” Sakuma said. “If you think that white America is going to come out here and pick these strawberries, you have been living in the dark for a long time.”

#### DEPORTED WORKERS RETURNED - WITH NEW NAMES

Sakuma said the immigration system is so broken, it is impossible to take it seriously. To make the point, he told a story about how his farm was raided a few years ago by federal authorities, who found that some of his employees were in the country illegally.

“They hauled them down to the border,” Sakuma said. “Three days

later, they were back in our office, but they had a different name and a different Social Security number!”

In the *Columbian* article, Sakuma recalled consulting with two immigration lawyers in Seattle about this comical predicament.

“Both of them told me the same thing: ‘You have no choice but to hire them back. If they provide you with a name, and they provide you a Social Security number, you have no choice but to believe them.’”

With so many politicians talking about border security, Sakuma said he worries that Congress will pass the mandatory E-Verify legislation. He just wants members to consider the consequences on farmers across the country.

“I’m being totally honest with you, Sakuma said. “Because I believe - I don’t know this for a fact, because as far as I’m concerned they’re all legally documented - but it’s my belief that 80 percent of them don’t have the right kind of documentation. You take away 80 percent of my workforce and it’s goodbye. If they had E-Verify here, you’d shut us down. Absolutely.”

#### IT’S ABOUT COMMITMENT

Wisconsin dairy farmers David and Deborah Reinhart spoke about a similar predicament in the *News Tribune*, a Wisconsin paper. They said they started hiring Mexican immigrants 11 years ago, when they couldn’t find enough local workers to help them milk the cows around-the-clock.

Reinhart said he believed the “new wave of immigrants” would continue the American story of arrival, hard work, settlement and assimilation - like their own immigrant ancestors.

For a while, things were fine. But as immigration has grown into a political lightning rod, the Reinharts, like other farmers across the country, find themselves in a precarious situation.



“The reason I have immigrant workers is not about the cost of paying them - we will pay what they’re worth - but the immigrant workforce has a commitment to the job that you can’t find in the local labor market,” Reinhart said.

“Right now, dairy is the No. 1 industry in Wisconsin. If it catches a cough, the economy gets the flu.”

### FORCING FOOD IMPORTS

As he sees it, there are only two choices: “Your food will be produced by a foreign worker in this country - or it will be produced and imported from another country.”

Critics of the bill say Americans will only understand the impact of the bill on agriculture after it’s been in use for a while and prices begin soaring.

The bill will put food production in this country at risk, Reinhart says. “If we allow food to go offshore like we have other products, because foreign imports are cheaper, we will become a second-class world power.”

“We’re scared,” the Reinharts admitted. “We might be breaking the law, but we don’t know it,” Reinhart said. “We would never break the law, but it’s close. All we’re trying to do is manage a business and feed the world, and here we find ourselves in a terrible kettle of fish.”

### CANDID ADMISSIONS

The Sekuma brothers in Washington and the Reinharts in Wisconsin reflect the reality of countless farmers and business owners. In a moment of startling candidness, they admitted in media interviews that the bulk of their workforce is almost certainly illegal. Their defense is that they suspect it but don’t clearly know.

While employers must fill out and keep on file what are called

I-9 forms, attesting to the employees work eligibility, it technically has not been the employer’s responsibility to verify these documents. They are filled with legalese that it takes a specialist in I-9s to understand.

Not only that, but employers who examine things too closely can get themselves into hot water with the Justice Department.

The DOJ just last week filed a lawsuit against Mar-Jac Poultry Inc., a poultry processing plant in Gainesville, Georgia. Prosecutors allege that Mar-Jac engages in “discriminatory conduct” against immigrants by requiring them to produce additional documentation during the I-9 process proving their eligibility to work in the United States.

The company’s owners were trying to stay on the right side of the law by nailing down which of their employees were legal. It didn’t help. They fell afoul of other laws contradicting the laws they were trying to uphold.

### THE RUBASHKIN CATCH-22

No one knows the Catch-22 in this absurd situation better than Sholom Mordechai Rubashkin, who, as manager of the former Agriprocessors, not only had a system put into place to screen out illegals, but hired specialists in I-9 forms who could detect forged or fake documents.

Mindful of anti-discrimination laws, he also hired a “facial expert” who could discern the true ages of Hispanic workers whom his human resources managers suspected were underage, but from whom they were not permitted to demand additional documentation.

Despite these expensive measures and precautions, the federal government prosecuted Sholom Mordechai with unprecedented ferocity, after raiding the meat-packing plant and finding hundreds of workers with invalid or fake papers.

His financial trial was filled with ridiculous allegations that he had financed the purchase of false papers and that he had “gathered up I-9 forms” and hidden them ICE investigators when the company was raided.

The fact that high-priced specialists from a leading immigration firm were in the office carefully screening out false I-9s on the very day of the raid powerfully refuted the prosecutors’ claims. But in one of the most prejudicial and harmful moves by the trial judge, Sholom Mordechai was prevented from defending himself by citing the presence of the specialists.

Judge Linda Reade, siding with the prosecutors who objected to the evidence, barred it from the jury.

At the June 15 appeal hearing in St. Louis, Chief Judge Riley asked Assistant U.S Attorney Peter Deegan if the outlandish 27-year prison sentence imposed on Sholom Mordechai “was driven by the immigration charges.”

Deegan answered in the affirmative, saying the immigration violations were all “part of the bank fraud.”

It is hard to imagine a more vivid illustration of fraud than that statement. One can only hope that the 8<sup>th</sup> Circuit Court of Appeals will grant Sholom Mordechai his constitutional right to a fair trial, where fraud has no place and federal prosecutors are forced to play by the rules.



# Postville: Iowa's Dirty Secret

BY DEBBIE MAIMON

In a disturbing story of religious bigotry in heartland America, city officials in Postville, Iowa, were accused in a federal lawsuit of driving a Jewish businessman to financial ruin after years of anti-Semitic harassment and discrimination.

The case, with its potential for bringing disgrace to Postville's elected officials, was kept out of the headlines by an out-of-court settlement finalized this week.

Gabay Menachem, a religious Jew residing in Postville, alleged that three members of the Postville City Council, City Clerk Darcy Radloff, Virginia Medberry and Jeff Reinhardt, had routinely discriminated against him and his business, GAL Investments, because of his Jewish faith.

The allegations were based on hostile, injurious comments and published statements, capped by a string of unlawful actions taken by the three defendants in their roles as agents of the City of Postville.

The 22-count lawsuit brought by Menachem in September 2010 represented the culmination of years of alleged bigoted behavior, as well as abusive and discriminatory enforcement of various procedures governing the provision of municipal water by City Clerk Radloff.

The lawsuit alleged that Radloff manipulated the rules governing the provision of municipal water in order to allow huge bills to amass at Menachem-owned properties. Menachem suffered financially, losing many of his lenders, as the artificial debts imposed by the city were turned into liens on his rental properties. His business eventually collapsed.

Despite Menachem's numerous pleas to city authorities for help over a three-year period, the city of Postville took no corrective action and failed to discipline the city clerk to halt further abuse of power, the lawsuit charged.

## SETTLEMENT SPARED THEM DISGRACE

Under the terms of the settlement reached this week, the City of Postville paid Menachem \$450,000 and agreed to send the defendants to "diversity workshops" sponsored by Iowa State University to learn about the need to respect members of other cultures and faiths.

In return, Gabay Menachem agreed to drop the federal and civil lawsuits against the city and city council officials that, in addition to disgracing local authorities, could have cost the city many millions of dollars in compensation and litigation.

The settlement surprised many who had advised Menachem that it would be fruitless to fight.

"People told me to walk away," Menachem told the *Yated* in an interview. "They said that anti-Semitic elements in the city admin-

istration were entrenched in power and I would never win. They said the lawsuit would inflame public opinion and cause even more anti-Semitism."

## TROVE OF EVIDENCE

Menachem recalled the trouble he had finding a lawyer to take him seriously.

"I would bring an entire portfolio of evidence, but they didn't even read it," Menachem recalled. "They said, 'Tell it to me in short.' And they looked at me in disbelief, as if I was some kind of nut to expect them to believe that elected officials could behave this way."

After being turned down by a series of lawyers, Menachem finally met up with one who was willing to look at the trove of documentation he had compiled. Civil rights attorney David Goldman of Des Moines, Iowa, leafed through documents uncovering a long-running pattern of harassment and discrimination, buttressed by an incriminating paper trail left behind by city council members.

Some of the most revealing evidence included undercover video and audio that captured pejorative comments and racial slurs against Jews uttered by council members who were unaware that they were being taped. The slurs were made to an undercover detective posing as a real estate agent who had expressed interest in doing business with Menachem. One after another, the council members tried to steer the "real estate agent" to other non-Jewish property owners.

## ECHOING ANTI-JEWISH STEREOTYPES

Echoing traditional anti-Semitic stereotypes, the council members called Menachem "a shyster" and painted him as a dangerous person. "When he comes in here, we have our chief of police come down," Radloff told the undercover detective.

According to the lawsuit, Radloff and other council members were caught on tape voicing anti-Semitic slurs, such as, "We wish the Jews had never come here," and, "I wish the Jews would leave Postville." The video transcripts of these taped conversations capture the efforts of the three defendants to poison Menachem's reputation to prospective customers.

The documentation Goldman reviewed included a taped interview with the former mayor of Postville, who quoted Radloff as saying that she would "run GAL Investments [Menachem's business] into the ground if it's the last thing I do."

Other documentation consisted of copies of notices the city clerk had sent Menachem of fines and taxes amounting cumulatively to hundreds of thousands of dollars. The fines in many cases

were levied for fictitious charges and were eventually incorporated into liens of Menachem's properties.

Goldman took two weeks to mull the case over. If Menachem's allegations turned out to be founded, certain individuals on the Postville city council were operating with breathless disregard for the law. Barely concealing their contempt for Jews and other minorities, they appeared to have routinely abused the power of their office to financially harm individuals they disliked.

In terms of career advancement, "fighting city hall" was not a wise move for a lawyer in this conservative region. But the case was too important to ignore. "[Goldman] called me and said he was willing to take it on, but wanted to bring in a second lawyer," recalled Menachem. "I said I was ready to do whatever it takes."

#### DISCRIMINATION BEGAN DISCREETLY, THEN ESCALATED

According to the lawsuit, the campaign of discrimination had begun discreetly. City council members allegedly had first attempted to steer business away from Gabay Menachem through negative comments and slurs. The badmouthing escalated to an overt abuse of power, with the city clerk imposing unlawful fines, taxes and liens for "unpaid water bills" and other fictitious charges.

The escalation of harassment followed in the wake of the 2008 ICE raid that all but destroyed Postville and the region's economy. The government's allegations of misconduct by Jewish owners of the plant inflamed public opinion against the Jewish residents. The formerly genteel anti-Semitism of council members morphed into something more destructive, the lawsuit charged, and Menachem became targeted in far more brazen ways.

The most diabolical part of the scheme to destroy GAL Investments, Menachem's business, revolved around the city clerk's failure to order the disconnect water service from vacated apartments, or from apartments where tenants consistently failed to pay their water bill.

According to the brief, the city clerk's refusal to shut off water service after repeated requests to do so led to the amassing of huge bills on Menachem's account. In a number of cases, requests to disconnect water service went unheeded for up to six months, running up tens of thousands of dollars in bills and fines.

The lawsuit charged that city officials had abused their power over water service in another way - by extorting money from Menachem over the contested water bills. They refused to grant water service to Menachem's tenants until Menachem made payments for the wildly inflated bills and then often failed to credit those payments.

The campaign of harassment included targeting Menachem's properties for unwanted snow removal services and charging staggering amounts of money for the work.

A city ordinance requires a landlord to remove snow within 48 hours of the snowfall. In the case of Menachem's properties, the lawsuit stated, city officials would rush to order the removal of snow before the required time frame. They would then bill him for the service, even though Menachem protested that they were violating the 48-hour ordinance, that he had his own snow removal equipment and had no need for the city's services.

#### HIS PROTESTS WENT UNHEARD

In one case, he was charged \$700 for snow removal of a single sidewalk. When he challenged the amount, he was told that the city lacked a plow and the work had to be done manually, with a shovel, which took over four hours. When Menachem refused to pay the bills, the amounts were turned into liens on his properties.

Included in the lawsuit's documentation are excerpts from published articles in which two of the council members, Jeff Reinhardt and Ginger Medberry, give voice to hostile sentiments toward the Jewish residents of Postville.

In a 2003 article in the *Chicago Tribune* on diversity in a small town, Medberry is quoted as "bemoaning the alleged lack of civility" of the Jewish townspeople.

"...In this part of the country, they are seen as rude," Medberry said. "They shun people and are always in a hurry. They give you the impression that they are too important to wait in line or to stop at stop signs."

#### "THEY DRESS DIFFERENTLY, HAVE A DIFFERENT SABBATH..."

Councilman Reinhardt went even further.

In an opinion piece in the *Postville Herald-Leader*, Reinhardt told readers that "diversity of values" in Postville threatened the non-Jewish population. He cast aspersions on the Jewish community for their different faith and customs, suggesting that they, along with "African-American people," created upheavals in American cities and caused "urban blight."

"This group wants to isolate itself, by dressing differently, keeping their children out of our schools, and wanting a different day for the Sabbath. They will not eat in our establishments," Reinhardt complained.

"This diversity is a clash of values and you have choices," he told readers, urging voters to put him in office so as not to "let other people's customs and traditions override yours."

Medberry, Reinhardt and Radloff generated an atmosphere of hostility in which anti-Semitic discrimination was approved and legitimized, the lawsuit charged.

#### EFFORTS TO RESOLVE ISSUE REBUFFED

The brief said that Menachem pleaded with city authorities to help him resolve his differences with the city clerk, but he was rebuffed. In desperation, he even agreed to pay thousands of dollars in bills he felt were unjust in order to keep his tenants supplied with water and his business viable.

All these efforts were unavailing. City officials refused to acknowledge the continuing campaign of harassment, failed to cancel the artificial bills, ordered water service disconnected from vacant apartments, and failed to halt Radloff's allegedly extortionist actions.

As Menachem tells it, these actions eventually led to the collapse of his business, leaving him penniless and in debt.

"These were people who would not yield an inch," he told the *Yated*. "After years of exhausting efforts to work things out with them, they just shut down communication. They refused to take my calls. The bills, fines and liens kept growing. With the liens threatening their investments, my lenders abandoned me. I was put out of business. The city won."

Menachem and his family had moved to Postville in 2006, after a serious accident left him with a permanent leg injury. They settled in Postville, drawn by the warm and vibrant Jewish community and promising opportunities for a business entrepreneur.

#### ENCOUNTER WITH SHOLOM MORDECHAI RUBASHKIN

In a lengthy interview with the *Yated*, Menachem recalls that painful time. "I was penniless, overwhelmed by medical bills, with no one to turn to. Someone told me about a generous person in Postville, Iowa, Sholom Rubashkin, who might be able to lend me some money.

"I called him and tried to explain my plight. He was in a terrible hurry and barely gave me two minutes. I hung up deflated. The next day, I received a shock. A FedEx letter arrived with a check from Sholom and Leah Rubashkin and best wishes for a *refuah shelaimah*. The checks kept coming - not loans, but gifts - every other week for a long time, long enough to get me back on my feet."

Eventually, with Sholom Mordechai's encouragement, Menachem and his wife relocated to Monsey and a warm relationship with the Rubashkins developed. With funds Menachem received from insurance after the accident, he launched a real estate business.

The couple had been married for a number of years but had not yet been blessed with children. They sought medical help but could not afford the expensive treatments that doctors advised them were necessary.

"Sholom Rubashkin paid for those, too," Menachem said. "His generosity was unlimited. We can never, ever repay him." Shortly after the treatments, to their joy and that of their new neighbors in Postville, the Menachems were blessed with twins.

Menachem believes that Sholom Mordechai was dealt a terrible

injustice that was rooted in an anti-Semitic city council. "They helped poison public opinion against him. The fact that the city agreed in the settlement to send Reinhardt, Medberry and Radloff to 'diversity workshops' that promote respect for other faiths shows what this story is about at bottom," he said.

"This was a severe case of anti-Semitic discrimination that in a just courtroom would have been easy to prove," he says. "The whole mess would have been blown open and the dirty secret that's been whispered about for so long would be out in the open."

He was advised instead to agree to a settlement, "rather than take the case to Iowa district court, where Judge Linda Reade would have presided. After what she did to Sholom Mordechai, and the lack of any outcry in Iowa over it, who would be foolish enough to expect justice in her courtroom?"

*In a disturbing story of religious bigotry in heartland America, city officials in Postville, Iowa, were accused in a federal lawsuit of driving a Jewish businessman to financial ruin after years of anti-Semitic harassment and discrimination.*



# Rubashkin Appeal Denied

“THE VIBES WEREN’T GOOD FROM THE BEGINNING”

BY DEBBIE MAIMON

An 8<sup>th</sup> Circuit Court of Appeals ruling that sweepingly denied Sholom Mordechai Rubashkin’s appeal has shocked tens of thousands of people monitoring the case, including many in the legal community.

The court denied the request for a new trial, for a review of the case by an unbiased judge, and for a commutation of the draconian 27-year sentence. It opposed the motion for additional discovery and the request for an evidentiary hearing.

The decision rejected the money laundering arguments that would have deducted 15 years from Sholom Mordechai’s sentence, and the points that invalidated the sentencing calculations. It validated all of the government’s actions and those of Judge Linda Reade as entirely proper.

In an interview with the *Yated*, lead appellate attorney Nat Lewin said he was stunned by the decision, calling it a “whitewash” of blatantly unfair prosecution procedures and an outrageous prison sentence.

“The vibes from the 8<sup>th</sup> Circuit weren’t good from the beginning,” he said, “ever since they denied Sholom bail pending sentencing, without offering a word of explanation. But what shocked me about this decision was its complete one-sidedness, its failure to look squarely and honestly at the issues.

“The 8<sup>th</sup> Circuit’s decision puts its imprimatur on the most massive injustice I have encountered in 50 years of practicing law,” he said.

## RUBBERSTAMPING GOVERNMENT’S POSITION

The Rubashkin case is increasingly seen as emblematic of the abuse of judicial and prosecutorial power in this country. It is viewed as testing the American criminal justice system in the blurring of the lines between the executive and judiciary functions that allowed a federal judge to virtually become an arm of the prosecution.

“By rubberstamping the government’s position, this court is encouraging a unitary branch of government - the executive and judiciary rolled up in one,” an Iowa lawyer monitoring the case told the *Yated*. “That, to me, is a chilling and frightening scenario.”

The court’s opinion, written by one of the 8<sup>th</sup> Circuit’s most senior judges, Judge Diane Murphy, revealed a court marching in rigid lockstep with the government viewpoint. The language throughout the document faithfully echoes the thought process and actual wording of the prosecution’s arguments and repeats flawed sentencing calculations by Linda Reade.

Unlike balanced legal opinions that, while agreeing with one party, also acknowledge valid points made by the opposite side, this decision is marked by wholesale ratification of the government’s reasoning on every score.

## FALSE LEGAL DOCTRINES

“The decision espouses wrong legal doctrines, often on ridiculous grounds,” Lewin told the *Yated*.

He cited as an example the 8<sup>th</sup> Circuit’s rejection of Sholom Mordechai’s new-trial motion, the appeal’s lynchpin. Rule 33 of the U.S. Code stipulates that relevant new evidence - in this case, the discovery of Judge Reade’s secret meetings with law enforcement - not available at the time of trial are grounds to grant a new trial.

The court of appeals, abandoning all pretense at an honest probe for the truth, brushed aside evidence of Reade’s *ex parte* meetings with prosecutors as adding “nothing new” to what was known before the trial, and not likely to lead to a probable acquittal at a retrial.

The court went so far as to misrepresent the defense’s arguments in an effort to bolster its stance. “Rubashkin concedes that his new evidence would not likely affect the jury’s verdict on retrial,” the opinion states.

“We made no such concession,” says Lewin. “That is simply wrong. What we maintained all along is just the opposite: that under an unbiased judge, one who was not acting as an arm of the prosecution, the outcome of this trial would almost *certainly* have been different.”

8<sup>th</sup> Circuit Court Judge Diana Murphy’s opinion echoed the government claim that since the request for Reade’s recusal was not made at the proper time, it therefore has no merit.

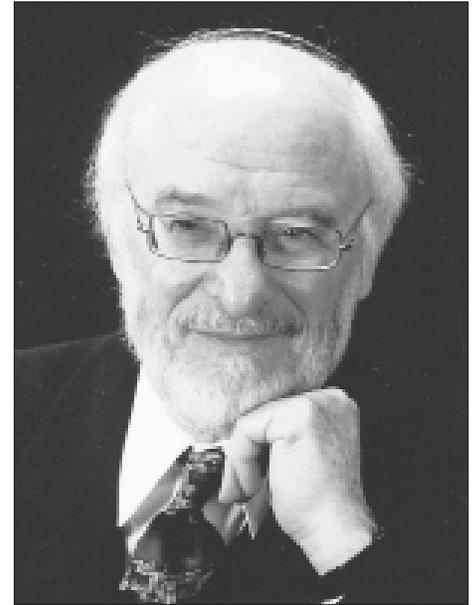
“This flies in the face of logic and common sense,” said Lewin. “Suppose a handwritten letter by this judge were to be found post-trial, saying, ‘I hate Sholom Rubashkin. I’ll have him behind bars for life if it’s the last thing I do.’ What the court’s ruling means is that even such concrete evidence of bias, unless it was produced before trial and would support an acquittal, would be rejected.”

Lewin added that the 8<sup>th</sup> Circuit’s narrow interpretation of Rule 33 - that only evidence that can prove innocence is admissible in a new-trial motion - runs counter to the understanding of the U.S. Code as defined by other circuits.

“This is the kind of issue that has broad bearing on American justice and might well interest the United States Supreme Court in the case,” he said. He added that the legal team is considering its options in fighting the devastating injustice of the 8<sup>th</sup> Circuit’s opinion, and an appeal to the Supreme Court is imminent.

## EXERCISE IN ABSURDITY

In one of the most disturbing flights from logic, the court asserted that the defendant, not Judge Reade, bore the responsibility for seeking Reade’s recusal. “Rubashkin did not make a timely



*“The 8<sup>th</sup> Circuit’s decision puts its imprimatur on the most massive injustice I have encountered in 50 years of practicing law.”*

recusal motion. He waited until after his conviction and sentencing before raising the issue,” the opinion said.

“This is ludicrous,” Lewin objected. “Sholom had to threaten to sue the government before they grudgingly turned over the documents - many months after he requested them and long after the trial was over. This fact was spelled out in the appeal brief and in oral arguments.”

Rather than fault the government for keeping defense counsel in the dark about the extensive *ex parte* contacts, the court of appeals blamed Sholom Mordechai for not proactively seeking the documents that revealed this activity.

“He is faulted by the court of appeals for not moving for recusal, even before he knew - *or could possibly discover* - any facts that would justify recusal,” Lewin pointed out, unable to mask his disgust at the irrationality.

#### **“BUT YOU DIDN’T PROVE BIAS”**

The court’s flight from the facts also stands out in its refusal to admit the overwhelming evidence of Reade’s deep involvement in the planning of the ICE raid. Her clandestine involvement, uncovered by the ICE memoranda, was sufficient to wipe out the trial purely on the grounds of “appearance of bias,” the defense had argued.

The court, in its decision, totally ignored the issue of “appearance of bias.” It rushed to Reade’s defense, insisting that the defense failed to prove that Reade should have recused due to “actual bias.”

Lewin was asked by Chief Judge William Riley at the June appeal hearing whether he could show evidence of prejudice in Judge Reade’s trial rulings that arose from her pre-raid meetings with prosecutors.

Lewin answered that while he had no evidence of prejudice,

implications of bias run straight through numerous rulings that harmed the defendant, all of which were spelled out in the appeal brief.

The court, in its opinion, pounced on his statement, taking it out of context and using it as grounds to reject the argument that Reade was required to recuse herself due to improper contacts with prosecutors.

“...We find no evidence that Judge Reade’s decision to remain on the case prejudiced Rubashkin’s verdict,” the opinion said, pointing to Lewin’s failure to show evidence of bias.

The court’s statement is a denial of a fundamental truth about human nature, said Lewin.

“It’s axiomatic that a judge who should be recused but remains on the case is bound to cause the defendant harm,” said Lewin. “But can I prove it in the sense of pointing to a letter, an email, a verbal statement of malice? No, I can’t. But that is not the issue.”

The controlling issue, he pointed out, is whether the judge’s neutrality would be doubted by the “average person on the street” hearing of her psychological investment in the law enforcement operation.

When a judge has psychologically joined the prosecution team as happened here, Lewin told the court in June, she can - and did - use her enormous leeway in discretionary rulings to influence the trial’s outcome.

“The 27-year prison sentence - two years more than the prosecutors requested, the sequence of the trials, barring of evidence and many other one-sided rulings by Reade reveal prejudice that pervades the trial,” Lewin said. “We described these pernicious rulings in several pages in our brief.”

But in a case so tainted even by the *appearance* of partiality, he said, the applicable standard is that even without proof of bias, the trial must be vacated.

## PREJUDICE CUTS TO THE HEART OF THE RUBASHKIN CASE

The issue of glaring prejudice cuts to the heart of the Rubashkin case from another angle.

Judge Reade herself sat with Judges Lavenski Smith and Diana Murphy a few hours before these individuals, together with Chief Judge Riley, heard oral arguments in the Rubashkin case.

Many people were dumbfounded by this scenario, so contrary to instinctive notions of the spirit of objectivity that must imbue a court of law.

“Judge Reade was the trial judge who secretly met with the prosecutors in planning the raid and arrest of Rubashkin, presided at his trial without ever disclosing those meetings, *and* sentenced him to more jail time than even the prosecutors asked for,” law professors Bennet Gershman and Joel Cohen pointed out in an article in *National Law Journal*.

“Now she joins the 8<sup>th</sup> Circuit and hears cases together with two of the three judges presiding over a review of her own conduct *that same day?*”

Even if the judges are capable of overriding camaraderie and sympathy for a colleague, the problem of the *appearance* of impartiality remains, the authors said.

In view of the allegations of judicial misconduct shrouding the case, scheduling Judge Reade as a fill-in within the same time frame as the Rubashkin hearing was, at minimum, “extraordinarily bad judgment,” the article asserts. “At worst, it raises serious questions about the impartiality and integrity of the proceedings.”

### HISTORY REPEATS ITSELF

Just as ‘close interactions’ with federal prosecutors tainted the federal trial, similarly close interactions between Reade and the 8<sup>th</sup> Circuit judges might compromise the appellate proceedings in the eyes of the public, the authors reasoned.

Reading the court’s opinion on the Rubashkin appeal, one can’t help but feel this apprehension is well-grounded. The potential for Reade’s presence on the 8<sup>th</sup> Circuit to have exerted undue influence - subliminally, if not overtly - on the judges’ attitude toward the Rubashkin case cannot be denied.

The language of the opinion closely mirrors Reade’s language in her sentencing briefs and rigidly adheres to the government’s line of thought.

Lewin said he was so disturbed at the news that the 8<sup>th</sup> Circuit had invited Reade to temporarily join them prior to the appeal hearing that he drafted a motion asking for the Rubashkin appeal to be heard by a different circuit.

“The legal team discussed it and we decided not to file the motion,” he recalled. “First, it would have been rejected. Secondly, we anticipated that it would infuriate the judges that we questioned their ability to rise above the natural tendency to be influenced by sympathy for a colleague. It would have backfired on Sholom. Then, later, after they issued their terrible decision, everyone would find a pretext for it in the fact that we angered the judges.”

### 20 U.S. ATTORNEYS, 50 LAW PROFESSORS PROTEST ABUSE OF POWER

Although Reade’s misconduct was easily dismissed by the 8<sup>th</sup> Circuit, this was not the case with the tens of thousands of people monitoring the case.

An electrifying letter sent to the Office of Public Responsibility, a branch of the Department of Justice, gives voice to the dismay and outrage characterizing the reactions of “the average person on the street” to the indications of prosecutorial and judicial misconduct in the Rubashkin case.

The letter, a plea to Attorney General Eric Holder to review evi-

dence of abuse of power and rampant injustices in the case, was written about a month after the appeal hearing. It is signed by former deputy U.S. Attorney General Larry Thompson and over 20 U.S. attorneys and 50 eminent law professors.

The letter outlines the concerns of these legal experts over the apparent blurring of the executive and judiciary functions in the Rubashkin case. They cite the allegations of misconduct on the part of some of the highest judicial and law enforcement officials in Iowa.

“Concerns about the USAO’s (U.S. Attorney’s Office’s) conduct in this case are shared by many, including the American Civil Liberties Union of Iowa, the Washington Legal Foundation, and the National Association of Criminal Defense Lawyers, all of which have filed amicus briefs in support of Mr. Rubashkin,” the letter noted.

### VIOLATIONS OF FEDERAL SENTENCING GUIDELINES

The WLF brief in particular slammed the grossly disproportionate 27-year jail sentence imposed on Sholom Mordechai, saying it reflects serious errors in Judge Reade’s calculations as well as violations of the Federal Sentencing Guidelines.

“And two nationally renowned experts on legal ethics have concluded that the prosecutors’ extensive *ex parte* contacts with Judge Reade constituted both prosecutorial and judicial misconduct,” states the letter.

The letter goes on to describe how “Judge Reade’s imposition of a 27-year sentence on Mr. Rubashkin - a first-time offender with no history of violence, a long record of charitable endeavors, and a father of ten - has generated extensive public criticism.

“In addition to the numerous op-eds and blog postings decrying the sentence as draconian, 47 members of Congress from 16 states - 27 Democrats and 20 Republicans - have written to the Department of Justice to express their concerns about the fairness of the proceedings.

“Nor are these critiques limited to the length of the sentence. Many, including most of the letters written by members of Congress, have asked that the Department of Justice investigate the allegations of prosecutorial and judicial misconduct surrounding the numerous *ex parte* meetings detailed above.”

[One is reminded of the June oversight hearing on the Department of Justice conducted by the House Judiciary committee, where Holder was peppered with questions from committee members on issues of outstanding public concern.

Rep. Sheila Jackson Lee and Democratic National Committee chairwoman Rep. Debbie Wasserman Shultz used the occasion to press Holder to investigate the injustices in the Rubashkin case.

Another committee member, Zoe Lofgren, reminded Holder that the entire subject of the Postville raid and prosecutions were a stain on American justice due to the subversion of constitutional rights and other flagrant abuses of government power.]

### AN UNHEEDED PLEA

The unprecedented letter by 20 U.S. attorneys and 50 law professors closes with a plea to Holder: “We strongly urge you to carry out a full and prompt investigation of the allegations of impropriety and unfairness in the Sholom Rubashkin case in order to remove the cloud that is growing publicly and in judicial circles...”

To date, no response to this letter has come from the Department of Justice. Perhaps Holder was hoping that a just decision by the 8<sup>th</sup> Circuit would bring closure to this ugly chapter in American justice and he would not have to get involved.

The court’s decision, however, dashed this prospect, fueling the burning injustices in the Rubashkin case. Far from burying the cause, however, the court’s sweeping, categorical denial of the appeal, insiders say, may rally support from unexpected quarters and open up avenues of relief for Sholom Mordechai.

# Numbers Climbing On White House Petition For Rubashkin

BY DEBBIE MAIMON

Sholom Mordechai's attorneys have filed a brief with the full Eighth Circuit Court of Appeals (as distinct from the 3-judge panel that rejected the appeal in September). They are also planning an appeal to the United States Supreme Court.

In an article in the Washington Jewish Week, Sholom Mordechai's attorneys finally take off the gloves, telling the public in plain English that the Rubashkin case cries out for investigation due to the gross injustices perpetrated against Sholom Mordechai by an U.S. Attorney's Office colluding with a federal judge.

The article by Ms. Alyza Lewin, traces the injustices in the case, throwing into sharp relief a case that from the outset bore the fingerprints of a government vendetta.

## "AMERICAN JUSTICE SYSTEM FAILED SHOLOM RUBASHKIN"

"My father and I represented Sholom Rubashkin in his appeal to the 8th Circuit Court of Appeals. And I can tell you that the American justice system has failed Sholom Rubashkin," wrote Ms. Lewin.

"From the very beginning, the Iowa federal prosecutors have pursued Rubashkin with unprecedented aggressiveness," she stated.

"They sought to have him imprisoned before trial on the ground that he is Jewish and Israel has a "Law of Return" that would prevent his extradition if he fled to Israel. (The fact that he was not a citizen of Israel, had made no effort to flee, and had no property or family connection there made no difference.)"

The article goes on to enumerate the rampant inequities and gross injustices in the way Sholom Mordechai was prosecuted, noting that the Iowa prosecutors "sought to imprison a non-violent first-time offender, with 10 children (including an autistic son), to life in prison for misrepresenting the value of his business' collateral. This, despite the fact that he never exceeded his business' line of credit and made every bank payment on time until a government raid forced his business into bankruptcy."

Lewin highlighted the prosecutorial and judicial misconduct in the case, noting that prosecutors had numerous ex parte meetings with the judge who presided over Rubashkin's trial, in which they planned the immigration raid that brought about the destruction of Agriprocessors. Experts in judicial and legal ethics insist the trial was fatally flawed by these improper meetings.

Yet, as we know, the 8th Circuit denied the motion for a new trial on the ground that the matter of improper collusion between prosecutor and judge could not be raised after the trial had ended.

"We hope the Supreme Court will recognize the injustice of such a procedural barrier and will agree to review the conviction," Lewin wrote.

She went on to note the bizarre situation in which "the trial judge sat 'by designation' (on the day before and the morning of Rubashkin's 8th circuit oral argument in St. Louis) with two of the 8th circuit judges

who heard Rubashkin's appeal."

Lewin then asked the loaded question that echoes in so many minds: If Rubashkin had been granted a trial before a judge who had not been meeting secretly with prosecutors leading up to the raid; or had he been granted an appeal with judges who had not sat together on the very same day (and the day before) with the judge whose conduct they were being asked to review, would the outcome of his trial and appeal have been dramatically different?

She noted that in fact, when Sholom Rubashkin was tried for child-labor violations before an impartial Iowa state court judge, he was acquitted on all counts.

## CALL FOR THE JEWISH COMMUNITY TO SUPPORT THE RUBASHKIN PETITION

The article concludes with a stirring call for the Jewish community to show their concern and to support the petition to the White House for an investigation into the case.

"As the Jewish community gets ready for Yom Kippur, when Jews ask G-d to judge fairly and with mercy, let's remember Sholom Rubashkin, who received neither justice nor mercy, and consider adding your signature to the petition."

The petition the article refers to has been registered on a special web site created by the White House a few weeks ago, to survey which issues are of paramount concern to the American public. Among hundreds of pending petitions, a call to investigate the Rubashkin case ranks second, with over 33,000 signatures gathered since the site opened.

The Rubashkin petition asks President Obama to direct the attorney general to investigate prosecutorial misconduct in the case and to correct the gross injustice that has been perpetrated against him. A significant show of public concern will enhance the case's chances of being accepted by the Supreme Court.

## ALEPH INSTITUTE ARRANGES MINYANIM IN PRISON

In the meanwhile, in Otisville Prison, Sholom Mordechai experienced a very different sort of petition, in the prayers he said with other inmates on Rosh Hashana.

Thanks to the efforts of Aleph Institute, a national organization that services the needs of many of the 40 to 50 thousand Jewish inmates in prisons across the United States, volunteers were allowed into the prison throughout Rosh Hashana to form the minyan for the handful of Jews there.

The volunteers rented a RV and with consent from prison authorities, parked it on Otisville Prison premises and hooked it up to power outlets there. The minyan was held in the prison chapel, with Sholom Mordechai leading the services.

"The Otisville prison administration was very cooperative and took measures to facilitate the minyan," Aleph Director of Education Ser-

vices Rabbi Yossi Stern told Yated.

Following are excerpts from a letter from Sholom Mordechai to his

children, shared with Yated by family members, in which he describes his *Rosh Hashanah*.

## ROSH HASHANAH IN OTISVILLE

*Teire Kinderlach Sheyichyu,*

I wanted to tell you about my *Rosh Hashanah* right after *yom tov*, but since yesterday was a *taanis*, it took me longer than usual to get my thoughts together.

Every day here has its own set of difficulties but all of this gets magnified when it comes to *Shabbos* and *yom tov*. I once took for granted the blessings of being able to go to shul, to daven, learn and then spend happy times with my family by the table, and with *chaveirim* by a *kiddush*, bringing out the joy and spirit of the day.

Like most of us, I took for granted the *lichtekeit* of *kedusha* surrounding the *yomim tovim*, the *kedusha* and seriousness of the *yomim noraim*... the *simcha* and the warmth and the throb of life in the air on *Sukkos* and *Simchas Torah*.

It is so very different here. A lifelessness, a frigid cold and ugly darkness surrounds everything, eating away at a person's soul.

Prison and captivity by their very nature destroy the makeup of the human mind. Over time, the degradation causes changes in people. It brings about irreversible damage to the heart and soul.

It takes many years and a tremendous amount of labor and input to build a *mentch*, beginning from the moment a child is born, and his *neshomah* enters his body with all its potential. Over many years, the child's parents and the community pour in time and resources to cultivate this potential, giving his *seichel*, his heart and character the training that will enable him to serve the *borei olam*.

The process goes on until manhood and maturity, when a person can finally stand on his own and deal with life, and fulfill his *avodah* in this world.

Captivity slowly and systematically destroys this long process. It drains the *taanug* and *rotzon* for life. The sensitivity and *kedusha* of a person's *neshomah* is constantly assaulted. Confinement and separation from family and friends slowly extinguish a person's ability to think, speak from the heart, feel and understand. Sensations are deadened and the *penimiyus* of a person's character and life withdraws back into his soul.

There is no cry of pain as this process of destruction goes on, as the fire of life slowly flickers out.

*Erev Rosh Hashanah*, I tried to fight these thoughts. I got up very early for *Selichos* and *davened* to Hashem to make this day the day that I would be freed. I tried to focus on the greatness and holiness of the day. Then it was time for *shacharis*, followed by some learning until it was after lunch time. Suddenly there was a loud announcement that there was a "lock-in" and everyone had to return to their cell and be locked in indefinitely.

It was only a few hours before *Rosh Hashanah*. I had made up to call Mommy about then, but the lock-in threw everything off course. There was no way of knowing how long it would last. Once it lasted from Friday until Monday morning. I began to say *Tehilim*, asking Hashem to let this be over quickly.

*Baruch Hashem*, about one hour before *yom tov* started, the doors opened. Thanks to Aleph Institute who made the arrangements, we had the *zechus* that volunteers were permitted by the prison administration to come inside for *yom tov*, to help us make a minyan.

At the last minute, there were delays and it was already after *licht tzinden* and ten minutes to *shkiah*, which gave just enough time to say *hatoras nedorim*.

*Bechasdei Hashem*, we had a *minyan* for every *tefillah*, beginning with *maariv* on *Rosh Hashanah* till *maariv* on *motzo'ei Shabbos*.

I don't know if I can describe what this did for me. The *kedusha* that permeated this place for three days gave life to *neshomos* that were so starved for so long.

The Gemara discusses that Hashem tells the *Yidden* on *Rosh Hashanah*, "*Imru lefonai malchiyos...*" so that we are *mamlich Hashem* as our king, and this is done through the *shofar*. We learn that this is what renews the *taanug* and the *ratzon* of *Hashem lemelucha*, which in turn pumps energy into Creation and keeps the world in orbit.

On *Rosh Hashanah*, the life granted to the past year returns to its source. This leaves the world in a diminished state of life, like a person who has fainted, with the vital signs of life present but no will or ability to act. This *siluk* of the *penimiyus hachayus* - the departure of inner life-sustaining force - is very similar to the effects of long confinement in prison.

Here, too, to escape the attack on the soul, the inner spiritual life also returns to the essence of the soul, to the *etzem haneshoma*, to hide. A person is left with the outer shell of his *seichel* and *middos* while his *neshoma* takes refuge deep inside. The outer self learns to act mechanically while the inner life has retreated to a place where it can be safe from assault.

When we make Hashem our king, the vital energy sustaining the world is infused back into creation. Through the *shofar*, life on all levels of *maaseh*, *dibur*, *machshovo*, *middos* and *seichel*, are returned. This is our gift of a fresh new life and a good and healthy year in which Hashem provides us with all things that we need.

Up until the night of *Rosh Hashanah*, I felt this way: faint with the loss of life. Then, as we gathered as a *minyan*, with warm smiles, and a sense of companionship and good will, we felt a surge of life returning to our *neshomos*. I knew that Hashem renews His desire to give life to the world that he created on *Rosh Hashanah*. But I never understood it so well as I experienced it this *yom tov* because of the profound revival of life that Hashem granted us.

At one point, they needed to count everybody in the chapel, and the inmates were told to all line up and tell the officer their number as he checked the information off on his chart. He was counting each one as they passed him by, each one nothing more than a number.

I thought how different it is when we say "*Kevakoros ro'eh edro...*" Hashem who is our shepherd has *rachmonus* on us *Yidden*, His *shayfelach*. He counts them with love and brings *rachmanus* into their *mishpat*. He sees what His "sheep" need for the new year and grants it to them so that they will change their ways and become better.

As I was *davening mussaf* and came to *Unesane Tokef*, the words "*Vesiftach es sefer hazichronos*, I thought how different it is to be standing before the real *tzedek umishpat*, the righteousness and justice of *Hakadosh Baruch Hu*. In contrast to what goes on in an earthly court when one has to fear corruption, how secure and safe we feel in the truth and justice of His verdict, knowing He loves us and will do what is best for us.

We were *baruch Hashem* able to make *kiddush* together and wish each other a *leshonah tova*, with the firm *bitachon* that we are *zoche badin*, and will be blessed with a *gmar chasimah tovah*, a good year in freedom. Together, *teire kinderlach* we will be *zoche* to the *geulah* with *Moshiach Tzidkeinu bimhayro beyhomeinu*.

*Besuros tovos.*

Love,  
Tatti

# Rubashkin Brief Challenges 8<sup>th</sup> Circuit Denial of Appeal

BY DEBBIE MAIMON

In a sharply worded brief to the 8<sup>th</sup> Circuit Court of Appeals, Sholom Mordechai Rubashkin's lawyers, led by Mark Weinhardt, challenged the 3-judge panel's rejection of the appeal and asked the full court to review the decision.

The brief, filed on October 11, pinpointed the breakdown of logic in the panel's decision, spelling out how it clashed with decisions by the United States Supreme and was inconsistent with previous rulings by the 8<sup>th</sup> Court itself.

The 8<sup>th</sup> Circuit panel of 3 judges had rejected the appeal's lynchpin argument that called for a new trial following the discovery that trial judge Linda Reade had collaborated with Iowa federal prosecutors. That pre-trial collusion invalidated the trial, the conviction and sentencing, the appeal argued.

## DOES IT MATTER WHETHER A JUDGE IS CROOKED?

Without challenging the evidence of improper collaboration, and turning their backs on a chorus of eminent legal voices crying "foul," the appeal court judges said the evidence didn't count because it came too late. Furthermore, they said, only evidence that can prove innocence is admissible in a new-trial motion.

Weinhardt's brief attacked the flawed logic and injustice behind this stance. "That means that if a convicted defendant obtains a videotape showing his trial judge taking a bribe from the government's lead witness, he will still be unable to secure a new trial" (because, crooked judge or not, no new evidence of innocence has been presented).

The injustice of such a ruling is self-evident, the brief said. "The defendant in such a case should not have to satisfy the severe burden of demonstrating the newly evidence would probably have led to acquittal. Neither logic nor law support this position."

## JUDICIAL BIAS ESCAPES DETECTION

The defense brief also challenged the panel's ruling that even if allegations of improper involvement with prosecutors were true, Sholom Mordechai had failed to show that the collusion with prosecutors biased the judge against him.

"Judicial bias can manifest itself in ways that evade detection," the Weinhardt brief argued back. Since a judge has enormous leeway in discretionary rulings, he can easily influence the trial's outcome while cloaking her bias in deceptive legal maneuvers. Forcing a defendant who has shown evidence of judicial and prosecutorial collusion to climb into the judge's head, as it were, and prove precisely how the collusion slanted the trial, is unreasonable.

Lead appellate attorney Nathan Lewin faced down a similarly unreasonable mindset from the panel at the June appeal hearing.

Judge Reade's clandestine involvement, uncovered by the ICE memoranda, was sufficient to wipe out the trial purely on the grounds

of "appearance of bias," he had argued to them, noting that the law's overarching goal is to ensure both *the appearance and reality* of a fair judicial process.

But the panel in its decision totally ignored the issue of "appearance of bias." It rushed to Reade's defense, insisting that the defense failed to prove that Reade should have recused due to "actual bias."

Lewin was asked by Judge Riley at the June appeal hearing whether he could show evidence of prejudice in Judge Reade's trial rulings that arose from her pre-raid meetings with prosecutors. Lewin answered that while he had no concrete evidence of prejudice, implications of bias run straight through numerous rulings that harmed the defendant at trial.

The judges in their opinion pounced on his statement, taking it out of context and using it as grounds to reject the appeal.

"...We find no evidence that Judge Reade's decision to remain on the case prejudiced Rubashkin's verdict," the panel said, pointing to Lewin's failure to show evidence of actual bias.

The court's opinion denies a fundamental truth about human nature, Lewin later said in an interview with Yated. "It's axiomatic that a judge who should be recused but remains on the case is bound to cause the defendant harm. But can I prove it in the sense of pointing to a letter, an email, a verbal statement of malice? No, I can't. But that is not the issue."

The controlling issue, he pointed out, citing strong legal precedents, is whether the judge's neutrality would be doubted by the "average person on the street" hearing of the judge's psychological investment in the law enforcement operation.

## WOULD READE'S NEUTRALITY BE DOUBTED BY THE AVERAGE PERSON ON THE STREET?

That brings one directly to the question of how one can determine what in fact would be the reaction of the average person on the street. The 8<sup>th</sup> Circuit totally sidestepped this question, as if had never been posed, although it supports a key argument in the appeal. But 47 Members of the House of Representatives gave a resounding, unequivocal response to the question when they separately wrote to Attorney General Eric Holder about their concerns.

As "average people on the street," these congressmen—27 Democrats and 20 Republicans—were troubled by the overwhelming appearance of impropriety in the case, and urged him to investigate the prosecution of Sholom Rubashkin,

If that isn't sufficient indication of the reaction of "the average person on the street," consider the letter signed by 75 law professors and former DOJ prosecutors, who wrote to the Department of Justice in July about their concerns, asking them to "investigate prosecutorial misconduct in the case of United States vs. Sholom Rubashkin."

"We are writing to ask that you turn an unsparing focus on the trou-

bling evidence of prosecutorial misconduct in the federal prosecution of Sholom Rubashkin,” the signatories said.

Because of the secrecy cloaking the communications between the judge and the prosecutors, “we are not privy to critical information about these meetings, including their number, nature and detailed account of what was discussed. But what we do know is deeply troubling,” the letter stated.

“These factors and the severity of the sentence imposed on Mr. Rubashkin warrant, at a minimum, an expeditious investigation by the department of justice,” the authors wrote.

The letter noted that “while the ICE documents do not provide a complete picture of what transpired at these meetings, they raise serious questions about the extent of Judge Reade’s involvement in the planning of the raid and the prosecutions that stemmed from it, including that of Mr. Rubashkin.”

#### “REMOVE THE CLOUD THAT IS GROWING PUBLICLY”

The letter from the 75 law professors and former DOJ prosecutors also noted the cavalier refusal of either Reade of the U.S. Attorney’s Office to provide a full account of the secret meetings. They said the “cursory and dismissive manner in which both parties have responded to requests for greater information and transparency have only underscored our concerns.”

The authors were outspoken about the injustice dealt Sholom Rubashkin by the decision of the judge and prosecutors “to conceal their *ex parte* contacts from him so that he was unable to move for the judge’s recusal.”

The result of these maneuvers “was unquestionably unjust,” they said, concluding with a strong call for “a full and prompt investigation...in order to remove the cloud that is growing publicly and in judicial circles about the matters we’ve described here.”

#### WHITE HOUSE RUBASHKIN PETITION SWELLS TO 51,800

“The cloud that is growing publicly” has prompted tens of thousands of people to sign the White House Rubashkin Petition, an effort launched by the White House to monitor issues of pressing concern

to Americans.

The petition that has surged to almost 52,000 names calls on the president to investigate the Rubashkin case for judicial and prosecutorial misconduct. As the second most popular petition on the White House Petition Site, it puts on graphic display the growing perception among “average people on the street” of justice run amok in the Rubashkin case.

The petition signatories reflect a cross-section of concerned citizens from across the width and breadth of the country. While many hail from Jewish communities on the East Coast, an array of names appear from almost every state including California; Florida; Maryland; Washington; Colorado, Kentucky; Texas; Montana; Delaware; Iowa; Georgia, Illinois, Mass; Arkansas, Florida, Missouri, Rhode Island, Vermont, Connecticut and many more.

“The petition listed its goal as 5,000 signatures by Oct. 22 when it was created a month earlier and posted on the White House’s We the People website,” wrote *JTA*. “It has since garnered 10 times its anticipated goal.”

“The petition calls on Obama to take prompt and effective steps to correct the gross injustice that has been perpetrated with the federal prosecution of Sholom Rubashkin,” the article noted.

People are troubled as much by the secret collusion between a federal judge and prosecutors as by the unwarranted sentence disparity between Sholom Mordechai’s 27-year sentence and the vastly lower sentences of defendants in similar situations.

The most recent appellate brief highlights this disparity, asking the 8<sup>th</sup> Court to review the failure of the 3-judge panel to address this part of the appeal, and noting Judge Reade’s failure to explain or defend it in her own writings.

If one needed any further indication of how the average person on the street views the case, the Rubashkin petition with its 52,000 names puts that question to rest. It also raises another troubling one, part of the growing cloud surrounding the case: How could the 3-judge panel of the 8th Circuit have turned its back so brazenly on the facts, fairness and logic? How did the panel feel comfortable ignoring an influential and growing chorus of legal and judicial experts all crying foul?



*People are troubled as much by the secret collusion between a federal judge and prosecutors as by the unwarranted sentence disparity between Sholom Mordechai’s 27-year sentence and the vastly lower sentences of defendants in similar situations.*

# Taking A Lesson From The Rubashkin Petition

BY DEBBIE MAIMON

“We’ve got to crack down on employers who are taking advantage of undocumented workers. When you read about a meatpacking plant hiring 13-year-olds, 14-year-olds—they have these kids wielding buzz saws and cleavers—it’s ridiculous. And the only reason they are hiring these folks is because they want to avoid paying decent wages and providing decent benefits.”

Anyone remember these words? They came from then-presidential nominee Barack Obama in election year 2008, when he was campaigning in Iowa. Obama made these shocking slurs against the employers of Agriprocessors several months after the massive ICE raid took place—*long before anyone at the plant had been charged with a crime*.

Rubashkin-bashing was immensely popular at the time. So when it came to pandering to voters who had been incited by the vicious anti-Rubashkin rhetoric of the mass-media, Obama jumped on the bandwagon. His vicious attack on the plant’s employers for child labor and worker abuse was libelous and wholly misinformed. All the charges stemming from labor allegations were later thrown out by a jury in a state trial.

Compare Obama’s stinging attack on the Rubashkin family before any evidence had been produced and prior to any charges being made, to the president’s response a few days ago to more than 52 thousand people imploring him in a special petition to investigate the “gross injustice” in the Rubashkin case.

The administration’s response consisted of a terse brush-off: “The White House cannot comment on the matters [of law enforcement and judicial ethics] raised in this petition,” it said. These must be resolved through proper channels.

The White House went on to inform petition signers that “the Department of Justice has mechanisms in place to investigate allegations of prosecutorial misconduct, including through its Office of Professional Responsibility (OPR).

“And with respect to judicial ethics matters, claims of judicial misconduct are dealt with by the Judicial Branch,” the email stated.

In other words: The president has no intention of going out on any kind of limb to correct injustice. So what if he helped to demonize Sholom Mordechai a few years ago to win higher ratings in Iowa? That’s water under the bridge. So please, all you tens of thousands of annoying Rubashkin petitioners, leave President Obama alone and take your complaints about the abuse of power to the proper channels.

## “WE THE PEOPLE:” PUBLICITY STUNT?

The administration promised on its We The People website that all petitions that garnered the requisite number of signatures would be carefully reviewed by the appropriate policy experts.

It is hard to take that pledge seriously when the most cursory re-

view would have uncovered the fact that 47 congressmen *already* took their concerns to the Department of Justice in separate correspondences with AG Holder.

The congressmen spelled out the glaring injustices in the case, urging Holder to investigate the gross injustices in the Rubashkin case. Holder ignored them.

Other prominent Americans also went through proper channels. Shortly after the June appeal hearing in St. Louis, 75 leading law professors and former DOJ attorneys from across the United States brilliantly outlined the evidence of judicial and prosecutorial misconduct in an 8-page letter. They sent the letter to The Office of Professional Responsibility (OPR), the very agency the White House names as the proper “mechanism” to handle complaints of wrongdoing in the Justice Department.

There had been no response to date from the OPR.

The most superficial inquiries about the Rubashkin case by the White House would surely have revealed the evidence of stonewalling and indifference from the agencies entrusted to handle serious allegations of misconduct.

Why then does the White House advise Rubashkin backers to take up their concerns with the very officials whose silence and inaction goaded 52,200 Americans to petition the White House in the first place?

The dishonesty and cynicism behind this response to the petition is deeply offensive.

[One can’t help but recall how, after the discovery of the ICE memorandum though FOIA that detailed the secret meetings between Judge Reade and government authorities, attorney Nathan Lewin wrote to the head of DOJ’s Criminal Justice Department, Mr. Lanny Breuer, calling on him to reconsider his earlier position not to review the case.

When Breuer finally wrote back, it was with the same cynical advice that makes the White House response to the petition so disturbing. I advise you to go through proper channels and take your concerns to the judge in the case, Lanner urged.]

## PETITION’S POPULARITY GRATED ON NERVES

Few were surprised by Obama’s brush-off. The petition’s sheer numbers—exceeding those of any other petition save one—were impossible to ignore. But as for expecting the administration to take meaningful action when no political capital can be gained from opening up this ominous can of worms? Not likely.

The petition’s popularity grated on others’ nerves as well. Jewish media hostile to Sholom Rubashkin such as the *Forward* newspaper, scrambled to explain away the petition’s runaway numbers, dismissing them as products of a “massive publicity campaign” in Orthodox circles.

A weekly publication that can take much of the credit for the destruction of Agriprocessors through its vicious mudslinging campaign in 2007, the *Forward* shrugged off the high-profile case as “an Orthodox Jewish cause celebre.”

Projecting the petition as exclusively an Orthodox Jewish cause and thus devoid of any overarching public significance, flies in the face of reality. Statistics show that petition-signers, whose city and state show up on the website, hail from all over the country, including states with little or no Orthodox Jewish presence, such as Idaho, Nevada, Oregon, Wyoming, Hawaii, Kansas, and North and South Carolina.

That is because the Rubashkin cause resonates deeply with countless Americans who see it as testing the health and viability of the American justice system. They view the high profile case as highlighting the weakest links in the justice system—the vast, unchecked power of prosecutors and the culture of judicial arrogance in which federal judges abuse their power without any accountability.

### JUDICIAL OVERREACH A CAMPAIGN ISSUE?

These concerns have been reflected in recent statements by presumptive presidential nominees. Texas governor and Republican presidential candidate Rich Perry, for example, makes it no secret that he believes the many judges on the bench are guilty of “overreach,” and have acted beyond their constitutional bounds.

The problem, he says, is that members of the judiciary are “unaccountable” to the people, and their lifetime tenure gives them free license to act however they want. In a recent book, *Fed Up!*, the governor speaks highly of plans to limit their tenure and offers proposals about how to accomplish it. Several of his ideas fall within the realm of mainstream conservative thinking today.

The recent 8<sup>th</sup> Circuit decision to deny Sholom Mordechai’s appeal is seen by many as emblematic of the travesty of justice that flows from judicial “overreach,” and the propensity by members of the judiciary to set aside justice in favor of sticking up for their friends on the bench.

By rubberstamping the government’s vindictive prosecution, and marching in total lockstep with Judge Reade’s outrageous Sentencing Order, the 8<sup>th</sup> Circuit Court of Appeals, many feel, has hurt its credibility as an institution upholding truth and justice.

To some, it seemed as though the 3-judge panel was hammering in the final nail on the Rubashkin case by denying his appeal. Far from putting the case to rest, however, the Court’s decision has fueled public’s perception that abuses of power have perpetrated a massive miscarriage of justice in the Rubashkin case.

In its written opinion, the 3-panel judge not only turned its back on the facts. It disdained the opinions of the nation’s most respected experts in judicial and legal ethics, thumbed its nose at three of the country’s most prominent legal advocacy organizations, and clashed with Supreme Court decisions.

### FROM OBSCURITY TO THE SPOTLIGHT

It’s interesting to retrace the stages in which the perversions of justice in the Rubashkin case rose from obscurity to national attention.

Renowned legal authorities Professor Stephen Gillers and Mr. Mark Harrison, one of the key architects of the Code of Judicial Con-

duct, raised the case’s stature by pinpointing the abuses of power by the presiding judge and the prosecutors in sworn affidavits filed with the 8<sup>th</sup> Circuit.

The experts studied the government and defense briefs in the case, including the FOIA documents. They stated their opinion that Reade’s secret meetings with government authorities violated legal ethics and were grounds to vacate the defendant’s conviction.

The opinions of these prestigious legal authorities boosted interest in the case in legal circles. But with the unexpected involvement of nationally respected legal advocacy groups such as ACLU, WLF and NACDL that filed amicus curiae briefs supporting Sholom Mordechai, the case began to take on national importance.

The ACLU of Iowa and the NACDL, two of the nations’ most respected legal advocacy groups, have both condemned the blurring together of the executive and judicial branches in this case.

The NACDL brief said that Reade conducted herself as an arm of the prosecution. The ACLU wrote that Sholom Rubashkin must be granted a new trial. “Due process demands it. The Constitution demands it,” the brief said.

### NACDL: FEDERAL JUDGE HELPED SALVAGE AN OPERATION GONE SOUR

In a little-known footnote to the case, the NACDL was one of the first independent legal voices to train a spotlight on the unethical strategy federal agents used to prop up an immigration raid that was threatening to become an embarrassment to the Department of Justice.

Until federal agents discovered financial irregularities at Agriprocessors, the massive law enforcement operation, loudly denounced for its brutality and violation of human rights, appeared to be going sour.

True, almost 400 illegal immigrants had been nabbed in the ICE raid. But the government was after something much more—the arrest of a high-profile target. The federal indictment had charged Agriprocessors with multiple felonies and lurid crimes such as harboring a drug lab, storing caches of weapons at the plant, torturing workers and other crimes. The government had an arrest warrant ready but couldn’t execute it at the time of the raid, and for months afterward, because the charges turned out to be completely fabricated.

“The massive raid befitted a bust of a well-armed drug cartel,” the NACDL brief noted. But agents came away empty-handed, leaving the government open to ridicule for having invested such massive resources in the operation.

“The trial judge, who was part of the planning and pre-arrest activities” and had thus invested heavily in the operation, helped find a remedy to justify that operation “when this elaborate raid on illegal immigrants did not bear fruit,” the NACDL brief explained.

The remedy was to find another crime, pump it up into a massive indictment and pin it on one person. That created the pretext for Judge Reade to “impose a sentence of over a quarter-of-a century,” the brief concluded.

• • •

As Sholom Mordechai awaits an answer to his appeal for a review from the 8<sup>th</sup> Circuit *en banc* (full court), public outrage about the case continues to mount, prompted by the publicity and information-sharing triggered by the White House petition. “We The People” may not have upheld its pledge to “carefully review the issues raised by the petition.” But it undoubtedly triggered some valuable fallout.

*“The massive raid befitted a bust of a well-armed drug cartel,” the NACDL brief noted. But agents came away empty-handed, leaving the government open to ridicule for having invested such massive resources in the operation.*

# Rubashkin Petition For Full Court Hearing Denied

FEAR OF OPENING PANDORA'S BOX?

BY DEBBIE MAIMON

The Rubashkin petition for an “en banc” (full court) hearing by the 8th Circuit has been refused, dashing hopes that at least one of the eleven judges would have the backbone to act independently, in the overwhelmingly conservative culture of this court.

“It was very, very frustrating,” said Rubashkin attorney Mark Weinhardt who authored the brief. “We hoped that there would be some dissent or resistance on the part of at least one of the judges.”

When an appeal has been denied by a 3-judge panel—as was Sholom Mordechai’s last month—an appellant can request a review of the case by the full court. Even if the court confirms the earlier ruling, the possibility that one of the judges might dissent with the majority opinion, or question some aspect of the ruling, offers hope to an appellant that the merits of his case will ultimately be heard.

The 8th Circuit’s en banc decision, however, included no voice of dissent, although three of the eleven judges, for reasons unspecified, did recuse themselves.

The remaining eight judges (including the original three who had ruled on the June appeal) rebuffed without comment the powerful arguments by Rubashkin attorney Mark Weinhardt calling for a review.

## 8<sup>TH</sup> CIRCUIT: JUDICIAL BIAS IS IRRELEVANT

Weinhardt’s brief had focused on the utter failure of logic and justice in the 8th Circuit’s sweeping rejection of the Rubashkin appeal last month.

The panel of three judges, without denying the evidence of *ex parte* meetings between Judge Reade and federal prosecutors, had ruled that the discovery of these secret meetings did not invalidate the trial because it was “not timely.” It was presented too late to help Sholom Rubashkin.

In addition, the discovery of hidden meetings between the judge and prosecutors did not actually *prove* the judge was biased against the defendant, the panel had argued.

Improper collusion, abuse of power, bias or appearance of bias—none of this matters, the court had insinuated. Only new *timely* evidence that points to the defendant’s innocence warrants a new trial. Everything else is irrelevant.

Weinhardt attacked the absurdity of this position, showing that it runs counter to logic and integrity and to earlier Supreme Court decisions.

Lack of impartiality in a judge—even the *appearance of bias*—taints a trial at its core, Weinhardt argued, and deprives a defendant of a fundamental constitutional right. A trial that suffers from such a structural defect must, by law, be vacated.

The panel’s error, he pointed out, was in failing to differentiate a defective trial of this sort which characterized Sholom Mordechai’s trial, from ordinary situations where a defendant must produce com-

PELLING new evidence of his innocence to win a new trial.

Once a trial has been shown to be fundamentally tainted, the discussion should be over. A defendant should not also “be forced to meet the severe burden of producing evidence that would likely lead to acquittal,” the brief reasoned.

Taking the panel’s bizarre ruling to its logical conclusion, Weinhardt noted, would mean that “even if a convicted defendant obtains a videotape showing his trial judge taking a bribe to put him behind bars, it won’t be enough; he will still be unable to secure a new trial!”

## SPOTLIGHTING EXTREME SENTENCE DISPARITY

The *en banc* petition also highlighted the extreme sentence disparity between Sholom Mordechai’s 27-year sentence and the vastly lower sentences of defendants in similar situations—noting the failure of the 3-judge panel to address Judge Reade’s refusal to explain or defend the outrageous severity.

The potent arguments in the *en banc* petition bolstering the request for review of these points were ignored by the 8th Circuit.

The full court’s refusal to address any of the issues or to explain its position sparked anger and skepticism in many who saw this response as coming from the court’s unwillingness to admit fallibility or level critique against one of its own.

“The logic of the *en banc* petition was unassailable,” a lawyer who has been closely following the case, commented to *Yated* in an interview. “There was no way the court could refute it, so they didn’t even try.”

## WHY THEY RECUSED

Given the Court’s circle-the-wagons mentality, an informed Iowa source said, it was surprising that three judges on the 8th Circuit chose to disqualify themselves from the case. Although they did not disclose their reasons, regarding two of the judges who recused, “one could guess at their conflict of interest,” he said.

One of the judges was formerly a partner at the same firm where Weinhardt once worked. This judge has in the past recused himself from a number of cases in which former associates are involved. It’s more than likely, the source said, that Weinhardt’s appearance in the Rubashkin *en banc* petition caused this judge to recuse.

Another judge, Judge Melloy, was formerly the district judge where Linda Reade now presides. When he was appointed to the 8th Circuit in 2002, Reade replaced him, becoming the chief federal judge for the Northern District of Iowa.

Melloy is still stationed in Cedar Rapids, Iowa, where the “headquarters” of the 2008 ICE operation against Agriprocessors were set up. For a long time after the 2008 raid, the source said, “the Rubashkin case dominated conversations” in Cedar Rapids legal circles.

“There was a lot of negative press about Rubashkin and Judge Melloy undoubtedly was exposed to it. The Cedar Rapids courthouse community... these are his friends and associates. It’s very possible Melloy felt he could not judge the case impartially.”

### HONORABLE CONDUCT CONTRASTED WITH MORAL FAILURE

While these comments are only speculative, one thing is clear: regardless of the reason for the judges’ decision to disqualify themselves from the Rubashkin appeal, their doing so highlights one of the most important moral obligations incumbent on a judge.

It also paradoxically adds force to the appeal’s key argument: a massive conflict of interest on Judge Reade’s part imposed an obligation on her to recuse from the Rubashkin case. Unlike her colleagues, she abandoned that obligation, exposing her loss of neutrality in countless ways throughout the trial and sentencing.

It is hard to imagine any issue facing the judges who recused that could compete with the profound conflict of interest that faced Judge Reade after she had psychologically become an arm of the prosecution. The honorable conduct of the judges who recused makes Reade’s moral failure that much more blatant.

### PROTECTING THE SYSTEM AT ALL COSTS?

Some critics have interpreted the court’s denial of the appeal as reflecting the 8<sup>th</sup> Circuit’s willingness to ignore the merits of the case in favor of protecting the system. Perhaps they reasoned that truth must sometimes take a back seat to this overriding mandate.

Imagine the fears that might have loomed in the background of their deliberations over the Rubashkin case: Wouldn’t overturning Judge Reade unleash forces that could not be contained? Wouldn’t critics of the government’s ICE raid, including immigration lawyers and activists for immigration reform, be quick to pounce, demanding a reopening of hundreds of other Postville prosecutions that Reade was questionably involved in?

Critics would dig and dig until they unraveled all kinds of unsavory things that are better kept off limits to the public.

Many were deeply disappointed by the dropping of immigration charges against Sholom Rubashkin after his 2009 bank fraud conviction. They had hoped to use the trial as a platform to expose the mistreatment of the men and women who were seized in the raid and prosecuted. Sharp criticism of the unprecedented harshness that characterized the raid continues to hound ICE, although time has muted the outrage and activism.

Should it now be rekindled, who knows where an investigation would lead and whom it would target, the Court must have asked themselves.

The release of a trove of FOIA materials to Sholom Rubashkin had turned into a nightmare for Judge Reade and the U.S. Attorney’s Office whose collusion in the Postville prosecutions had until that point been hidden from public view.

### WHO KNOWS WHERE AN INVESTIGATION WOULD LEAD?

Critics might find out how and why the huge, coordinated effort that required intense planning and vast resources before it swooped down in May 2008, seizing about 400 workers, was first launched.

They would want to know why illegal immigration was criminalized at Agriprocessors in a way it has never been before. Why was Agriprocessors targeted when it is widely known that the nation’s entire livestock industry uses illegal immigrants extensively? With 19 million illegals and a cloudy policy at best, why was Agri singled out?

Who gave the go-ahead to this enforcement action? Who wrote the “stage instructions” for shotgun-wielding agents in heavy riot gear to break down doors and corral the workers, whisking them



away in chains to makeshift courts and detention centers in northern Iowa?

There the immigrants, most of whom spoke no English and were given minimal translation, were pressed to plead guilty and serve five to 12 months in prison, or face a maximum of 10 years and a \$250,000 fine at trial. Never before had such harsh penalties been imposed en masse on undocumented workers. Why now?

The plea agreements these people were given had been pre-scripted by government authorities, including Judge Linda Reade, and required the immigrants to admit to ID theft and to cooperate with the government in helping to prosecute others.

### THEIR CONVICTIONS SHOULD HAVE BEEN VACATED

However, a few months following the raid, the U.S. Supreme Court threw out the charges of ID theft that were used to coerce guilty pleas from the immigrants. Their convictions should therefore have been vacated but they all remained in jail.

Why? Was it because the government needed witnesses against Sholom Rubashkin and promising early release was the best leverage they had over the immigrants?

Really, what good would it do to open this massive Pandora’s Box? Respect for the system would be eroded. Judges, prosecutors and countless people on the chain of command, from the Iowa U.S. Attorney’s Office all the way up to top officials in the Justice Department, would be implicated.

The hunters might become the hunted.

How can that be allowed to happen, members of the 8<sup>th</sup> Circuit must have asked themselves. Far better to bury the ugly mess, suppress the entire thing. If a man has to spend 27 years in jail to make a twisted thing straight, so be it. Some things are more important than justice.

# Whom Are They Protecting?

BY DEBBIE MAIMON

Outrage over the 8<sup>th</sup> Circuit's refusal to remedy the blatant injustices in the Rubashkin case has powered a determination among his supporters to see the case brought before the United States Supreme Court.

Rubashkin attorneys have called the 8<sup>th</sup> Circuit's decision "a sweeping whitewash" of judicial and prosecutorial misconduct in the case. That the appeals court rubberstamped a trial plagued by judicial bias and prosecutorial misconduct has left many shocked and troubled.

One hears a disturbing echo of the court's decision in the prolonged silence from the Department of Justice (DOJ) in response to pleas from 47 congressmen to investigate the rampant abuse of power in the Rubashkin case.

What lies behind the DOJ's tactic of ignoring such an outpouring of concern about the injustices in the case?

## SILENCE LINKED TO FEAR?

A recent message to Rubashkin supporters from unnamed sources in the Department of Justice suggests the DOJ's silence about the Rubashkin case might be due to something other than apathy or indifference. It's quite possibly linked to fear.

Two senators from a western state recently reported back to their petitioners that their contacts in the DOJ have warned them to stay away from the Rubashkin case, because "it is way too dirty."

The mystifying comment was relayed to a Rubashkin supporter who had discussed the case with the senators in question. "I want you to know that I had extensive conversations about Sholom Mordechai Rubashkin with both Senator ..... and Senator .....,," the Rubashkin supporter wrote to fellow activists, without disclosing the officials' names.

"I begged them to intercede on my behalf and on behalf of the Jewish people for this terrible travesty of justice. They got back to me and told me that they were told by the DOJ that "this case is way too dirty" and they "should stay out of it and absolutely not get involved."

The activist wrote of his impression that driving this message from the DOJ was a fear that "picking one loose thread from this case could unravel the entire patchwork, and that simply can't be allowed to happen."

## 'WAY TOO DIRTY'?

Who are these DOJ officials who consider the Rubashkin story "way too dirty?"

We don't know, but it doesn't really matter. What is of interest is their reason for advising a hands-off policy. By today's standards, a dirty story is usually an explosive tale of betrayal or de-

pravity that threatens to torpedo reputations, careers and innocent bystanders. It's typically about corruption of such depth or magnitude, it makes one cringe.

Could "way too dirty" be a reference to the inflated counts of bank fraud of which Sholom Mordechai was convicted? Or perhaps a reference to charges that he paid cattle suppliers late? Might it describe the alleged money-laundering about which a jury found that no personal profit accrued?

Unlikely.

Prosecutors, aided by the media and other Rubashkin-bashers, certainly did their best to sensationalize the case and inject as much dirt into it as possible. That's what the lurid allegations about Agriprocessors housing a meth lab and illegal weapons caches were all about--allegations which were never heard again after the raid took place.

The attempt to doctor up the record was also reflected in the carefully orchestrated uproar about child labor, worker abuse, exploitation and dangerous working conditions at Agriprocessors.

But all these child labor allegations were tossed by a jury in a 2010 state labor trial. Despite two years of preparation for the state trial and millions of taxpayer dollars invested in flying witnesses in from Guatemala and Mexico for a trial that lasted over a month, prosecutors could not prove a single allegation. The jury handed Sholom Rubashkin a sweeping acquittal.

Try as they might, prosecutors failed to produce even the whiff of a really good scandal.

If Sholom Mordechai's record of alleged misdeeds flunks the "way-too-dirty" test, the dirt - and the fear of what happens when it hits the fan - must lie elsewhere.

## RUBASHKIN APPEAL THREATENS EVERY KEY PLAYER

One need not look far to find real dirt. The Rubashkin appeal forced the spotlight on the abuse of federal power that marked not only Sholom Mordechai's case but the broader debacle of the 2000 ICE raid out of which the case grew.

The appeal threatened all the key players in the operation with its exposure of secret meetings between Judge Reade and law enforcement officials about the planning and execution of the raid. After becoming a virtual arm of the prosecution, Reade then presided over the criminal proceedings, convictions and sentencing of hundreds of arrestees - repeatedly violating the Code of Judicial Conduct.

The fear, presumably, is that the righting of injustice in the Rubashkin case could not happen without also triggering a probe into the trampling of due process and civil liberties that marked the Postville prosecution of hundreds of immigrants.

The brutal treatment of these undocumented workers and the fast-track justice that railroaded them into waiving their rights sparked an uproar at the time. Civil rights groups, immigration advocates and defense lawyers cried out about justice run amok and demanded an investigation by the Department of Justice.

The expending of vast resources to no useful end by then Iowa U.S. Attorney Matt Dummermuth and many senior officials under him, including Stephanie Rose (current U.S. Attorney) and Richard Murphy, heightened the sense of outrage.

#### **BRUTAL TREATMENT**

These officials executed a massive raid that destroyed a vibrant, much needed plant along with the entire town of Postville, arrested hundreds of people, and prosecuted them in cattle-call trials in cattleground trailers with only the shabbiest charade of providing legal counsel.

They jailed hundreds afterward for five months each for felonies such as document fraud and social security fraud, after which the immigrants were deported.

Why did they bother incarcerating them? After other government raids across the country, most illegal immigrants without previous criminal records were quickly deported. The same end could have been achieved in Postville without all the shameful pageantry and glory-seeking.

That, of course, would not have given Dummermuth, Rose and Murphy the chance to grab headlines and promote their career enhancing ambitions.

#### **5-MONTH INCARCERATION TO KEEP WITNESSES ON ICE**

As Sholom Rubashkin's trial unfolded, it became apparent why prosecutors needed to keep the undocumented workers in jail for five months. Deporting them immediately, in line with established protocol, would have deprived prosecutors of a pool of witnesses for the upcoming Rubashkin trial.

Critics say the prosecutors used forced plea deals to coerce the immigrants into testifying in court against other defendants, including Sholom Rubashkin. For the plea deal to be ratified, the immigrants had to pledge to cooperate with the government investigation in any way required of them.

Witnesses who pledged full cooperation in whatever aspect of the investigation, prosecution and trial for which they were needed, were promised early release and deportation to their native countries to rejoin their families.

This cynical exploitation of defenseless people and other excesses by judges working in collusion with prosecutors, prompted a scathing critique by the former president of a prominent immigration advocacy group, AILA [American Immigration Lawyers Association].

#### **'IOWA FEDERAL DISTRICT COURT [JUDGE READE] WAS DRIVING THE TRAIN'**

"The Iowa federal district court [Judge Linda Reade] was driving the train, fatally compromising its own integrity as an independent branch of government," wrote then AILA President Charles Kuck in 2008.

*[AILA wrote this long before the discovery of ICE documents that laid bare the collaboration between federal prosecutors and Judge Reade.]*

"The tracks laid down to carry this new 'enforcement train' were designed to force rapid guilty pleas under the threat of serious jail time, avoid the inconvenience of trials, limit access to immigration counsel, eliminate the prospect of all future relief, and impose criminal sentences simultaneously," the AILA attorney said.

The chorus of protests sparked a congressional subcommittee hearing to examine the government's tactics in the raid, drawing media attention for several weeks.

But the official spin on the story won the day. Federal authorities in Washington testifying at the hearing portrayed the operation as compassionate and humane. They denied all allegations of verbal and physical abuse, as well as all charges of civil rights violations.

With hundreds of immigrants jailed or deported and unavailable for interviews, the protests and clamor gradually died down.

#### **RUBASHKIN APPEAL AS BATTERING RAM**

What would a Rubashkin win mean for hundreds of arrested immigrants over whose criminal proceedings Judge Linda Reade presided and whom she sentenced to jail?

One can only imagine the nightmarish spectacle of immigration attorneys and activists using a Rubashkin victory as a battering ram to overturn hundreds of convictions, and to expose and disgrace the judges and prosecutors who handled them.

No one was ever held accountable for the due process and civil liberties violations that occurred in Postville prosecutions. During the heat of the 2008 congressional hearings into the raid, each side tried to fob off responsibility on the other.

The DOJ had kept a low profile in the face of public outcry against the operation that shattered lives, tore apart families and crushed the entire economy of the region. DOJ spokesmen insisted that local officials in Iowa ran the operation and were responsible for strategic decisions.

While denying that they were responsible for initiating the ICE raid, federal prosecutors who executed the prosecutions prided themselves on their role. The Iowa United States Attorney Office was so pleased with the brutal efficiency of the prosecutions that a press release was issued boasting about arraigning, pleading, and sentencing a record number of defendants in one day.

Top members of the US Attorney's office were richly rewarded for not only carrying off the raid but for shielding Washington from having to take responsibility for its excesses.

Stephanie Rose was appointed U.S. Attorney of Iowa's Northern District shortly after the raid, after Matt Dummermuth stepped down. [He is now aspiring for a seat on 8<sup>th</sup> Circuit Court Of Appeals.]

And in 2009, at an award ceremony titled "Justice Dept. Honors Its Heart and Soul," Holder and top DOJ brass honored Richard Murphy, senior Iowa Assistant US Attorney, for pulling off the raid so superbly.

Murphy received lavish praise "for spearheading monumental coordination efforts... in preparation for his office's execution of a massive criminal worksite enforcement operation."

#### **A GLORIOUS NARRATIVE IN TATTERS?**

The Rubashkin appeal, by exposing the secret collusion between Judge Reade and the U.S. Attorney's Office, threatened to shred the glorious narrative many esteemed officials had written for themselves.

If the appeal were to succeed, these self-proclaimed champions of justice might topple from their pedestal. Their superiors in the Department of Justice who gave them the nod, if not their explicit marching orders, would all be implicated.

Instead of his hyped-up conviction and 27-year prison sentence being used by the USAO to justify the overblown ICE raid, Sholom Rubashkin would end up using these grossly excessive measures to expose the corruption of the very individuals who had lynched him.

A Rubashkin court victory would have spelled disaster for too

many highly placed people.

With its reputation of being overwhelmingly pro-government and conservative, the 8<sup>th</sup> Circuit must have viewed the Rubashkin appeal as posing an unthinkable danger—as a case that had the potential to torpedo the very heart of the justice system.

As for the question of who in fact masterminded the ill-conceived ICE raid, let's revisit that event through the eyes of an Iowa judge, Mark Bennett, based in Sioux City. Bennett admitted in an interview with a documentary-maker in 2009 that he was forced to mete out unjust jail sentences to many of the immigrants, due to a Department of Justice policy that "tied his hands."

"I was embarrassed to be a United States District Court Judge that day," Judge Mark Bennett of Sioux City, Iowa, said of his actions in sending 57 of the arrested immigrant workers to jail.

#### A JUDGE'S CATCH-22

The *Des Moines Register* article quoted Bennett as saying that he had no option but to agree to plea deals that called for him to imprison 57 immigrants for five months and afterwards deport them. That punishment deprived needy families of their breadwinners and drove them deeper into poverty and despair.

The judge noted that the 57 people he sentenced to jail, except for being undocumented, had clean records. "Court hearings in which 57 people in a row do not have even a single misdemeanor among them is unheard of in federal court," Bennet said.

"If anybody deserved mercy and compassion and fairness and justice, these 57 did. And I don't believe they received it, even

though I was the one who imposed the sentence," Bennett said regretfully.

He added that the prosecutors coerced immigrant workers into signing binding plea agreements that mandated prison time, by holding the threat of more severe charges [with longer jail terms] over their heads. "I thought their insisting on each of the defendants serving a five-month sentence was a tragedy," he said.

"But it's an executive branch decision, and I didn't have the power to do anything about it other than not agree to the plea agreement. But if I did that, they would have been held in custody much longer."

"My hands were tied by the Department of Justice," he explained.

If the 8<sup>th</sup> Circuit's mindset of don't-bother-me-with-the-facts finds an echo in the stonewalling from the Department of Justice on the Rubashkin case, we now know why.

The story, as the DOJ contacts told the Rubashkin supporter, is indeed "way too dirty." It's about wholesale betrayal of a trust, about bowing to the dictates of prejudice, ambition, self-righteousness and protecting one's own. It's an explosive, untold story that reeks of corruption.

An Iowa attorney monitoring the case put it this way: 'If Americans had any idea of the ruthlessness behind this story... of the scheming by people in power... the way they got away with railroading an American citizen without a shred of regard for his rights, there would be rioting in the streets. Unfortunately, people are oblivious. Asleep.'

## STONEWALLING A GROWING SCANDAL

Attorney General Holder's tactic of ignoring unpleasantness in the hope that it will go away may have kept the lid on the explosive Rubashkin saga for now. But stonewalling to kill a scandal invariably backfires.

Witness the furor over Holder's refusal to take responsibility for Operation Fast and Furious, a botched federal gun "sting" that has scores of congressman demanding the attorney general's resignation.

Fast and Furious was run by a Department of Justice agency, the ATF (Alcohol, Tobacco and Firearms). The highly secretive program allowed hundreds of weapons to flow from Arizona into Mexico for the professed goal of helping identify gun routes and the drug cartel kingpins buying illegal weapons.

The idea behind the program was that if law enforcement followed the weapons, massive arrests would surely follow and the bad guys would be eliminated. But because there was no plan to adequately track the buyers and the weapons once they crossed into Mexico, the plan utterly failed.

Not only did it fail, the operation was responsible for introducing huge numbers of weapons into a region of the world that has seen 40 thousand drug-related murders in the last five years.

Some agents feared that the guns might be "walked" back over the border and used to commit crimes in the United States and notified their superiors of their concerns. But the program was allowed to continue.

On the night of December 14, 2010 a deadly gun battle broke out in a border canyon near Rio Rico, Arizona. When it was over, U.S. Border agent Brian Terry, 40, was dead and near his body were two of the firearms that had been "walked" in the Fast and Furious program. When these facts came to light, the story exploded onto

the front pages nationwide.

### TESTIMONY RINGS HOLLOW

Attorney General Eric Holder, has told Congress he didn't know anything about the Fast and Furious program until the Terry tragedy. But shortly after his testimony, memos and emails surfaced indicating Holder had been briefed about it nearly a year earlier.

When challenged, Holder rebuffed his critics as politically driven and took no responsibility for the reckless operation. At his hearings before a Senate Judiciary committee investigating the program, Holder gave evasive and conflicting answers.

Republicans began calling for Holder to resign when the DOJ balked at turning over internal documents to comply with subpoenas issued by Rep. Darrell Issa (R-Calif.), chairman of the House Oversight and Government Reform Committee.

Republicans are skeptical over Holder's previous testimony that he was in the dark about the program's serious pitfalls. Considering the number of agencies such as ATF, FBI, IRS and ICE that were involved in the operation, they point out, it seems implausible that Holder knew nothing about it. Especially, in light of disclosures that he was receiving regular updates from his subordinates (updates he says he never read).

Lanny Breuer, head of the Criminal Justice Division of the DOJ, drew fire two weeks ago for trying to shield Holder from responsibility by taking the rap himself.

Breuer admitted to a Senate committee hearing that he knew of an earlier federal program similar to Fast and Furious - and just as reckless a failure - but somehow failed to connect the two programs and to grasp the alarming implications for Fast and Furious.

He apologized for not alerting his boss, Holder, about the disas-

trous problems with the earlier gun sting.

### BREUER AS SACRIFICIAL LAMB

Breuer's readiness to "fall on his sword" to protect Holder failed. "How is it that the Number Two, Three, Four at Justice all knew about this Program but the Number One [Attorney General Eric Holder] didn't?" asked Sen. Issa in an interview this week with the press.

"Is it because he said 'don't tell me'? Is it because [subordinates] knew what they were doing was wrong and they were protecting their boss? Or is it just that Eric Holder was so disconnected, or incompetent ...?"

Issa's comments came as the number of lawmakers demanding Holder's resignation surged to 52.

Issa told news reporters that if Attorney General Eric Holder isn't "doomed" because of his handling of Operation Fast and Furious, the entire Obama administration will suffer.

"If the [Obama] administration continues to have full confidence in a failed administration by Eric Holder and Lanny Breuer, then ultimately the administration is going to be doomed," Issa said.

Indications that Fast and Furious may become a political hot potato in the 2012 presidential election were reinforced this week by calls for Holder's resignation from two Republican presidential nominees; Texas Gov. Rick Perry and Rep. Michelle Bachmann (R-MN).

In an op-ed this week in the *Washington Times*, Perry wrote that Holder's credibility has been "irreparably damaged" by the scandal.

"Mr. Holder's proclaimed ignorance leaves Americans to draw one of two conclusions: Either he is guilty of extraordinary incompetence or he is guilty of a cover-up. Either way, it is high time for Mr. Holder to step down. If he refuses to resign, Mr. Obama must

fire him immediately," Perry wrote.

### SWEATING IN THE HOT SEAT

There is something ironic about the image of Holder and Breuer "having their feet held to the fire" as they were being grilled over allegations of misleading Congress.

Breuer has often emphasized that public trust and confidence are essential elements of an effective criminal justice system. Yet under rapid-fire questioning by Senator Grassley, R-Ia, about what he knew of the Fast and Furious operation, he was obviously ill at ease, sweating, shifting nervously in his seat, pulling at his tie, all the while insisting he had no more information to offer.

Breuer has been in the news lately for other reasons. At a two-day legal summit in downtown Washington last week, he made a presentation to hundreds on one of his favorite topics - the issue of sentencing disparity.

"With increasing frequency, federal judges have been sentencing fraud offenders - especially offenders involved in high-loss fraud cases - inconsistently," Breuer told participants.

"He implored federal judges to 'mete out sentences that are appropriate to the conduct of individual defendants,'" the *BLT (Blog of Legal Times)* reported.

Breuer has often stated the justice department is "especially concerned" about the inequity of sentence disparity. "Our laws and their enforcement must not only be fair, they also must be perceived as fair," he said in a speech in Miami last year.

### PRETTY WORDS ON PAPER

How ironic to read these words. At the time, with a growing chorus of legal experts challenging the excessive severity of Sholom Mordechai's sentence, many hoped that Breuer would order a judicial review of the case. That would be consistent with his expressed concern of fairness and with the increasing disparity in white-collar sentencing.

"The Rubashkin case has been marred by so many abuses and excesses that close scrutiny by the Department of Justice is required to avoid a result that will be a permanent stain on American Justice," attorney Nathan Lewin advised Breuer in a letter last year. Lewin asked the assistant attorney general to appoint attorneys to review the case.

Despite credible allegations of prosecutorial misconduct roiling the case, and despite the staggering sentence being sought by prosecutors, Breuer declined to get involved.

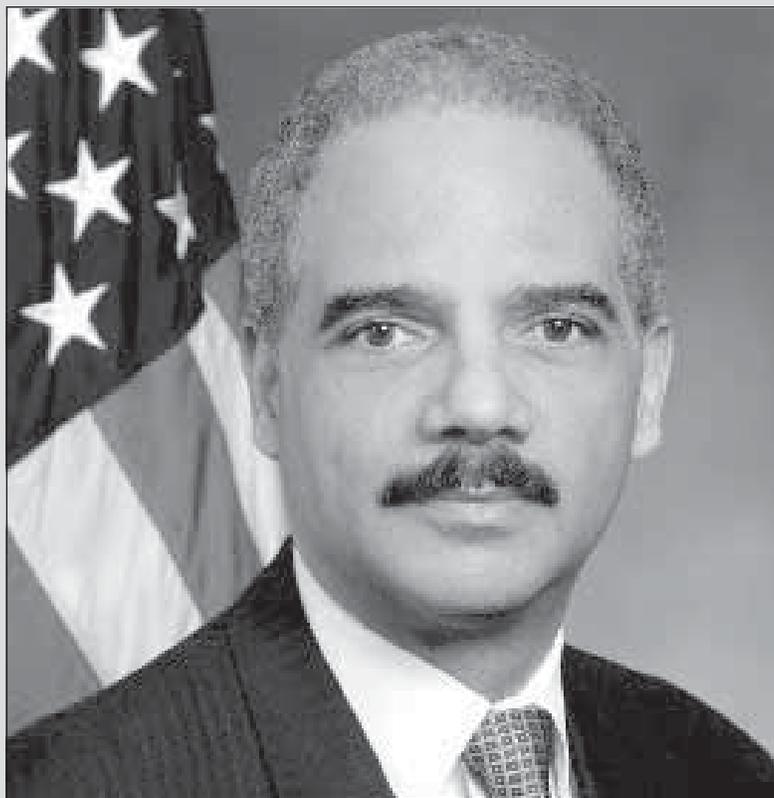
He advised Lewin to raise his concerns "with the presiding judge or with the prosecutors in the case" -the self-same officials engaged in subverting justice.

Rep. Bill Delahunt, D-Mass., wrote in his letter to Eric Holder around this time that the justice department's unwillingness to inquire into the Iowa prosecutors' conduct in the Rubashkin case was "distressing in itself."

He singled out Assistant Attorney General Lanny Breuer for unfairly "passing the buck back to the U.S. Attorney's office for the Northern District of Iowa," the prosecutors who were determined to lock up the defendant for life.

For those who expected a more humane and judicious response from Breuer, a son of Holocaust refugees who should be especially sensitive to injustice and persecution, his failure in this regard was deeply disappointing.

### Eric Holder



# UFCW Corruption Case And Sholom Rubashkin

BY DEBBIE MAIMON

What does the recent arrest of three former bosses of the UFCW [United Food and Commercial Workers] on charges of racketeering, extortion and money laundering have to do with Sholom Mordechai Rubashkin?

The linkage between the two topics was proclaimed in the headline of a local Jewish weekly: *Officials of UFCW, Organization That Brought Down Rubashkin, Arrested*. The title suggested one would discover from the article a tie-in between the arrest of the UFCW officials and the collapse of Agriprocessors, the Rubashkin family's meat-packing plant.

The article, however, made no effort to follow up on this linkage—perhaps assuming the facts are well known and no elaboration was needed.

This is unfortunately far from the case. Too few know about the UFCW's odious accomplishments in Postville, Iowa; how this powerful union, aided by highly-placed political cronies, destroyed a prosperous Jewish company, drove its owners to financial ruin and crushed an entire economic region.

How ironic that the powerful union that maligned Agriprocessors "for worker abuse and exploitation" is now mired in disgrace over corruption charges. But this irony is probably lost on a great many readers.

## BIZARRE NEWS BLACKOUT

The UFCW corruption case is a story that cries out to be told. But penetrating the veils that keep the union's tactics from public view is no easy task. The union's skill in spinning the facts and in keeping the public in the dark is on display in the bizarre news blackout surrounding the October arrest of top union officials.

The article posted by the Jewish weekly was a copy of a report released by the National Legal and Policy Center [NLPC] on the arraignment of the three UFCW chiefs, Anthony Fazio Sr., John Fazio Jr., and Anthony Fazio Jr. on corruption charges.

The information in the article had been lifted from a press release issued by the New York City Courthouse News Service in October, the day the men were arrested.

After appearing in these two sources—Courthouse News Service and NLPC, and of course the indictment itself—the story of the arrests on corruption charges abruptly died in its tracks. Not a single news wire carried it.

The indictment said the union leaders had stolen \$2.4 million dollars from their members and from employers over a 16-year period, and used the money to line their own pockets.

It accused the Fazios of "extorting, soliciting and obtaining cash payments, in violation of federal and state labor law, from business owners whose employees were represented by [the UFCW branch]

Local 348," to enrich themselves and others.

Manhattan U.S. Attorney Preet Bharara said in the indictment that "as [union]leaders, the Fazios were supposed to advocate on behalf of their members, not strong-arm and threaten business owners in order to make a profit under the table... They will now be held accountable."

FBI spokeswoman Janice Fedarcyk elaborated on the Fazios' modus operandi. "The Fazios used their position to pad their pocketbooks by allegedly threatening and extorting businesses for more than 15 years instead of using their position to protect the workers their union represented."

These former presidents and treasurer of the UFCW—men who stood at the helm of the organization for decades—were arrested over a month ago. The trio were taken in handcuffs to a precinct in Manhattan, and slapped with a 52-page indictment. High profile arrests of this sort normally make headlines. Not here. The usual media buzz and notoriety accompanying the arrest and arraignment of prominent figures were totally absent.

Where was the press? Where were the flashing media cameras, and reporters with microphones pushing and shoving to get a statement from the celebrity legal team proclaiming their client's innocence?

## EXPLOSIVE STORY DIED IN ITS TRACKS

While major efforts have gone into jacking up the insipid antics of "occupy Wall Street" to the level of something resembling news, a naturally explosive story has not only been kept off the front pages, but out of the entire mainstream press.

Incredibly, five weeks later, no information has surfaced in any news organ about the unfolding legal process in the case. There is no place to go to learn more about this significant case.

What does it all mean?

One's imagination tends to run riot trying to visualize how such a news blackout was orchestrated. How about this scenario: A union associate—we'll call him Tony—places a phone call to "Jim" who has connections in the D.A.'s office,

**Tony:** Hey Jim, how's it going?

**Jim:** Pretty good. How can I help you, Tony?

**Tony:** I need a favor, Jim. About the Fazios. Keep the press out of the picture, okay? We know you boys have to do your job, but no fanfare. Keep it real quiet, okay?

**Jim:** It's not so simple, Tony. This is hot. The D.A.'s been working on this for two years. He's entitled to a little public recognition, you know what I mean?

**Tony:** We'll see he gets recognition. We know how to show our appreciation—especially in an election year. You have any doubts

on that score?

**Jim:** No, I guess not.

**Tony:** Good. So I can count on you, Jim? This is a big one.

**Jim:** I'll see what I can do, Tony.

Ridiculous, right? This only happens in novels—bad ones, with contrived and implausible plots that would be laughed out of the editor's office.

On the other hand, isn't truth sometimes stranger than fiction? In this case, the truth is made even stranger by the fact that in addition to the news blackout surrounding the immediate arrests and arraignment, the media silence encompassed all subsequent court hearings related to the case.

What pleas were entered by the accused union bosses? How much was bail set for? Is there going to be a trial? Who are their attorneys? How many years in prison do the men face "if convicted of all charges"? One searches the news outlets in vain for the barest hint.

"How powerful must be the reach of the UFCW—and their many influential friends and beneficiaries," wrote one columnist. "While the union hierarchy is busy protesting corporate greed and alleged malfeasance, those same protesters are robbing their members blind with impunity, and keeping the public in the dark even about their bosses sitting in the dock."

Conservative commentator Rush Limbaugh has his own way of explaining this phenomenon. "There is no news in the mainstream media," he says, "it is all about advancing an agenda." The press's astonishing silence about the government's corruption case against the UFCW drives home this reality.

#### BURYING STORIES THAT DON'T FIT THEIR AGENDA

One need look no further for evidence of how the media can bury a story that doesn't fit its agenda than the *NY Times*' silence about the Rubashkin White House petition on the "We The People" website.

While the newspaper reported on other high-ranking petitions, it omitted all mention of the second most popular one: the petition signed by 52,000 people to correct the injustices in the Rubashkin case.

In the same vein, the *NY Times* and other mainstream media have consistently shunned the Rubashkin solidarity rallies that have drawn tens of thousands of people. They have wholly ignored the phenomenon of 48 congressmen joining prominent voices in the American legal community urging the Department of Justice to investigate the case.

In turning its back on a cause that does not fit its agenda, the mainstream media is playing accomplice to a process of destruction still taking a bitter toll on Sholom Rubashkin and his family.

#### REVISITING THE UFCW'S CAMPAIGN AGAINST AGRIPROCESSORS

Does it really matter how the meat-packing plant and the Rubashkin family were destroyed? As ugly and repellant as the union's tactics were, why dwell on the past? Why not move on?

The answer is that the lies planted by the UFCW about Sholom Rubashkin in the union's long-running campaign to unionize Agriprocessors, continue to poison public opinion, and can harm efforts to have the Rubashkin case heard by the United States Supreme Court.

Although the Supreme Court does not decide whether to accept a case based on the popularity or notoriousness of a defendant, public perception of the defendant as a criminal who deserves his fate can certainly influence the high court's decision.

#### DISCREDITED LIES RECYCLED

Lies peddled by the union—specifically about "illegal labor prac-

## A War of Attrition

tices" at Agriprocessors—continue to be served up to an unsuspecting public. They were recycled as recently as last month in an op-ed in the *LA Jewish Journal* by a Rabbi K. of an LA synagogue identifying itself as modern Orthodox.

The author was writing about the need for higher standards of ethics in the Jewish community and—setting a fine example of ethical behavior, himself—took a sanctimonious jab at Sholom Rubashkin, accusing him of unethical treatment of his workers.

When challenged by a reader comment, Rabbi K. said he was referring to fines levied by the Department of Labor against Agriprocessors for allegedly withholding workers' wages.

Were immigrant workers actually cheated out of their pay at Agriprocessors? This is easily determined by examining the state trial record, at which these and many other allegations were aired.

As explained at the trial, most accusations about "shorting pay" arose over differences in "time clocked" and "time worked." Workers punching the clock before their shift officially began, tried to bill the company for extra time they voluntarily put in. This ran counter to company policy that it would not recognize "voluntary" overtime, only overtime that was specifically requested by the company.

When workers' paychecks did not reflect the extra time they billed for, outside agitators showed them how to file complaints with the Department of Labor for having their paychecks "shorted."

The rabbi, responding to criticism from *LA Jewish Journal* readers for his badmouthing of Sholom Rubashkin, claimed he possessed evidence that Agriprocessors had paid the fines imposed by the Department of Labor, as if that itself was proof of guilt.

This claim is patently false, as anyone familiar with the timeline of events can testify. The fines were levied *after* the raid had forced Agriprocessors to cease operations and to declare bankruptcy. It was as if Iowa labor commissioner Dave Neil was intent on giving Agriprocessor's already "dead body" one final kick—just to make sure.

Company representatives contested the fines as unjustified. It goes without saying they were never paid, and weren't expected to be paid by a company in its death throes.

But that wasn't the point. The point was their shock value to those campaigning to demonize Agriprocessors and how these sensational charges might be used as fodder in the state's child labor case against Sholom Rubashkin.

#### FROM THE MORAL HIGH GROUND—OR THE GUTTER?

Like a modern-day Rip Van Winkle, Rabbi K. seems to have slept through some major events since news of the fines was used to malign the company.

At Rubashkin's 2010 state labor trial, an astounding thing happened. The case against the defendant had appeared overwhelming. Labor Commissioner Dave Neil, a man with extensive ties to Iowa's major unions, had initially charged Agriprocessors with 9311 counts of child labor.

On top of this, the judge allowed the prosecution to air many other allegations of "shorting pay," deliberate hiring of minors, lack of safety training, having minors work with "dangerous chemicals," and other complaints against the company.

Even before the trial began, 90 percent of the 9311 child labor charges were abruptly dropped. That they had been ridiculously inflated from the start was self-evident. Further embarrassing the prosecution, the number of charges then shrank to just 67. And under a jury's scrutiny, they fell apart altogether, along with all other allegations.

The trial ended with a jury's verdict of not guilty on all counts. What about 'not guilty' don't you understand, Rabbi K?

What is even more extraordinary than a rabbi publicly repeating lies about a fellow Jew that have been discredited in court, is the wording of the rabbi's claim in an email to this writer. He stated not that he had *read about* or had *seen* news reports related to the Department of Labor fines that he claims Agriprocessors had paid, but that he has "all these documents" in his possession.

When asked to produce a copy of them for this writer, the rabbi responded with silence.

As improbable as it sounds, suppose Rabbi K's intimacy with the Rubashkin saga extends so far that he actually does retain documents about an internal Agriprocessors' matter. Wouldn't such a privileged insider surely be informed about the jury's conclusions at the state trial? How then could he have accused Sholom Rubashkin of charges which were shown to be without foundation?

Whether coming from ignorance or bigotry, the author's audacity in using a Jewish newspaper to defame a fellow Jew, in the name of calling for higher ethical standards as a "rav" (as he refers to himself in his byline), is breathtaking.

#### DEADLY FALLOUT OF A UNION CORPORATE CAMPAIGN

If the lies in the *LA Jewish Journal* do not seem virulent enough to warrant a post-mortem of the union's successful campaign in demonizing Agriprocessors, a closer look at the chain of events that led to the destruction of the company offers a more graphic selection of libels.

How many know that as part of a 2008 UFCW campaign against Agriprocessors, the union phoned religious households across Jewish communities in New York with a Yiddish message questioning Agriprocessors' kashrus and safety standards?

This tactic, disguised as a public welfare alert, was aimed at maligning the company's image and eroding its customer base. Once a company loses 10 per cent of its customers, union leader Joe Crump has said, it loses its profitability and faces a slow demise.

Many a company, thrown on the ropes by a union "corporate campaign" of the type waged against Agriprocessors, has been forced to the bargaining table with the union. Such was the union's game plan against Sholom Mordechai Rubashkin.

#### SCARE TACTICS, MISINFORMATION

One of the ways the union covers its tracks is by piling on misinformation. Its strong-arm tactics in forcing a company to unionize comes disguised as a service to the public. The tactics are packaged as a noble effort to alert people to the danger/exploitation/bad practices of a particular company.

The campaign against Agriprocessors actually goes back much further, to 2005, when the UFCW attempted over many months, without success, to unionize the plant in traditional ways, such as enticing workers through promises of higher pay, better medical

benefits, and so forth.

Acknowledging the failure of traditional methods, the union shifted gears and launched a "corporate campaign." This is a strategy described in the union's own literature to its members as a multi-pronged war of attrition waged against a given corporation, until the company either surrenders to unionization or is forced to shut down.

#### WAR OF ATTRITION

In the battle to unionize a plant, a key tool is lodging accusations and complaints against the company for violations of federal regulations. The company is then penalized and fined, with the union parlaying the NC's (noncompliance citations) to the public as proof of dangerous or unscrupulous business practices.

The company may be forced to hire public relations consultants to counter the negative publicity, pouring its resources into damage control, often to the neglect of its business.

If the charges are fought in court, the company bleeds financially through formidable legal fees. Either way, the war of attrition eventually exacts a massive toll.

As the *Wall Street Journal* has noted, "Unions are using regulatory laws as strategic weapons in their organizing and bargaining battles," the purpose of which is to "harass a company in the marketplace and blackmail it into voluntarily recognizing unions without a National Labor Relations Board-sponsored election."

Regulation is so out of control that any businessman in America, at any given time, is almost certainly guilty of noncompliance with a number of federal regulations. It is beyond human ability to be familiar with the tens of thousands of OSHA, EPA, IRS and other regulations. "The unions realize this—indeed, they lobbied for many of the regulations in the first place," notes the *Wall Street Journal*.

#### UNION-ALIGNED FORWARD SOFTENS UP THE ENEMY

The UFCW's war of attrition geared up after it witnessed the success of the *Forward*—a union-aligned newspaper with a pronounced anti-religious agenda—in trashing Agriprocessors in 2006 with a series of libelous articles.

Building on negative publicity generated by PETA's prior assaults against the company, the *Forward's* articles painted the meat-packing plant as a filthy, dangerous worksite where inhumane treatment of animals and workers abounded.

These outrageous claims should have been easy to counter. The USDA maintained a full-time presence at Agriprocessors. Also on site, on a steady basis, were top-of-the-line auditors hired by the company to ensure the plant's high standing in the industry, in terms of cleanliness and safety, and the company remained above average. These specialists were constantly on the alert for any breach of standards.

#### PRAISE FROM IOWA SENATORS

In addition, the public view of Agriprocessors was extremely favorable. The plant had been visited over the years by many members of Iowa's political bureaucracy, including Senator Chuck Grassley and Senator Tom Harkin, who publicly praised its operations. Harkin was quoted in the press as saying "Agriprocessors is one of the cleaner nicer operations that I've seen in the whole state."

Perhaps the Rubashkin management felt that a costly public relations counteroffensive was unnecessary because the facts were so self-evident. False allegations would simply fall apart on their own.

Tragically, this notion proved wrong. The *Forward's* mud-slinging, picked up by the mainstream media, began to stick. [Having seen the extraordinary ability of the unions in repressing a scandal, it doesn't take much of a stretch to imagine their power in creating one.]

The *Forward's* salvo against the meat-packing plant was followed up some months later by a smear campaign waged by a Con-

servative rabbi from Minnesota, Morris Allen.

Allen had pledged that his visit to Agriprocessors was for the sole purpose of ascertaining whether the *Forward's* articles had any truth to them. He had claimed to be free of any union-related agenda. He won an unrestricted private tour of the plant based on these assurances and the recommendation of a trusted friend of Sholom Mordechai Rubashkin, Rabbi Asher Zeilingold of Minnesota.

[In a scathing editorial to a Jewish weekly, Rabbi Zeilingold later lashed out at Allen for building Magen Tzedek on the blood of a fellow Jew and for conducting himself with deceit.]

After infiltrating Agriprocessors with labor consultant Avi Lyon [who posed as a friend of Allen who was merely curious about how the kosher plant operated], Allen teamed up clandestinely with union reps in Postville. His collaboration with the union was exposed when their secret meeting was unexpectedly discovered.

Allen later used his tour of Agriprocessors to launch a new social-justice certification called, "Magen Tzedek." Although as can be seen from his private correspondence with Sholom Mordechai, he had only praise for the company after his tour, he later reinvented his findings to fuel a smear campaign against Agriprocessors from which he launched his social-justice program.

He and Avi Lyon would go on to engage in one of the most vicious modern day blood libels. The pair appeared on a documentary, *American Greed*, as Jewish "insiders" with access to the real truth about Agriprocessors. They pitched the producer's fantasy to millions of viewers that Sholom Rubashkin was a rapacious corporate villain.

"We tried to keep this matter 'Jew to Jew,' Allen piously explains on *American Greed*, but said he "had no choice but to go public" with his complaints.

#### CONSERVATIVE LEADER LAUNCHES SMEAR CAMPAIGN

Magen Tzedek became a rallying point for Conservative leaders to galvanize their struggling movement. It also set the stage for Allen's bid for a market share in *kashrus* certification.

Allen pitched his new certification as the remedy to worker exploitation at kosher plants, gaining media limelight while riding the wave of public wrath over the "abuses" he helped to expose at Agriprocessors. His ambitions served as the perfect foil for stepped-up union activity against the plant.

[Later, the UFCW in conjunction with the Magen Tzedek launched a boycott of Agri products, with several rabbis' websites and blogs affiliated with the Conservative movement calling for a full boycott of all Rubashkin products.]

With Agriprocessors greatly weakened by the blows raining down upon it, the UFCW in 2007 formally launched its corporate campaign against Agriprocessors.

In addition to sending out an automated message to Jewish homes

in the N.Y. area smearing Rubashkin products, pamphlets were distributed at kosher stores, advising customers of "health hazards" in Rubashkin meat and poultry.

Trader Joe's stores in various locations were picketed, and in the guise of a public service to consumers, a new website was launched to monitor "abuses" at Agriprocessors.

#### CAMPAIGN GETS UGLIER

Picketers distributed pamphlets calling on customers not to buy Trader Joe's turkey and poultry products because they contained dangerous amounts of sodium.

After being immersed in salt for an hour for kashering purposes, all kosher poultry contain higher amounts of sodium than non-kosher products. Union agitators, however, shrewdly bank on consumer ignorance when employing scare tactics.

The relentless picketing of Trader Joe's stores culminated in a victory for the union in April 2008, as Trader Joe discontinued business with Agriprocessors. Trader Joe's at the time was receiving *a truckload of Agriprocessors products every single day*. The loss of this company's business struck an irreparable blow.

Employing similar tactics, the UFCW targeted Local Pride, an Agriprocessors branch in Gordon Nebraska. Here, too, the attacks eroded the company's credibility, despite public comments by a USDA spokesperson that "Agriprocessors is in full compliance with all health and safety concerns cited against the company over the past 3 years."

#### CONGRESSMEN JOIN THE FRAY

In the same time frame, as the *Forward* ran a spate of editorials and op-eds attacking Agriprocessors, and as Rabbi Morris Allen stepped up his own smear campaign against the company, four Democratic congressmen stepped into the fray.

The congressmen, all known to enjoy close ties with the unions, wrote a joint letter to the secretary of the U.S. Department of Agriculture expressing concerns about food safety at the company's Postville plant and urging and investigation. The well-publicized letter dealt one of the most lethal blows to the company's image.

[*One of the congressmen would later have a change of heart. In 2010, after disclosures about Judge Reade's ex parte discussions with prosecutors came to light, this congressman would write a searing letter to Attorney General Eric Holder protesting the severe injustices in the government's prosecution of Sholom Rubashkin and demanding an investigation*].

By mid-2008, aided by Morris Allen's smear campaign; by a media geared up for a feeding frenzy; powerful friends such as Labor Commissioner Dave Neil; and congressmen hungry for union support in an election year, the union had set the stage for the final knockout blow against Agriprocessors—the infamous ICE raid.

### *USDA Spokesman:*

*"Agri Processors is in full compliance  
with all health and safety concerns cited against the Company*

# FAST AND FURIOUS: Holder In The Crosshairs

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BY DEBBIE MAIMON

The American public is finally awakening to the shocking implications of Operation Fast and Furious, and demanding accountability for a gun-walking scheme so wanton and reckless, it defies belief.

The covert operation, run under the auspices of ATF (Alcohol, Tobacco and Firearms), an agency responsible to the Department of Justice, encouraged gun dealers in the Southwest to sell firearms to middlemen, who then smuggled the weapons across the U.S.-Mexican border.

The idea was to track the approximately 2000 high-powered guns to the heads of Mexican drug cartels, who would then be nabbed by authorities. But the surveillance and tracking part of the plan never got off the ground.

The smuggled guns were soon in the hands of Mexican gangsters and have been turning up next to dead bodies. 1400 guns are still unaccounted for.

The program was halted only after the murder of a U.S. Border Guard by Mexicans using “Fast and Furious” firearms, when a courageous ATF agent blew the whistle and told members of Congress, beginning with Iowa’s Sen. Chuck Grassley, what was going on.

Grassley and Rep. Darrell Issa, R-Calif., have led the probe into Operation Fast and Furious for almost a year. Their efforts to ferret out the facts have been greeted by stonewalling from the DOJ, evasive answers and outright lies.

The best they can get out of Holder is an admission that Fast and Furious was a “flawed” operation that should never have happened. Who ordered it? Nobody is quite sure. When did Holder first know about it? Depends on what day you ask.

“We don’t know who ordered it and I’d be surprised if evidence were to surface... that identified who was responsible,” Holder told Congress. He tried to cast the affair as a misguided local operation by the Arizona office of the Bureau of ATF.

Many congressmen find that impossible to believe since “Fast and Furious” entailed joint operations between ATF, the FBI and many other agencies who would have only acted on the orders of recognized higher ups.

“Massive gun-smuggling by the U.S. government into a foreign country does not happen without the explicit knowledge and approval of leading administration officials. It’s too big, too risky and too costly,” writes the Washington Times in a scathing op-ed that slams Eric Holder for deceiving the American people.

Holder’s efforts to distance himself and the DOJ from the fiasco have backfired as two congressional probes chip away at what many believe is a cover up that reaches the highest levels of the Obama administration.

Testifying to the growing sense of outrage, 55 congressmen are demanding Attorney General Eric Holder’s resignation. And a House of Representatives resolution of “no confidence” in Holder’s leadership quickly picked up 75 co-sponsors last week.

## REPORTER WHO REFUSED TO MARCH IN LOCKSTEP

The furor has been slow in heating up. A mainstream media protective of its Democratic heroes has successfully played down the affair, keeping the public blindsided for close to a year.

That has now begun to change. Congressional hearings have thrust into public view a pattern of contradictory and misleading testimony, dodging questions and revolving stories on the part of top DOJ officials, including the Attorney General and senior deputies.

While the media continues its foot-dragging on the story, a few notable exceptions have pushed the story into the headlines. Foremost is CBS News, whose investigative reporter Sheryl Atkinson refused to march in lockstep with the policy of hush-up.

Atkinson was one of the first to publicly point out that Holder’s testimony before Congress conflicted with internal Justice Department memos that had come to light. CBS News published her findings, infuriating the DOJ.

In response to Atkinson’s persistent queries to the DOJ about Holder’s exact words-- “Could you write them down for me so I know it’s 100 per cent accurate?” a DOJ staffer screamed at her that she was being unreasonable. “The New York Times is reasonable, Washington Post is reasonable. CBS News is not!” the staffer raged, according to Atkinson’s interview with Fox News.

Fox News and websites including Daily Caller and a variety of news and political blogs began intensively tracking other contradictions and inconsistencies by the DOJ, and shining a light on indications of a cover up.

A recent scathing op-ed in the Washington Times pinned responsibility on Holder and his chief deputies for the lethal gun-walking program that was responsible for so much death and violence. The operation was so out-of-control, it even had ATF agents protesting its recklessness and potential for disaster to the agency’s chiefs.

Some of these individuals became whistle-blowers, and risked their careers to reveal to higher ups—and when that failed, to members of Congress—what they felt was criminal negligence on the part of the ATF. This is how the truth about Fast and Furious first began to emerge.

## U.S. BORDER AGENT VICTIM OF HIS OWN GOVERNMENT

“A year ago this week, U.S. Border Patrol Agent Brian Terry was murdered,” the Washington Times wrote. “He died protect-

ing his country from brutal Mexican gangsters. We now know the horrifying truth: Terry was killed by weapons that were part of an illegal Obama administration operation to smuggle arms to the dangerous drug cartels.”

“Terry was a victim of his own government,” the article continued. “This is not only a major scandal; it is a high crime that potentially reaches all the way to the White House, implicating senior officials. It is President Obama’s Watergate” [a reference to the political dirty tricks of the Nixon Administration that eventually forced Richard Nixon out of office.]

The government’s rationale for Fast and Furious has been scornfully dismissed by critics.

“ATF claims it was seeking to track the weapons as part of a larger crackdown on the growing violence in the Southwest. But there was never any serious attempt to trace the guns. Instead, ATF effectively has armed murderous gangs,” the Washington Times op-ed noted, adding that the Mexican government was outrageously kept out of the loop, and left to cope with the botched operation.

#### GUN-WALKING DENIALS SHOWS TO BE FALSE

Holder and his chief deputies, including Criminal Justice head Lanny Breuer, have denied having any knowledge of the gun-walking operation.

But emails subpoenaed by Senators Grassley and Issa have lifted the veil on secret discussions among top DOJ personnel that show that higher ups were well aware of “gun-walking” along the Mexican border long before they say they were.

Other emails have incriminated Assistant Attorney General Lanny Breuer, who heads the justice department’s criminal division. Breuer’s office played a prominent role in crafting a February letter to Congress that denied ATF had ever walked guns into Mexico.

Yet, under pressure from congressional investigators, the department later admitted that Mr. Breuer knew about ATF gun-smuggling as far back as April 2010.

“Imagine my surprise when I discovered from documents that Mr. Breuer was far more informed during the drafting of that letter than he admitted before the judiciary committee,” Grassley fumed last week on the Senate floor.

Grassley says Breuer both lied in officially denying in a letter what he knew to be true about federal gun-running, and then lied about his involvement, in the letter.

“Mr. Breuer’s failure to be candid and forthcoming before this body irreparably harms his credibility,” Grassley added in the speech, during which he called for Breuer’s resignation.

#### ‘SYSTEMATIC COVER-UP’

The Washington Times op-ed lashed out at Holder for withholding vital information about the affair from Congress.

“Mr. Holder is fighting to prevent important internal Justice documents from falling into the hands of congressional investigators,” the author wrote.

“He insists he was unaware of what took place until after media reports of the scandal appeared in early 2011. This is false. Such a vast operation only could have occurred with the full knowledge and consent of senior administration officials.”

“Massive gun-running and smuggling is not carried out by low-level ATF bureaucrats unless there is authorization from the top,” the article continued. “There is a systematic cover-up.”

Holder insists the Justice Department has been forthcoming and points to thousands of documents and emails turned over to Congress. The most striking thing about all this material is what wasn’t included: Not a single email generated by Holder, or sent to him.

When asked by Senator Issa to explain this extraordinary omission, Holder said he was waiting for an internal DOJ investigation

to be completed and “didn’t want to interfere.”

#### WHAT’S THE DIFFERENCE BETWEEN LYING AND MISLEADING?

During one hearing, Holder admitted that an ATF letter to Congress that denied the agency had ever allowed “gun-walking” was false. The denial, he argued to Congress, was not a lie. It was “inaccurate.”

“What’s the difference between lying and misleading Congress in this context?” Rep. Sensenbrenner asked.

Thrown off balance, Holder tried to dissect the word ‘lie,’ coming up with “If you really want to have this conversation...lying is a state of mind.” It’s when the person “has an intent to mislead.”

The ripple of derisive laughter that greeted this wordplay left no doubt about whether, to those in the room, Holder’s testimony qualified for his definition of lying.

Under withering questioning by congressmen, the attorney general has admitted that the guns will likely “cause many more killings” for years to come. His passive acceptance of such tragedies has further enraged critics.

#### PAYBACK FOR THOSE WHO KNOW HOW TO KEEP QUIET

A Forbes.com article has noted that friends of Holder who were involved in “Fast and Furious” as well as potential witnesses, are being “rewarded” for keeping quiet.

The article cites as an example the career development of former acting ATF Director Kenneth Melson. Internal documents show Mr. Melson directly oversaw Fast and Furious, including monitoring numerous straw purchases of AK-47s.

He has admitted to congressional investigators that he, along with high-ranking ATF leaders, reassigned every “manager involved in Fast and Furious” after the scandal surfaced on Capitol Hill and in the press.

Melson said he was ordered by senior Justice officials to be silent regarding the reassignments. Hence, ATF managers who possess intimate and damaging information – especially on the role of the Justice Department – essentially have been promoted. Below are a few examples, according to the Forbes.com article:

Acting ATF Chief Melson became an adviser in the Office of Legal Affairs in Washington, D.C.

Acting Deputy Director Billy Hoover is now the special agent in charge of the D.C. office.

Deputy Director for Field Operations William McMahon—he’d received detailed briefings Fast and Furious—is now at the ATF’s Office of Internal Affairs.

Former Special Agent in Charge of Phoenix William Newell—he oversaw Fast and Furious and lied by saying guns hadn’t been allowed to go south of the border—is now at the Office of Management in Washington, D.C.

ATF Group Supervisor David Voth—he managed Fast and Furious out of the Phoenix office—is now in a management position in Washington, D.C.

Agent Hope McCallister—she had management duties on the team that ran Fast and Furious—was given a “Lifesaving Award” after it came to light she’d ordered agents to stop tailing suspects who the ATF had allowed to buy guns.

Meanwhile, the whistleblowers who blew the cover off Fast and Furious are paying the price.

Agent John Dodson, after nearly a year of harassment, including being given menial assignments and being barred from areas of the ATF building in Phoenix, is in the process of trying to sell his home in Arizona so he can transfer to South Carolina.

Agent Larry Alt transferred to Florida. He still has unresolved legal claims against the ATF for their alleged retaliation against him.

Agent Pete Forcelli was demoted to a desk job after he testified before Congress. He has requested an internal investigation to address retaliation targeting him.

The lesson for potential future whistleblowers is clear. Like those who had been ordered to let guns “walk” in Operation Fast and Furious—and federal employees who are caught up in other misguided or corrupt programs—the choice is to either keep quiet, or come forward and be crushed by the bureaucracy while attempting to stand up for what’s right.

### DOJ SOUGHT TO TAMPER WITH FOIA

Senator Grassley has highlighted a related issue that hasn’t made the headlines. This issue puts the politics behind the cover up of Fast and Furious in perspective.

In November, internal documents showed that the DOJ was considering changing existing Freedom of Information Act (FOIA) regulations. This is a process that allows citizens to seek and obtain unclassified documents. The changed law would allow federal

agencies to answer a FOIA request by saying “no records exist,” even if the records do, in fact, exist.

That would put government documents out of reach of American citizens whenever a federal agency decides, for whatever reasons, that the information being sought should remain classified.

Under the changed law, when someone makes a request for government documents, the agency would be able to dodge that request with false denials.

That would undermine the very purpose of the Freedom Of Information Act: to keep government responsible to the people by guaranteeing the rights of Americans to be informed about government actions and policies affecting them.

“They were giving themselves a license to legally lie,” Senator Grassley told reporters. “And this was supposed to be the most transparent administration we’ve ever seen,” he added ironically.

The senator added that after his staff made a commotion about the DOJ giving themselves a “license to legally lie,” the DOJ was “so embarrassed they withdrew the proposal right away.”

## OPERATION FAST AND FURIOUS’S REAL AGENDA

What “Fast and Furious” reveals about the highly politicized culture of the Justice Department, where, in the service of politics, lives can be wantonly snuffed out and reputations destroyed, is on display in the extraordinary episode described below.

As CBS has reported, ATF emails turned over to Congress open a window on the agency’s agenda. The emails talk of using “Fast and Furious” casualties to “argue for controversial new rules about gun sales.” (The ATF’s own role in instigating the weapon smuggling would of course be concealed.)

In simple English, the government’s game plan behind Fast and Furious seems to have been to open the door to weapons smuggling and violence, and then use that mayhem to prove the need for tighter gun control.

To advance this goal, say critics, ATF working with federal prosecutors tried to pin the blame for the violence on one of the largest gun dealers in the area, Carters Country. What happens next sounds like something straight out of a novel.

Government staffers leaked a story to the Washington Post about their “discovery” that gun sales along the Mexican border were sending firearms into that country, feeding its crime and instability.

The Post (whose editors, like most liberals, endorse tighter gun control) obliged by writing an in-depth story uncovering this “criminal enterprise.”

The article’s authors were apparently given private access to ATF’s internal statistics and documents and their article reflected this inside information. The article singled out two stores as complicit in promoting the arms-smuggling: Lone Wolf in Arizona and Carter Country in Texas.

The story said Carter Country’s retailer and owner were notified they were under grand jury investigation for illegally selling the guns to known middlemen (straw purchasers) for huge cash profits.

Here’s the opening paragraph in the December 13, 2010 Washington Post article:

“A federal grand jury in Houston is investigating a clerk for [Carter’s Country], one of the largest independent gun retailers in Texas, for allegedly making illegal sales of firearms that landed in the hands of Mexican drug cartels, a criminal attorney for the gun store said Monday.”

Carter Country was in deep trouble. Responding to the report in the *Post*, the gun dealer’s attorney, Dick Deguerin, defended his client, charging that agents from the ATF actively encouraged reluc-

tant Carter Country employees to sell weapons to suspected “straw purchasers.”

DeGuerin said Carter’s Country and the salesman did nothing wrong and were acting as tipsters to the ATF, in developing cases against suspected gun traffickers.

“They tipped ATF off to dozens of purchases,” DeGuerin said. “What’s outrageous is that there could be this kind of suspicion that anyone at Carter’s Country did anything unlawful, when they were just doing what ATF wanted them to do.”

“They were encouraged to go through with the sales so that the ATF could follow the sales, get information on the purchasers, and perhaps, I guess, interdict the purchaser and seize the weapons,” DeGuerin said. “If anybody dropped the ball, it was ATF.”

The attorney’s protests, reported in the Washington Post article, would never have been taken seriously [who would believe a federal agency would knowingly put guns into the hands of gangsters?], if not for the events of the following night.

During the night of December 14, an AK-47 sold to a straw purchaser with the blessing of the ATF at the Lone Wolf gun store, was used in the firefight that cut down Border Patrol Agent Brian A. Terry.

Within 24 hours of Terry’s death, federal officials had traced the AK-47 to Fast and Furious. [The programs’ guns were obviously marked to enable tracing.]

Behind the scenes, some ATF and other federal agents aware of the gun-walking operation, began to vehemently protest its continuation. Ignored by their superiors, they went to Congress with their story. Operation Fast and Furious was abruptly shut down.

The poor Carter Country clerk whose fate had been all but sealed by the prosecutors’ and ATF’s game plan, received what seemed to be a miraculous reprieve. The grand jury subpoena was abruptly dropped, as were all charges against him. No explanation was given.

With hindsight, there is no mystery here. Refusing to play scapegoat, Carter Country was going to blow the whistle on “Fast and Furious”. Prior to Brian Terry’s murder, whether his allegations against ATF would have been believed is doubtful. But with the tracing of two of the weapons found near Terry’s body to “Fast and Furious,” the program was about to have its cover blown.

Damage control was now the priority. That meant hushing up noisy attorneys like Dick Deguerin who knew too much, and now—in the aftermath of Brian Terry’s murder—might actually be believed.

# Lighting Up The Night

## POST-CHANUKAH REFLECTIONS

BY DEBBIE MAIMON

*Dear Kinderlach, shetichyu,*

I'd like to describe a few things about *Chanukah* in prison even though it's very difficult to find the right words. The feelings they arouse are so deep, they touch the *neshomah* and almost can't be defined, but I will try.

Let's start with a thought about the miracles of *Chanukah* whose eternal message our *chazal* were *kovaya* with the mitzvah of *hadlokas neiros*, in a spot visible to people in the street. The menorah actually sits on the boundary between the home and the street.

And at that spot where the home ends and the street begins, we are to beam the light and *kedusha* of our homes outward, banishing the darkness and *klipah*.

Normally, the light and *kedusha* generated by the *mitzvos* are kept within the Jewish home where they remain pure. But on *Chanukah*, it's just the opposite.

By reliving the *mesiras nefesh* of Matisyahu and his children, we are given their *koach* to bring the glow of the *Chanukah licht* outside our homes into a region of darkness and impurity.

But a *Yid* casting the light of the *Menorah* into the darkness of the street does so from the safety of his "fortress" - the Jewish home. How different it is in a prison, where the street is not outside! It is inside, with its negative forces filling up the very space in which one exists, and surrounding all the physical senses 24 hours a day.

Yet Hashem commands us to bring the *Chanukah* light even to such a G-d-forsaken, impure place. And when Hashem commands us to do a mitzvah, that command itself is proof that we have the *koach* to carry it out. Even a task that seems to be "a mission impossible."

The *mesiras nefesh* of Matisyahu and the *Chashmonaim* proved that if a *Yid* truly lives by *ain ode Milvado*, nothing is impossible.

How Can I Describe It?

How can I describe this "*tohu vovohu*" that defines the day-to-day existence in prison? Hashem should help that no *Yid* ever know this kind of darkness.

Watching the people here sitting at attention, eyes focused upward on a screen filled with *tumah* and nonsense that invade every corner of the unit, it is almost impossible to convey the unbearable clash between *kedusha* and *tumah*. In such an atmosphere it was time for *hadlokas neiros Chanukah*.

In a way, it's a perfect *moshol* for the clash that many people in freedom regularly face.

Imagine the interior of a Jewish home, with a beautiful table set for the *yom tov* of *Chanukah*... and gleaming menorahs ready to be lit with *hiddur mitzvah*. The bookshelves are filled with *sifrai kodesh* and pictures of *gedolim* adorn the walls. You can almost touch the *kedusha* of this solid *Yiddishe* home, filled with the

mouth-watering aroma of potato *latkes* and the *simcha* of this wonderful *yom tov*.

Now imagine, as the *shamash* is lit and the *brochos* recited, that someone answers the knock at the door and in marches a bunch of wild strangers right off the street. Imagine gunshots...vile laughter... foul language... church scenes... and other disturbing scenes, including the 3 most serious transgressions.

Thanks to someone who has mindlessly let them in, the street is now inside the home.

Imagine the shock and distress of family members as they are unable to eject the intruders. The people don't feel like leaving. They claim they were invited in.

Why would any sane person have done that? Think about this carefully, *kinderlach*. Think of the *nimshal* to this scenario.

*Baruch Hashem*, we were permitted here to light the *Chanukah* menorah - the handful of *Yidden* who want to - and to watch the *hailige lichtelech* as they spread their glow and sing their message to us, of *hailikeit, lichtikeit* and *getlichkeit*.

After the *neiros* were lit, I sang the melody of *haneiros halolu* that the *chassidim* of the Rebbe Maharash composed. It's a lengthy version with some of the words repeated many times that enabled me to think about Hashem and His *nissim*.... I thought of how we need to be connected with Him and begged Him to help us stay connected.

I sang the final words, *al nisecha ve'al niflosecha ve'al yeshuosecha* over and over again... A few of us began dancing together, the way I have done all the years in our home, and *b'ezras Hashem* will do again soon, with all our family together.

We'll Be Together

*Kinderlach*, it's *Shabbos Parshas Vayigash*, a real happy *parsha* because in it, Yosef reveals himself to his brothers and the family is finally reunited again. What a great *simcha*! Imagine, we can still feel the happiness of that reunion thousands of years later.

And we *daven* that Hashem will do the same for our family. If He only wills it, I will be home for *Shabbos* and our family will be together again to serve Hashem with greater *simcha* than ever before.

This is also the *Shabbos* after *Chanukah* and we are still living with the *ruach* of *Chanukah*, and holding on to the *lichtikeit* and amazing *nissim* of *Chanukah*.

Today, during our visit, you were singing the song of the *Marvelous Middos Machine* about *maaver al midosov*, remember? The *Shaloh Hakodosh* has a beautiful *vort* about this *midah*. Let's learn the *parsha* with him, and try to imagine he is with our family teaching and inspiring us.

The *posuk* tells us that after Yosef revealed himself to his brothers, he kissed all his brothers and cried on them.

But wasn't it the brothers who sinned against Yosef by throwing him into a pit and then selling him? Yet here was Yosef crying and kissing them; he was the one wiping away the hurt and resentment in his heart and allowing his love for his brothers to overcome his other emotions.

Consider the great lengths a person should go to, says the *Sheloh*, to be *moichel* others, and to be *maaveir al medosov*," to overcome his *middos*.

So sing that song again now, *kinderlach*, with this *derech chaim* from the *parsha* and most important, live it! That will give me tremendous *nachas*.

Those Who Went *B'simcha*

*Kinderlach*, here's a beautiful *Ohr Hachayim Hakodosh* about the tremendous reward for accepting a *gezairah* from *Shomayim*. The *posuk* tells us that Yaaakov brought all his children and grandchildren—and all his descendants (*kol zaro*) down to Mitzrayim. Why it necessary to add "his children and all his descendants? Surely he would not have left them behind!

The *Or Hachaim Hakodosh* explains that only Yaaakov's children

and grandchildren (*bonov u'benai bonov ito*) accepted the decree of exile and went down to Mitzrayim willingly. But the following generations, his great-grandchildren and their children, had to be urged and pressured into going.

This explains why the enslavement of the *Yidden* did not start until all the *shevotim* had passed away. This was Hashem's reward to those who went to Mitzrayim willingly, with a whole heart, knowing they were going into *golus*.

*Kinderlach*, we see from here the wonderful reward for those who serve Hashem with a *leiv sholom*, *b'simcha*. That has the power to wipe away bad *gezairos* of pain and suffering and to bring *yeshuos* and *nissim*. So let's try hard to work on being *b'simcha*. That is how we can serve Hashem best. If I can picture you *b'simcha*, that will bring me *simcha*.

*Yehi ratzon* that Hashem should end my *shibud* in prison as well as the *shibud* and enslavement in *golus*, and that He grant freedom now for all *Yidden* with *Moshiach Tzidkeinu*.

*A guten Shabbos* and a *guten tomid*,

*Tatti*



*Simcha*  
*has the power*  
*to wipe away*  
*gezeiros*  
*and bring*  
*yeshuos*  
*and nissim.*

*Let's try hard*  
*to be*  
*b'simcha.*

# Women Add Powerful Voice For Rubashkin

BY DEBBIE MAIMON

An estimated two thousand women thronged to Ateres Charna in New Square last week, for a women's *pidyon shvuyim* gathering on behalf of Sholom Mordechai Rubashkin.

The massive turnout from Monsey and New Square bore moving testimony to the passionate concern the Rubashkin case has aroused in all branches of the frum community.

Sholom Mordechai is serving a 27-year prison sentence after a trial in which federal prosecutors and the presiding judge have been accused, based on evidence discovered after trial, of working together behind the scenes and concealing this information from the defendant.

Many of the nation's top legal and judicial experts say the trial was fatally flawed by this judge-prosecutor collaboration and should be vacated. Prominent legal authorities view imposing a 27-year prison sentence for a first-time, non-violent offense as a grotesque mockery of justice.

Following the 8<sup>th</sup> Circuit's denial of his appeal, Sholom Mordechai, who has been imprisoned for two and half years, is petitioning the United States Supreme Court to review his case.

Anguish over the injustice that has tainted the Rubashkin saga from the beginning, has united and mobilized hundreds of thousands of Jews in America and overseas. They have joined solidarity rallies and fund raising drives to gather funds for his costly legal defense, viewing the travesty of justice as *Klal Yisroel's* cause.

## MASSIVE TURNOUT

Last Tuesday evening, it was Rockland County's turn. In a stunning show of support, the women of Monsey's diverse *Litvishe* and *Chasidische* neighborhoods, and the women of New Square, turned out in record numbers for the Jan. 24<sup>th</sup> women's gathering.

An audience of two thousand women heard from Mrs. Leah Rubashkin, Mrs. Roza Hindy Weiss, daughter of Sholom Mordechai and Ms. Alyza Lewin, a lead attorney on the case who traveled from Washington, D.C.

Mrs. Chaya Gourarie of Postville, Iowa, sister of Sholom Mordechai, was Master of Ceremonies, in addition to delivering a stirring message from Sholom Mordechai, conveyed from person to her during a recent visit with him in Otisville prison.

Mrs. Chani Lipschutz was honored for the extraordinary role she and her husband, *Yated* editor Rabbi Pinchos Lipschutz, have played in building a legal defense fund for Sholom Mordechai, and keeping the Rubashkin case from sliding into obscurity.

Joined by dedicated *askonim*, defying the scoffers and naysayers, they have fought to keep the case a front-burner issue for the past three years, going to extraordinary lengths to unite the Jewish community behind the cause.

Through *Yated's* powerful advocacy for Sholom Mordechai, through hard-hitting appeals and news articles, *Yated* turned a little known case into a strong grassroots movement in the frum community. Tens of thou-

sands of Jews have since adopted Sholom Mordechai as a brother, and are committed to gaining justice for him.

As an introduction to the *asifah*, a searing slide show offered an intimate glimpse of the Rubashkin family before and after the shattering government raid on Agriprocessors in 2008.

A soulful musical performance by Mrs. Suri Gluck of Project Hope followed. Mrs. Gluck's soaring soprano captured the evening's tone with uplifting songs of faith, *achdus*, and yearning for redemption, and brought the evening to a close on a note of joyous hope.

The Rebbetzin of New Square graced the event and opened the program with the recitation of Tehilim.

## FEAR NO EVIL

Sholom Mordechai's message, conveyed by Mrs. Guararie, focused on the Ruzhiner Rebbe's interpretation of a *posuk* from *Tehillim*, in *perek chof gimmel*. "*Lo ira roh ki atoh imodi*," Dovid Hamelech says. "I fear no evil for Hashem is with me."

"What is the evil that Dovid Hamelech refers to here?" the Ruzhiner asks. "*Ki atoh imodi*." The evil is that You, Hashem, are with me in an awful place of *tumah*. How frightful that the *shechinah* has to be dragged into such a place, how dreadful to sense every spark of holiness being trampled. Yet I will resist this dread that threatens to paralyze me."

"That is Sholom Mordechai's message," Mrs. Gourarie said. "In the *heilige* Ruzhiner's answer, we can read between the lines to understand my brother's great suffering."

"Someone once asked me, Mrs. Gourarie said, "if Sholom Mordechai is as upbeat as people report. Considering he is in such a dark, demoralizing place—a place where it's a struggle every minute not to feel dehumanized—considering the great uphill legal battle he has to fight, how upbeat can even the most positive person be?"

"Yet, he trusts and believes with all his heart that *yeshuas Hashem k'heref ayin*, all the while trying to shield his family from what he has to endure."

## "YOU GAVE ME THE ANSWER"

Mrs. Roza Hindy Weiss took her audience back in time to Peaceful Postville, as the tiny rural town was once called, "a modern day *shtetl* in middle of a bunch of corn fields," where "our door was never locked. People would just knock and walk in, calling "Hello!" to announce themselves.

"One *erev sukos*," she reminisced, "about two hours before *yom tov*, the local *mashgiach* walked in. The guest list had been steadily growing... and my mother and us girls were cooking furiously, trying to keep up with it.

"The *mashgiach* went straight out to the *sukkah*. My father climbed down from putting on the last pieces of *sechach*. The man told my father

how his wife had just finished cooking the whole *yom tov* and their fridge suddenly broke. My father immediately cut him off before he could even ask, telling him to go to the local appliance store, buy a new fridge and send him the bill.

“But the store is already closed,” the *mashgiach* told him. “So tell my wife to give you the fridge in the kitchen,” my father responded.

“This is the kind of *chesed*, the kind of selflessness I grew up with,” Roza Hindy said, “My parents got immense pleasure from giving to others, always with a *bracha* that no one should ever need anything. My father couldn’t even keep a car... Whenever he would get one, he’d end up giving it to someone he thought needed it more, and then ask people for rides.

### WORLD TURNED DARK

She spoke of the anguish of having the world darken when her father was imprisoned after the government raid, the family’s assets were forfeited, and they were unable to hire competent legal help. She, who had so often opened the door for supplicants, now become one herself, pleading for help from others to rescue her father.

She recalled walking up a pathway to knock on someone’s door, when a troubling thought struck her.

“I thought about what I had learned, that Hashem repays 10 times the amount of *tzedaka* that a person gives. My father and grandfather gave so much *tzedaka*—they would literally give the shirt off their backs! How can this be happening? I quickly pushed the question out of my head but as the days and weeks passed and I continued on this exhausting journey, that question returned to haunt me.

“And then, you gave me the answer,” she told the hushed audience. “Yes, each and every one of you. With every contribution you made, with every dollar you raised, you answered my question.

“No child should have to see their father in a bright orange prison jumpsuit; in shackles, wrists, ankles and waist in chains,” the speaker said, choking up.

“No child should have to see and hear their father cry Shema Yisroel as he accepts a virtual life sentence. No child should have to lie awake at night worrying if their father is safe... if he’s alive and well.

“And so, for the sake of my younger siblings, for the sake of my mother, for the sake of *Klal Yisroel*,” Roza Hindy concluded, “I beg and plead to Hashem to end this terrible *nisayon* and show your *taiera kinder* “*v’habotaich baHashem chesed isovavenu.*”

### THE ONLY REALITY THAT COUNTS

Mrs. Leah Rubashkin looked across the audience of two thousand women, almost all of “whom she had never met. “It’s a good thing I’m among sisters,” she smiled tremulously, “because if I had to stand up here in front of thousands of strangers, I’d be terribly nervous.”

She addressed the silent question that seemed to emanate from all corners of the room: how do you keep going?... A mother of ten...an unending, excruciating David-Goliath legal battle for justice....never enough money to pay the lawyers...

“What keeps us going is *bitochoh* in the *Aiber-shtet*,” she told her listeners. “That affects how we view reality. There is the reality of how things seem to be, which is all about the limitations of what we can expect. Then there is a second reality—the belief that Hashem is totally in charge, has no limitations and can bring *yeshuos k’heref ayin*. And the faith that He will do so if we only trust in Him enough and are *zoche* to his protection.”

### “SMILES AND WINKS FROM ABOVE”

She took her listeners on an exhilarating journey that revisited some of these fascinating twists and turns in the case. She shared what she calls the “smiles” and “winks” from Above that in some of the darkest moments “let us know that we were not alone, that a Jew is never alone.”

She shared her family’s elation at witnessing the melting of barriers between different communities, and the harmony that has led Jews from

across the religious spectrum to work together to help right a shattering injustice.

Time after time, breakthroughs in this harrowing story have followed *achdus* rallies that united diverse segments in the Torah community. The amazing confluence of positive legal developments, with outwardly unconnected events, had been a source of great *chizuk*.

As one example, Sholom Mordechai’s dramatic acquittal in the state labor trial came on the heels of an outpouring of support from the Chasidic Monroe community.

### THE POWER OF UNITY

In a parallel vein, the massive turnout at twin rallies in the Torah enclave of Lakewood was followed by the explosive discovery of the collaboration between the presiding judge and the prosecutors that prompted the emergency motion for a new trial.

Although the new trial motion was denied, it is now being reformatted in the most current Rubashkin legal offensive, a petition to the United States Supreme Court.

Events unfolding after last year’s Five Towns Rally offered yet another example of a turning point in the case following a resounding show of unity among Jews.

An *asifah* in Far Rockaway drew thousands of Jews out of their homes on a frigid winter night to petition for justice for Sholom Mordechai. Shortly afterward, three prominent legal organizations threw their support behind the Rubashkin appeal in *amicus curiae* briefs,

The *amicus* briefs singled out flagrant constitutional abuses in the case, and condemned the draconian 27-year prison sentence. The organizations’ powerful advocacy raised the case’s profile and boosted the chances of reversing the sentence and gaining Sholom Mordechai a new trial. Although a new trial has so far been denied him, the support of these organization are of considerable importance in the petition to the Supreme Court.

### PASSION AND OUTRAGE

In a riveting address, Ms. Lewin summed up a burning saga of injustice, hammering home her message that “although we live in a vibrant democracy that prides itself on its independent judiciary – our precious system failed Sholom Rubashkin.”

“I am here on a quest for justice,” she began. “As you are aware – Sholom Rubashkin had a trial and an appeal. But I am here to tell you that to this day, Sholom Rubashkin has been denied justice.

She informed her listeners of the newest developments in the case: the hiring of renowned attorney Paul Clement who will work with Nat and Alyza Lewin on petitioning the Supreme Court for a *writ of certioari*, a full review of the case. The petition will be filed in early April.

Many have spoken out about rampant injustices that run through this case; Ms. Lewin’s masterful presentation was unique, however, in its scope and lucidity. And in its passion.

She electrified her audience, dramatically questioning the integrity of the prosecutors and judge, and pointing to their duplicity in the prosecution of Sholom Mordechai.

Throwing political correctness to the winds, Ms. Lewin called the government’s overzealous prosecution “a tale of horrors.”

The case is complex, she said, not because Sholom Mordechai committed reams of crimes as the prosecutors charged, but because his offenses were not severe enough to warrant the kind of treatment the government had in mind for him, and therefore had to be reframed—and invented.

Ms. Lewin invited her listeners to peek behind the veil to witness a string of devious legal and strategic moves on the part of Iowa prosecutors. These included

- ~ issuing an unprecedented seven superseding indictments
- ~ poisoning the public against Sholom Rubashkin with a sensational arrest
- ~ dividing and subdividing his alleged crimes to reach extraordinary numbers
- ~ jailing Sholom Mordechai for two months before his trial without

grounds

~ legally reframing first-time, nonviolent offenses as egregious crimes warranting the severest of sentences.

### A SPECIAL ZEAL

She turned back the pages of this tale to the very beginning, tracing the government's extraordinary harshness in its treatment of Sholom Mordechai from the very earliest stage.

There was "a special zeal" in their approach to him, she said, conduct reserved for the most hardened, dangerous criminals."

She showed how this "unprecedented aggressiveness," destroyed any semblance of government fairness and impartiality in the case.

Many of the audience's unspoken questions—Why was Sholom Mordechai targeted?—What drove the government?—were answered as the attorney recounted how Rubashkin family's success in building Agriprocessors into a flourishing business had attracted powerful enemies and made the company a prime target.

First on the list of foes was the animal rights groups, PETA, who launched a national campaign against the plant, alleging inhumane treatment of animals. This charge was immediately reinforced by a smear campaign by the UFCW labor union who had fought unsuccessfully to unionize the plant, and had turned to malicious slander as a means of forcing Agriprocessors to surrender.

The Jewish *Forward* newspaper boosted the assault with a series of vicious articles depicting Agriprocessors as a cruel "jungle." A Conservative Jewish leader publicly demonized Agriprocessors and the Rubashkin family, in hopes of building a new *kashrus* certification on the ashes of Agriprocessors.

### FATAL MISTAKE

With hindsight, many acknowledge that PETA's campaign was a thinly veiled attack on *shechita* and should have been exposed as precisely that. In hindsight, it should have been countered with a powerful defense.

"But at the time, instead of rallying to Agriprocessor's defense, many in the Jewish community – including the Orthodox Jewish community—joined the chorus of condemnations against the plant," Ms. Lewin said.

They played right into the hands of the anti-*shechita* forces. The chorus grew in strength. By the time prominent Jewish voices confirmed the falsity of the allegations and rose to Sholom Mordechai's defense, it was too late.

"It had by then become apparent to the public, and to the US government, that Agriprocessors was an extremely soft target: if attacked in an immigration raid, everyone was certain there would be no meaningful opposition."

### SPINNING THE STORY

After investing millions of dollars in a sensational militarized raid against Agriprocessors, and leaking details of the lurid indictment to the press, the government was caught flatfooted when the raid produced no evidence even faintly resembling the charges in the indictment.

Although the raid nabbed almost 400 immigrants, the federal indictment had charged Agriprocessors with multiple felonies such as harboring a drug lab, storing caches of weapons at the plant, torturing workers and other crimes. These charges turned out to be completely fabricated.

"The massive raid befitted a bust of a well-armed drug cartel," an amicus curiae brief submitted by the Washington-based NACDL to the 8<sup>th</sup> Circuit in support of Sholom Mordechai, noted. But agents came away empty-handed. No evidence of lurid crimes and hence, no villain.

That left the government open to ridicule for having invested such massive resources in a brutal raid that shattered thousands of lives, tore apart a town and destroyed the region's economy.

"When this elaborate raid on illegal immigrants did not bear fruit," wrote the NACDL brief, "the trial judge, who was part of the planning and pre-arrest activities" apparently sought a remedy to justify it.

The remedy was to find evidence of another crime, pin it on one per-

son and pump it up into a massive indictment. That would supply the grounds to "impose a sentence of over a quarter-of-a century on the defendant," the brief explained.

### THE TRAIN LEAVES FROM THE PROSECUTOR'S OFFICE

"The 'indictment train' leaves from the U.S. Attorney's Office," Rubashkin attorney Guy Cook explained in an interview with *Yated*. "With their power to manipulate the counts and the charges in the indictment, they can turn a relatively minor offense into a major criminal prosecution.

"In this case," Mr. Cook said, "it's as if they decided, hey, we want to lock this guy up for a long, long time, but it's not going to happen unless we come up with a recipe: Let's see, we've got inflating collateral, and bankruptcy: we can spin that as bank fraud. We've got wire fraud, mail fraud, and we've got something that will play as money laundering. That'll raise the sentence 15 years.

"And we can throw in perjury, obstruction of justice and witness tampering, too. That's 25 years and above, right there."

That is how Sholom Mordechai came to be charged with hundreds of immigration and bank fraud charges, compounded by alleged wire fraud, mail fraud and money laundering charges.

That is how he came to be falsely charged with causing a lending bank the loss of \$26 million, an arbitrary "loss number" never substantiated by the government.

That is how he came to be sentenced to 27 years, with the 8<sup>th</sup> Circuit of Appeals actually defending the sentence as being on the lower end of the sentencing guidelines. Meaning, the judge could have made his sentence even longer—and still technically be within bounds. [How unfair to accuse her and the prosecutors of being cruel. They could easily have thrown more "ingredients" into the recipe-for-a-life-sentence.]

### MAKING A MOCKERY OF JUDICIAL NEUTRALITY

Ms. Lewin concluded with the troubling conduct of the 8<sup>th</sup> Circuit of Appeals, in designating Judge Linda Reade to sit on a panel together with two of the judges who were scheduled to hear the Rubashkin appeal that same day.

Reade was also designated to sit with them on other cases the day before the Rubashkin appeal—the same judges who would be weighing allegations of *her own misconduct* in conducting *ex parte* communications with Rubashkin's prosecutors.

Many people were dumbfounded at this scenario—so contrary to instinctive notions of the spirit of objectivity that must imbue a court of law.

"Was it necessary to arrange the judges' panels this way," so that Judge Reade could fraternize with her fellow justices for a day and a half leading up to the Rubashkin appeal?" Ms. Lewin asked. "Was it fair to him? Was it just?"

This situation illustrated that the Rubashkin case at its core is about abuse of power and the absence of judicial neutrality in both the federal court and in the appeals court. The case is increasingly seen as emblematic of these abuses in courtrooms across the country.

Ms. Lewin concluded by calling for "a ground swell of emotion, a public outcry."

"We need all of you to tell the world: We want justice for Sholom Rubashkin and we want it now. We need you to let people know that the system has failed and that you care.

"Write letters to your elected officials," she urged. "Let them know that you are upset. Write letters to the newspapers telling them this story and how justice has been turned on its head in Sholom Rubashkin's case."

"If you stand for justice, rise from your chairs and stand now with me!"

In response, two thousand women rose in a standing ovation. Energy swept the crowd and singing and dancing broke out. A ring of women and girls lifted Ms. Lewin on a chair, as Mrs. Suri Gluck concluded the evening with a rousing medley of songs expressing *emunah*, hope and the determination to fight for justice for Sholom Mordechai.

# Judge's Appointment Re-opens Postville Wounds

BY DEBBIE MAIMON

President Obama's recent nomination of Iowa U.S. Attorney Stephanie Rose to serve as a federal judge has forced into the spotlight an ugly chapter—the Postville Prosecutions of 2008. The rehashing of this disturbing odyssey has cast a dark shadow over Rose as she awaits Senate confirmation.

“Rose must now meet her moral and ethical duty to publicly explain her role [in the Postville Prosecutions], and give assurances that as a federal judge she will show a commitment to justice that she seemed to lack in 2008,” David Leopold, past president of American Immigration Lawyers Association (AILA), wrote in the *Huffington Post*.

“At a minimum,” he stressed, “the Senate Judiciary Committee should insist that Rose fully explain her role in the [many] due process violations which characterize the assembly line justice meted out during the Postville Prosecutions.”

The Postville Prosecutions comprised the immediate legal aftermath of the terrifying worksite enforcement action against Agriprocessors, the 2008 military-style ICE raid that destroyed the town and the region's economy.

In that operation, 600 local and national lawmen in riot gear swooped down on the Postville meat-packing plant, pounding doors open and arresting and shackling hundreds of men and women. The vast majority were herded onto buses, detained in make-shift jails, and subjected to fast-track criminal convictions—94 a day—for entering the country illegally.

After being forced into plea deals to avoid lengthy jail terms for “identity theft” (a charge later invalidated by a Supreme Court ruling), the arrestees were jailed for five months and afterward deported.

Almost none had previous criminal records. Never before—or since—were illegal immigrants in this country arrested and fast-tracked to jail en masse simply for being undocumented.

## CONGRESSIONAL INVESTIGATION STYMIED

A congressional investigation into allegations of due process violations sought to identify who was responsible. It also probed to what extent Iowa's federal courts, which imposed the prison and deportation sentences, may have been impermissibly involved in the raid and the criminal prosecutions.

Leopold of AILA, along with a number of eyewitnesses to the raid, gave testimony at the hearing.

The congressional subcommittee's investigation was stymied by conflicting reports, with DOJ spokeswoman Deborah Rhodes testifying that Iowa federal prosecutors directed the prosecutions, whereas Iowa prosecutors insisted the orders came from Washington.

Rhodes defended Chief Judge Reade, whose involvement was being scrutinized, saying she had merely received a “heads up” about the ICE operation. That claim would later be belied by ICE memoranda that suggested a profound level of participation by Judge Reade in pre-raid planning.

The 2008 investigation wound down without closure on critical questions.

## A SENATOR'S ENDORSEMENT CARRIES CLOUT

Four years later, with Stephanie Rose's appointment as federal judge, Iowa's Senator Harkin who nominated Rose for the post, would flatly contradict the Department of Justice's official stance about who gave ICE their marching orders.

“The Judiciary Committee and Department of Justice looked at the entire raid and aftermath, and determined [Ms. Rose] had no knowledge of the planning or implementation of the raid,” Harkin said in a statement to *Eastern Iowa News*.

At the time of the raid, Stephanie Rose was Deputy Chief of the criminal division of the U.S. Attorney's Office in Iowa's Northern District, reportedly third in the chain of command. Few believe it credible that she had no knowledge of the massive operation her office was planning for many months prior to its execution.

But a senator's endorsement carries clout and has muted criticism of Rose in many quarters. This is not the first time Harkin has gone to bat for Rose. It was Harkin who nominated her for the post of U.S. Attorney in 2009, a year after the raid. Harkin lavished praise on Rose for her commitment to fairness and her excellent judgment.

A *New York Times* article slammed the 2009 nomination, reminding the public of Rose's key role in the Postville prosecutions. The article quoted a social justice organization that cited Rose's office's “aggression” in the way the Postville Prosecutions were conducted, harshly criticizing Rose and her colleagues for putting “the requirements of their own ambition” ahead of respect for due process.

Others echoed their dismay at seeing Rose rewarded for her performance in the U.S. Attorney's Office.

“She was among the key assistant U.S. Attorneys who drove the mass prosecutions of nearly 300 undocumented immigrant workers arrested at Agriprocessors,” *Huffington Post* informed readers. “There the government brazenly used the federal identity theft law as a hammer to coerce the workers into pleading guilty to social security fraud, despite questionable evidence, and accepting automatic deportation.”

## DENYING DOCUMENTED FACTS

Despite the cloud hanging over her in 2009, Rose won confir-

mation as U.S. Attorney. Sometime afterward, she published an op-ed in the *Des Moines Register*, saying she had decided to finally “break her silence” to correct “a mountain of false information” about the conduct of her office in the Postville Prosecutions.

She cast the ICE operation as little more than a casual inspection by humane officials, denying known and documented facts about the raid.

“Agents were not clad in riot gear. There was no military operation,” she scoffed. She said the illegal workers had been “appropriately housed and fed catered meals.” In Rose’s version, the arrestees all had “access to phones, televisions and other recreational activities.”

“Tireless agents, U.S. Attorney’s Office employees, defense attorneys and court personnel worked around the clock to ensure defendants’ rights were protected and standards of human decency were met,” Rose gushed.

Compare her rhapsodic portrayal with Leopold’s factual description in the *Huffington Post* of the due process violations to which the immigrants were subjected.

“Launched in the waning days of the Bush Administration, Postville was a cold clinical experiment in which federal prosecutors sought to criminalize undocumented workers on a mass scale.”

“By using the federal identity theft statute as a hammer, the U.S. Attorney’s Office for the Northern District of Iowa concocted serious felonies out of routine civil immigration violations. No longer would undocumented immigrants simply be arrested, administratively processed and deported. Now they would be sent home as criminals.”

The article goes on to describe the denial of adequate defense counsel to the workers and the unlawful use of “Fast Tracking” prosecution. This amounted to a conviction/deportation assembly line, denying the fundamental rights of the defendants.

#### ROSE’S UNWITTING REVELATIONS

In breaking her silence in the *Des Moines Register* op-ed, Rose addressed the allegations of government overreaching in the “assembly line” prosecutions of hundreds of workers.

That enforcement action, she said, was “critical to the successful prosecution of Rubashkin and other management employees. These cases could not have been effectively prosecuted if the illegal workers had not been arrested and detained.”

What Rose revealed was astounding. The massive, extravagant raid that destroyed Postville as well as the brutal treatment of impoverished Guatemalan farmers was viewed as “critical” essentially for the purpose of nabbing Sholom Rubashkin.

Why the urgent need to nab him? We know why it was deemed necessary *at the time*. The original indictment spelled out a long string of lurid crimes allegedly going on in Agriprocessors, including the harboring of a drug lab and the smuggling of weapons onto the company’s premises. Charges of rabbis abusing workers, and the company knowingly employing illegal immigrants were enumerated.

#### DOING BAD THINGS TO STOP BAD PEOPLE FROM DOING BAD THINGS

In other words, Rose’s rationale seems to be boil down to: the government had no choice but to treat the immigrants harshly to stop Rubashkin from doing bad things to them.

Yet at the time Rose wrote her op-ed, almost of all of the “bad things” had been discovered to be false allegations and had never again been mentioned by prosecutors. In addition, the immigration charges that lay at the heart of the indictment had all been dropped.

[The child labor offenses would later all be dismissed by a jury in the state labor trial.]

Sholom Rubashkin was ultimately convicted of *none* of the of-

fenses in the original indictment. That means that draconian measures against hundreds of immigrants that Rose insists were necessary because they enabled the government to go after Rubashkin for terrible crimes, turned out to be misguided, a colossal mistake.

In place of an acknowledgement from Rose, however, that government misconceptions formed the core of the indictment, the public was fed the brazen lie that “the massive law enforcement action” with its wrenching collateral damage on hundreds of defenseless people “was critical” to effectively prosecute the arch criminal, Sholom Rubashkin.

#### ROSE: NO ONE CAME FORWARD TO TESTIFY AGAINST RUBASHKIN

In case anyone wonders how arresting and jailing hundreds of undocumented workers could aid in prosecuting Rubashkin, Rose made it very clear.

“Not one unarrested illegal worker ever came forward to assist law enforcement,” she explained.

In other words, to compel people to “assist law enforcement,” the government had no choice but to arrest them. Otherwise, no one would “come forward” and testify; there would simply be no case against Rubashkin.

After investing millions of dollars and untold man-hours in the planning and execution of the sensational raid, the government would have to walk away empty-handed. Who knows how many heads would roll as a result of the botched operation.

That could not be countenanced. Hence, as Rose tells us in her op-ed full of unwitting disclosures, the illegal workers had to be arrested and jailed before they could be induced to “assist” law enforcement [obviously by agreeing to give incriminating testimony against their employer in exchange for leniency.]

As we know, none of the charges of which Sholom Rubashkin was ultimately convicted needed the immigrants’ testimony. He ended up never standing trial for immigration offenses, for which their evidence was deemed “critical.” He stood trial for bank fraud, matters that the arrested workers could normally have never assisted prosecutors with.

#### FINDING A WAY TO EXPLOIT JAILED IMMIGRANTS

Lest anyone think the spectacular show of government firepower was therefore a total waste of time and money, Rose’s office found a way to exploit the jailed immigrants in the bank fraud trial.

Prosecutors had the immigrants testify that Sholom Rubashkin encouraged and enabled his Hispanic workers to use false papers—a charge he denied. This offense and other immigration-related evidence should have been irrelevant and inadmissible in the bank fraud trial.

It was sneaked in, however, under prosecutors’ claims that by hiring illegals, Sholom Rubashkin had “defrauded” his lender bank because he had assured them that he was in full compliance with U.S. law.

#### CONCOCTING A SINISTER PICTURE

In the end, the immigrants who were arrested in order to persuade them to “assist” law enforcement in prosecuting Rubashkin for degenerate crimes, ended up helping prosecutors in a different way—by painting the defendant as having run afoul of immigration law.

Prosecutors creatively manipulated the “evidence” so that it took on sinister dimensions, projecting Sholom Rubashkin as a conniving lawbreaker who secretly pumped out false papers and arrogantly circumvented regulations. Not as wicked as a drug peddler, abuser of minorities or weapons smuggler, perhaps, but criminal enough.

Jurors found it easy to convict such an odious person of whatever charges prosecutors pinned on him.

## RARE COURAGE

Much ink has been spilled explaining how Sholom Mordechai's right to a fair trial was compromised by the collaboration between the presiding judge and the prosecution. Although detailed evidence of this collaboration surfaced only with the release of the FOIA materials, organizations such as AILA and ACLU were troubled in the immediate aftermath of the raid by the overwhelming appearance of judicial bias.

It is illuminating to note the words of Charles Kuck, past president of AILA, who, without the benefit of the stark evidence in the FOIA documents, penetrated to the heart of what many legal experts regard as the worst case of prosecutorial and judicial misconduct in recent history.

Kuck had the courage to publicly express what few dared to say about Chief Judge Reade.

*"The Iowa federal district court was driving the train, fatally compromising its own integrity as an independent branch of government,"* wrote Kuck about Reade's extraordinary involvement in the prosecution.

"The Court, with Chief Judge Reade presiding, violated the Agriprocessors defendants' rights to an impartial judge who is not predisposed to side with the prosecution," Kuck wrote. He noted the following clear indications of partiality—once again, without the benefit of hindsight made possible by the belated release of government memoranda:

"The Court demonstrated its partiality through its collaboration with ICE and the U.S. Attorney's Office in preparing for the raid

and the subsequent criminal prosecutions."

"The U.S. Attorney's office secretly notified the Court almost six months prior to the raid to not only prepare for potentially 700 arrests but to also develop the plea agreement scripts and binders for the defendants and their attorneys."

"The Court also attended the orientation meeting for the defense attorneys held at the courthouse."

"In preparation for the raid, the Court hired twenty-six interpreters from around the country. Once the raid commenced, the Court held extended hours and agreed to process defendants in groups to enable fast-tracked processing — up to 94 defendants per day."

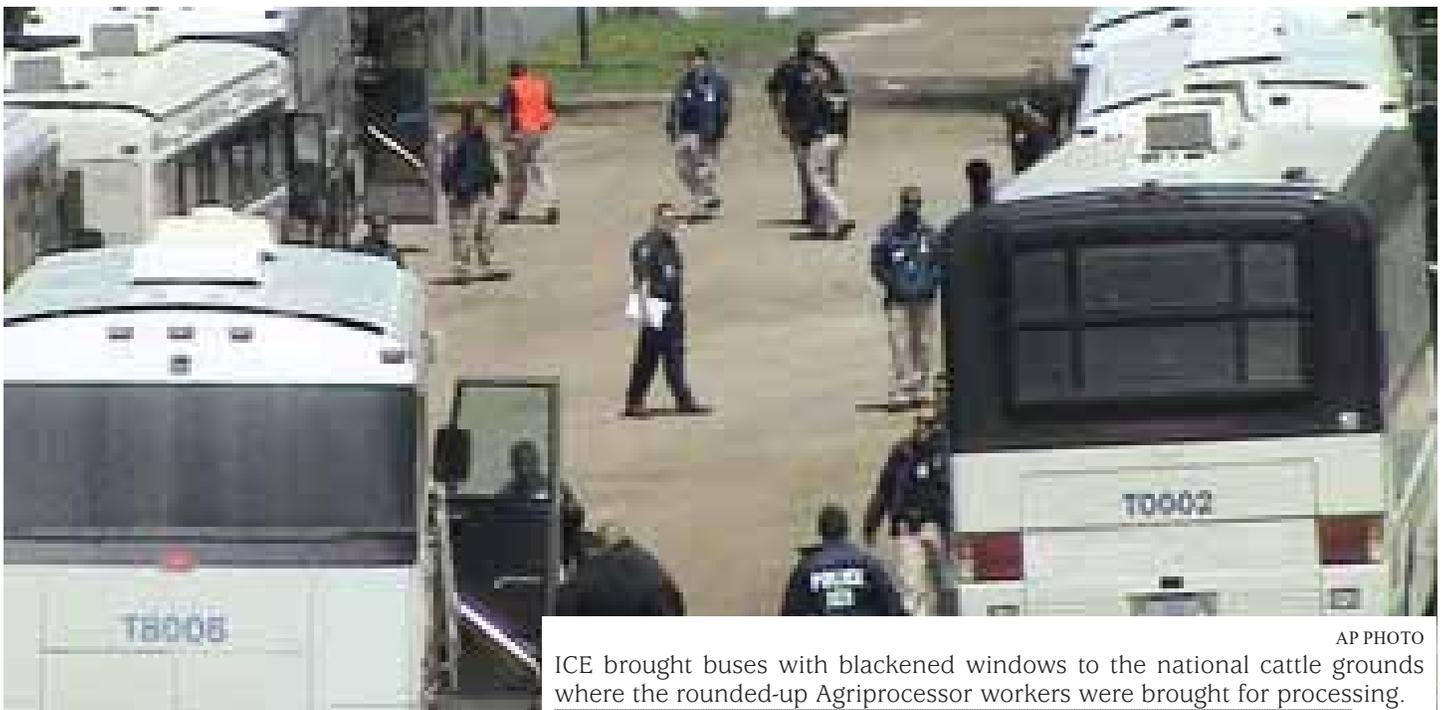
"The Court's pre-approval of the plea agreement and preparations for the hearings gave the appearance of cooperating with and being partial to the prosecution."

"Public defender Rockne Cole wrote a letter to Congress after declining to represent any of the Agriprocessors defendants because he found a breath-taking level of coordination between the United States District Court Judge and the Department of Justice" that gave a reasonable appearance of partiality in the Court."

"The chilling spectacle that unfolded as a result of the 2008 Postville raid remains a stain on our justice system," the *Huffington Post* article by Leopold concludes.

"As a federal judge Stephanie Rose will be entrusted to decide each case fairly, impartially and diligently. That is why before the Senate passes on her confirmation it should insist that she tell the truth, the whole truth, and nothing but the truth about her role in the Postville prosecutions."

*"Launched in the waning days of the Bush Administration, Postville was a cold clinical experiment in which federal prosecutors sought to criminalize undocumented workers on a mass scale."*



AP PHOTO

ICE brought buses with blackened windows to the national cattle grounds where the rounded-up Agriprocessor workers were brought for processing.

# The Revolving Wheel Of Fate

A MESSAGE FROM SHOLOM MORDECHAI RUBASHKIN TO HIS CHILDREN

*Dear Kinderlach, Sheyichyu*

A story is told about how one *erev yom tov*, as a shul was filling up with guests who had come to spend the *yom tov* with their *rebbe*, the *rebbe* studied them carefully, noting the different state of mind wealthy people radiated as compared with Jews of poorer means.

Wealthy Jews were visibly happy and content, while those wrestling with poverty were weighed down with sadness.

"If only they were aware," the *rebbe* sighed, "of the *galgal hachozzer*, the wheel of fate that constantly turns around people's station in life. This wheel is built into the natural order. It lifts high the down-trodden and lowers those on top of the world. If only people realized this, they would approach life differently."

*Kinderlach*, we tend to think a person's station in life is fixed. This is not the case at all.

When a person finds himself on top of the "wheel", he shouldn't feel complacent, because the *hashgochah* behind the revolving wheel may soon bring him down. One who finds himself on the bottom of the "wheel" shouldn't despair, *chas v'sholom*; he should trust that he will soon be on his way up, and this should lift his spirits.

## ALL CARDS ON THE TABLE

The *Ohr Hachaim Hakodosh* uses the concept of *galgal hachozzer* to explain the first *passuk* in *Mishpotim*: "*V'eilah hamishpotim asher tasim lifneihem*," these are the laws that you should put before them.

Why use the expression "put before them"? Wouldn't "you should teach them" be more natural?

The *Ohr Hachaim* explains that since *Hashem* wanted the Jewish people to accept the *mishpotim* willingly, including laws that might impose a financial loss, He instructed Moshe to lay everything out clearly and unambiguously. Put it *lifneihem*, *Hashem* told Moshe. Tell them everything from the front end.

Make sure they understand why even *mitzvos* that entail a loss of money should be done *b'ratzon*, wholeheartedly. Because these *mitzvos*, too, are truly advantageous for a person, even when they don't seem to be.

To understand how this works, says the *Ohr Hachaim*, consider the first *mitzvah* in *Misphotim*, that of the *eved ivri*, a Jew who was so destitute he was forced to sell himself as a slave.

The purchase of an *eved ivri* is different from all other purchases, because it is not a permanent acquisition; it's only for six years. After that, the *eved ivri* goes free, and the buyer loses his 'property'.

This appears to be a major downside to the laws of buying an *eved ivri*. No one wants to lose money or property. Why would someone in the position of buyer happily embrace this particular law? What possible advantage could he have from it?

## IT COULD HAPPEN TO YOU

The answer is that no one has a guarantee that he will never be the *eved ivri*. As totally remote and unlikely as it seems, it could still happen. That is the power and mystery of the "*galgal hachozzer*."

To understand this better, consider how the *eved ivri* comes to be sold in the first place.

A Jew is sold for one of two reasons: (a) because he is in a situation of such dire poverty, he has nothing at all left to sell except himself, or (b), his poverty caused him to surrender to temptation and steal. He was then caught, and because he was unable to pay back what he stole, *bais din* sold him as a slave. With the money from the sale, *bais din* makes restitution for the theft.

In either case, says the *Ohr Hachaim*, this Jew's dire poverty was brought about by what was '*misgalgal* to him', the *hashgachadige* wheel of fate that dealt him his particular situation.

## THE GALGAL HACHOZER CAN TAKE ANYONE DOWN

Each and every person who learns these laws of *eved ivri* must realize that they apply as much to the rich as to the poor. Of course it's hard for a wealthy person to conceive of the possibility he might "turn" poor. But it could happen.

There is no one so secure that he does not have to fear a reversal of his fortunes. The *galgal hachozzer* can take anyone down. But even though he may end up in the pits as an *eved ivri*, the Torah says, a person will never be "sold" forever. He will be freed in six years, or earlier.

This Sunday night, something happened that brought this lesson home to me strongly.

I was learning the *parsha* in the chapel. The recall to the unit is about 8:30. To reach the cell, I needed to pass through a group of inmates sitting with earpieces on, glued to the many screens above.

One inmate stopped me and pointing to the screen, says, "Look there—see that show? You need to see that. It's about a guy who was framed and landed in jail with a life sentence."

Politely, I said, "Thanks, but I don't watch," and continued on. I returned the *seforim* and headed towards the email monitor. Someone else came over to me excitedly. "Hey, you must watch that screen, you need to see that show!"

I thanked him and worked on the email and headed back. On the way back, the first fellow gets my attention, saying, "Listen to this...!" He shoves the wire with the earpiece into my hands. Luckily, the show was already wrapping up.

Afterwards, someone told me it was a program about the research done by some anchorman who brought to light the unethical way a life sentence was handed down to someone. What some of these inmates were infuriated about was that the prosecutor used a hardened crimi-

nal as a witness to get the defendant sentenced to life imprisonment.

“How they could use a hard-core criminal as the witness to lock up that guy for life? Then they give the criminal a lenient sentence in exchange for his testimony? What kind of justice is this? The criminal himself should have gotten life!” one guy was shouting excitedly.

The irony was that he himself was in jail for a serious crime. Without realizing it, he was denouncing himself. How and why he came to be where he is today, I have no idea. But he clearly didn't see himself as others saw him.

#### IT WILL NOT BE FOREVER...

Then the *posuk* I had just learned came to life. I saw what the *Ohr Hachaim* means by translating “*lifneihem*,” as laying out the *mitzvos* with crystal-clear clarity so that each person understands how the laws are directed not at the next fellow, but right at HIM.

Imagine, *kinderlach*, how far-fetched it must have seemed to the *Yidden* to picture themselves ever becoming destitute. Each one had many donkeys loaded with gold and silver from the *bizas hayam*, the wealth they collected at the *yam suf*. Which *Yid* could imagine himself ever being that *eved ivri* the *posuk* is talking about? How remote it all

must have seemed.

Yet, the concept of the *galgal hachozzer* that brings people to utterly unthinkable situations in life makes it possible to relate to the pure *chesed* of Hashem in the laws of the *eved ivri*. And this is the hidden advantage and the *zechus* embedded in the *mitzvah* that we spoke of before, when it comes to *mitzvos* like *eved ivri* that entail a loss of money.

Hashem is telling us: You, too, as unlikely as it seems, may become poor and wretched. It will feel like you are suffering forever, because for a slave, a minute can feel like forever. But it will not be forever. You will go free.

*Yehi rotzon* that we should each be *zoche* to be an *eved Hashem* and to constantly grow in our *avodah*. Our Father, our King and Master, will surely grant us what we need to serve Him—most of all, *cheirus*, to serve Him in freedom. May He grant it to us now...*hayom*. And may we be *zoche* to the coming of *Moshiach Tzidkeinu* and the *binyan Bais Hamidosh Hashlishi*.

*A gutten Shabbos.*

*A gutten tomid.*

*Love, Tatti*



# Sanzer Rov Visits Sholom Mordechai Rubashkin

“AWED BY THIS YID’S MADREIGAH”

BY DEBBIE MAIMON

A visit from the Sanzer Rov, Rav Tzvi Elimelech Halberstam to Sholom Mordechai Rubashkin in Otisville prison left both “uplifted” and “emotional,” one of the *rebbe’s gaboim*, speaking from Eretz Yisroel, told *Yated*.

Both men cried, said Rabbi Avrohom Deutch, who was part of the *rebbe’s* entourage at the prison. “The *rebbe* was awed that a Yid in such a degraded environment could reach such a high *madregah*.”

“This is a *Yid* who excels in *bitochon*,” he said afterward. “Everyone can learn from him. And we should all be *mispalet* to the *Ribono Shel Olam* for him.”

The visit lasted only 45 minutes, cut short by regulations that require all inmates to be counted at precisely 4:00.

The *rebbe* had come from Kiryat Sanz in Eretz Yisroel for a two-week trip, to visit his *chasidim* in Brooklyn, Union City and Monsey. Arrangements to visit Sholom Mordechai had been a part of the itinerary from the outset, *Yated* learned. The necessary paperwork had been submitted to the Bureau of Prisons two months earlier, and clearance granted.

## I FEEL A KESHER WITH YOU

Speaking by phone, R’ Chaskel Eidlis, another of the *Rebbe’s chasidim* who accompanied him to the prison, said the *rebbe* had never before met or spoken with R’ Sholom Mordechai but felt a connection with him. “He is well-informed about him and wanted to meet him in person.”

“I feel a *kesher* with you just as all of Klal Yisroel feels a *kesher* with you,” the *rebbe* told Sholom Mordechai warmly as the two met in the prison chapel.

The timing of the *rebbe’s* visit had posed a problem, since visitation in Otisville prison, once permitted three days a week as in most federal prisons, has been severely cut back. Visits from family and friends are now restricted to Fridays and alternate Sundays.

These measures have resulted in extreme hardship for both inmates and visitors. The intense crowding on the days when visits are still permitted often results in guards terminating an inmate’s visit for no reason other than that too many people are in the room.

This Orwellian situation - terminating an inmate’s one visit a week with his family due to crowding resulting from termination of the other visiting days - creates havoc. Family members or friends traveling from distant places, often at great expense, who were admitted into the prison visiting room, are without warning abruptly ejected.

The diminished visitation has been hard on the Rubashkin family and the *rebbe* did not want to cut into the little time they have together once a week. Nor did he and his entourage, in their limited time in the United States, want to have their visit at Otisville cut short or cancelled altogether.

“The difficulty was solved by having the *rebbe* come on a regular weekday as a guest of Rabbi Richter, the prison chaplain,” explained Mr. Shimmy Reichman, a third member of the *rebbe’s* entourage. “Once we were inside and had been thoroughly searched and ‘laser-stamped,’ we met Sholom Mordechai with Rabbi Richter and six other Jewish inmates in the chapel.

Reichman described the chapel as a “neutral” place with “different closets, labeled according to religion: Christian, Muslim, Jewish, *l’havdil*. Inside the closets are shelves of religious books... The *rebbe* spoke to each inmate privately, and then we *davened mincha*, Sholom Mordechai *davened* for the *amud* with deep feeling.”

Afterward, the *rebbe* asked the *chasidim* to sing. “For a few minutes, the singing blocked out the darkness and oppression of that place,” Rabbi Deutch, speaking from Eretz Yisroel, recalled.

## RECALLING THE DEATH SENTENCE... WITH HAPPINESS

The *rebbe* then asked, “Why is it that when Adar comes, *Yidden* are *marbim b’simcha*? Adar was the worst time for the *Yidden* in the times of Haman and Achashveirosh.”

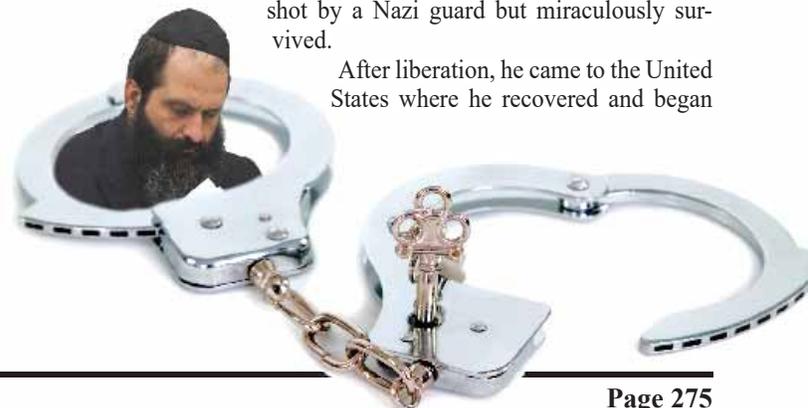
“Adar was the month a death sentence had been handed down for the entire nation. The *Yidden* lived under a terrifying *gezairah of l’hashmid, laharog ul’abeid*. These are certainly not happy memories. What is the *inyan* of being *marbim b’simcha*?”

“The answer,” the *rebbe* said, “is that remembering the despair reminds us of the amazing *yeshua*, and the lesson that Hashem can turn the bleakest situation around in a second.

“A Yid who has *bitachon* will be *zoche* to *yeshuos gedolos*, as we saw in the time of Mordechai and Esther. That is the happiness of Purim, the knowledge that we have a father in Heaven who can do anything.”

Far from mere platitudes, the *rebbe’s* words drew on the illustrious legacy of his father, the previous Klausenberger *rebbe*, Rav Yekusiel Yehuda Halberstam, *zt”l*, who survived horrific experiences in the death camps. His entire family, including his wife and eleven children, were murdered by the Nazis. The *rebbe* himself was shot by a Nazi guard but miraculously survived.

After liberation, he came to the United States where he recovered and began



the process of rebuilding. He eventually settled in Kiryat Sanz in Eretz Yisroel, where he founded a beautiful community of Torah and *chasidus*. He also founded the renowned Laniado hospital in Netanya. After his death, his son, Rav Tzvi Elimelech, continued his legacy as the Sanzer Rov.

### LAPID AISH—A FIERY LEGACY

The *rebbe* then took Sholom Mordechai aside and they spoke privately for a while, Rabbi Deutch said, adding that he learned afterward that Sholom Mordechai had told the *rebbe* that at a very trying time in his life, he had read the *sefer* “*Lapid Aish*,” written by the *rebbe*’s father, the Klausenberger Rebbe.

The *sefer* demonstrates the *rebbe*’s profound faith that enabled him to survive his frightful ordeals during the Holocaust.

In a letter to his family after the *rebbe*’s visit, Sholom Mordechai described the visit and shared parts of this private conversation. He said he told the *rebbe* that when he was in a state prison in Iowa awaiting the state labor trial, he had been brutalized by the guards when he protested the removal of his *yarmulka* and *tzitzis*, and was then thrown into his cell.

In those dark hours, he wrote to his family, a strange thing happened. A book about the Klausenberger *rebbe* was delivered to him. “Until today, I do not know who sent it. I read the book from cover to cover,” Sholom Mordechai wrote his family. “It gave me tremendous *chizuk*.”

“I shared this story with the *rebbe* about miraculously receiving this book,” the letter continued. “We spoke about an extraordinary incident in his father’s *sefer* that happened on Yom Kippur in the DP camp where the Klausenberger *rebbe* was interned after the war.

### VIDUI... FOR DEATH CAMP SURVIVORS?

“The Klausenberger Rebbe was the *shliach tzibur*, and since there were barely any *machzorim* there, the *rebbe* pronounced the words slowly and in a loud voice for the benefit of the *mispallelim*. Then he came to the *vidui*.

‘*Oshamnu, bogadnu*,’ he chanted, translating into Yiddish as he went along.

“‘*Oshamnu, mir huben gezindikt*, we transgressed,’” the *rebbe* began. But he suddenly stopped. He repeated the words in a tone of wonderment, ‘*Mir huben gezindikt? We sinned? What does this mean? We were beaten, starved and tortured. We were murdered in horrible ways, only because we are your nation and your children!*’

“He went on to the next word, ‘*Bogadnu*,’ translated it into Yiddish and then halted again, bewildered. ‘*We betrayed? How did we betray? They choked us, drowned us, burned us alive.... only because we are your people and have remained faithful to you, Hashem,*

throughout the most terrible times! When and where did we betray?’

“Sobs broke out among the *mispallelim*. The *rebbe* continued the *vidui*. ‘*Gozalnu*, we stole,’ and again choked up. ‘*We stole?*’ he cried out. ‘Our enemies, with the approval of the world, stole everything we had—our money, our families, all our loved ones—our very lives! What did we steal?’

“The *rebbe* concluded that this part of the Yom Kippur *davening* was not for the broken survivors to say, and he closed the *machzor*,” Sholom Mordechai quoted from the book in his letter.

“The people behind him were by now crying bitterly. But the *rebbe* wasn’t finished.

“...There is one thing we do need to ask forgiveness for, dear friends! For the days we woke up in the freezing barracks on the hard wooden planks, starving, bitterly cold and disgusted with our miserable lives. We didn’t want to go on living.’

‘For losing hope in Hashem, for losing the will to live...for not wanting to arise and thank Him for another day in which to serve Him, and to hold on to *bitachon* that he will save us *Yidden*—for that we need to say *vidui*. For giving up on Hashem, we need to do *teshuva*.’”

### SO PAINFULLY SHORT

Sholom Mordechai finished recounting this moving story in his letter, adding that it had braced him in one of his darkest hours.

He shared with his family the many *brochos* the *rebbe* had given him before leaving, and how uplifting—but so painfully short—the visit was for him.

“What a *zechus* to *daven mincha* with the *rebbe*, whose father was the great *tzadik*, the Klausenberger Rebbe, *zatzal*, who lived through the horrors and torture of the Amalaik in our parents’ generation. But prison is a place of constraints, and there were severe constraints on the time we could be together...”

The letter concluded with words of encouragement. “*Kinderlach*, have *bitachon* in Hashem that He will very soon redeem each Yid from his Haman and his private *tzorah*.”



# Spector of Postville Haunts Judicial Nominee

BY DEBBIE MAIMON

With the Senate Judiciary Committee poised to consider the nomination of U.S. Attorney Stephanie Rose to the federal bench, critics are urging committee members to take a searching look at this nominee who was a chief prosecutor in the controversial 2008 Postville Prosecutions.

An op-ed in the *Des Moines Register* by Dr. Camayd Freixas, a federal interpreter who witnessed the prosecutions, adjured the Senate not to “rubber-stamp” Rose’s nomination “as if Postville never happened.”

“Postville, May 12, 2008, will be remembered in infamy as a stain on American justice,” he wrote.

He urged the senators to question Rose closely about her role in the prosecutions that drew harsh criticism for alleged abuses of due process and civil rights.

One of the most serious allegations against Rose’s office concerned its collaboration with Chief Judge Linda Reade, who later imposed prison and deportation sentences on the defendants.

The nation’s top judicial experts have said that the judge’s close involvement in the enforcement operation had compromised her neutrality, and should have compelled her to recuse herself from the trials of the defendants, including that of Sholom Rubashkin.

## REVISITING ‘DISTURBING ALLEGATIONS’ ABOUT ROSE AND COLLEAGUES

The *Des Moines Register* article highlighted “the disturbing allegations of unethical *ex parte* communications between Rose’s office and the chief judge, in the planning of the raid and prosecutions for 8 months leading to the ICE operation.” It also slammed the “withholding of exculpatory evidence from the defense.”

“Documents obtained under the Freedom of Information Act in [the Sholom Rubashkin prosecution] showed that Rose’s office involved Chief U.S. District Judge Linda Reade in the pre-raid planning,” the article attested.

“Rose saw nothing wrong with this, but considered it a proper role for both judge and prosecutor. So much for her ethics and impartiality.”

Dr. Camayd-Freixas wrote a detailed and widely quoted essay about the abuses he had personally witnessed. He also gave testimony to a congressional committee investigating the raid and the prosecutions of the defendants.

## FIRST MASS FELONY PROSECUTION IN HISTORY OF MODERN DEMOCRACY

“More than 300 undocumented meatpackers were hammered with the anti-terrorism-related charge of identity theft, forced to plead guilty to felony fraud, jailed up to a year at public expense and de-

ported without an immigration hearing,” the author recounted in his current op-ed.

“Hundreds of families were left to starve and the Postville economy was devastated. The seven-day ‘fast-track’ proceedings, with one lawyer for every 20 defendants, were a mockery of due process, condemned nationally by the legal community and slammed at a congressional hearing.”

Camayd-Freixas said that the fast-track, “assembly-line” justice—where defendants’ individual circumstances were completely disregarded—stands out as the only “mass felony prosecution” in the history of modern democracy.”

## A FEDERAL JUDGE MUST BE HELD TO A HIGHER STANDARD

While many denounced the proceedings as a travesty of justice, then Assistant U.S. Attorney Rose called it “a ton of good work,” praising the “tireless” efforts of those who took part in the proceedings.

But Camayd-Freixas noted that her serious errors of judgment in the Postville prosecutions cast a shadow over her fitness for the federal bench.

“A federal judge must be held to a higher standard of fairness, impartiality and understanding of the law,” he wrote, noting egregious breaches of all three credentials in the Assistant U.S. Attorney’s conduct.

He harshly criticized Rose and her colleagues for using “the identify theft” charge against immigrants who were ignorant of the Social Security system, and had no clue their false papers contained identification numbers belonging to another person.

That felony charge carries far more serious penalties than the civic offense of entering the country illegally or overstaying one’s visa.

Holding the “aggravated identity theft” charge over the heads of the arrested workers drove most of them, guilty or not, to waive the right to trial or immigration hearing, Camayd-Freixas noted. In addition, it coerced them to plead guilty to felony charges that landed them in jail for five months, followed by automatic deportation.

The vast majority of this group had no criminal history. If they were not going to be allowed to stay here legally, shouldn’t they have been sent back immediately to rejoin their impoverished families in Guatemala and Mexico?

What purpose was served by jailing them at taxpayers’ expense, while their families back home starved?

## ROSE AND READE MISAPPLIED IDENTIFY THEFT CHARGE

The Postville strategy, using the identity theft charge as a weapon to coerce guilty pleas, backfired two years later. That’s when the Su-

preme Court ruled in an unrelated case that the charge was inapplicable in cases where the defendant did not knowingly steal the identity of a specific individual.

Assistant U.S. Attorney Stephanie Rose and Chief Judge Linda Reade, it now became clear, had misapplied the law in the hundreds of Postville prosecutions they oversaw.

"This landmark 9-0 decision overturned three appellate courts, including the 8<sup>th</sup> Circuit, and thousands of cases," wrote Camayd-Freixas. "So much for Rose's 'ton of good work'.

"The Supreme Court ruling," he said, "showed how easily a biased interpretation of the law can put politics and prejudice before justice."

#### JUST FOLLOWING ORDERS?

The author noted that Stephanie Rose's nomination had been sponsored by Iowa Senator Tom Harkins, the same person who had nominated her for the U.S. Attorney position a year after the raid. [At that time of the raid, she had been third in the chain of command in the U.S. Attorney's Office.]

Facing down criticism of his nominee for her actions in the Postville tragedy, Harkins claimed Rose had a very minor role in the operation and was just following orders.

That image contrasts sharply with an eye-witness description of a private meeting that took place at the United States District Court-house in Cedar Rapids, Iowa, on May 12, 2008, as the ICE raid was underway.

The eye-witness report was written by Rockne Cole of Iowa City, one of the public defenders summoned to the meeting along with instructions "not to tell anyone" about it.

Cole addressed his July 2008 letter to Rep. Zoe Lofgren who chaired the congressional committee scrutinizing the raid and the legal proceedings that followed. Parts of his letter were printed in the *New York Times*.

#### A HANDBOOK FOR HOW TO GET YOUR CLIENT JAILED AND DEPORTED

Cole wrote of his astonishment at the meeting's agenda, which he summed up as a legal scheme in which "a court-appointed attorney's role was to act as a 'guilty-plea processing clerk', serving only to expedite the mass waiver of rights."

"It was like a handbook on how to get your client jailed and deported," he told this writer.

In Cole's report, far from playing a minimalist role in the proceedings, Rose appeared to be a key player. She chaired the meeting, describing at length the well-crafted strategy by which the attorneys were to guide their clients into waiving their rights to a trial or immigration hearing, and to agree to plea deals that required 5 months of jail time and deportation.

"Assistant U.S. Attorney Rose began the meeting by scanning the audience for media officials.... She then began the presentation," Cole wrote. He said Rose advised the attorneys they would be handling a large number of defendants at one time. [The number started out at 10 but later jumped to a staggering 20.]

After a court clerk handed out to all the attorneys "guilty plea handbooks," Rose launched into a description of the various plea deals being offered to the defendants, all of which presumed guilt of a felony crime.

There was no allowance in the Rose's "representation plan" for a plea of innocence, Cole told the congressional committee in his letter.

"What I found most astonishing," he said, "is that apparently Chief Judge Reade had already ratified these deals prior to one lawyer even talking to his or her client."

Cole said that he concluded from what he heard at the meeting that Judge Reade [who was present at the meeting] and the United States Attorney's Office coordinated the mass detention; roundup; representation plan; plea deals and sentencings, before he or any of the attorneys could speak to their clients.

#### 'BREATHKING LEVEL OF COORDINATION'

"I hope I am wrong about that inference," Cole wrote, "but the overwhelming facts suggest a breathtaking level of coordination between the United States District Court Judge and the Department of Justice, [*i.e. between Judge Reade and Assistant U.S. Attorney Rose-ed.*].

Cole said he realized he could not be part of what he saw as a legalized assault on human rights, and walked out in disgust.

"I nevertheless strongly encourage the Committee to keep an open mind, and afford all officials involved a fair hearing, which unfortunately was not given to the defendants in Postville," Cole concluded.

Almost four years later, on the eve of the Senate confirmation hearings for President Obama's nominees that will decide Rose's future, an op-ed appeared by Cole appeared in the *Iowa Gazette*.

"On May 12, 2008, prosecutor Stephanie Rose and her colleagues in the Northern District of Iowa brutally removed a large ethnic group from Postville through the infamous immigration raid. President Obama has now nominated Rose to be a federal judge for the Southern District of Iowa," Cole began.

"Neither Rose nor any of her colleagues have ever acknowledged the slightest injustice arising from their brutal tactics," Cole wrote. "To the contrary, she has celebrated the [government] operation."

#### COULD NOT KEEP SILENT

Still practicing in Iowa City, Cole said he could not keep silent as he watched Stephanie Rose "about to ascend to lifetime employment on the backs of the 'huddled masses.' He could not forget the "injustice" and "brutality" inflicted on the hundreds of defendants "by Rose and her colleagues."

Aware that he has probably endangered his career by speaking out, Cole told this writer he "would rather stand up against this injustice than capitulate to further my own career, as [Rose] has done. It is sickening what happened to the workers and to Sholom Rubashkin, and they are getting away with it."

"Since the raid," he wrote in the *Gazette*, "I have wondered why so many of the legal elite have walked in lock-step supporting Rose and her colleagues while turning their backs on [the victims]. Perhaps, I will never have that question answered.

"But I do know one thing for sure: I will never forget what happened to Rosanna Meijia who was one of the 'cattle' rounded up and brought to the Cattle Congress.... and every person who, like her, was stripped of dignity."

"I will never endorse any person who, after four years of reflection, cannot recognize the basic inhumanity that was shown on that day of infamy.

"President Obama," he wrote, "shame on you for validating this injustice by nominating Stephanie Rose to be a U.S. District Court judge for the Southern District of Iowa."

*"I will never endorse any person who, after four years of reflection, cannot recognize the basic inhumanity that was shown on that day of infamy.*

---

ROCKNE COLE OF IOWA CITY

# *Machshova Mo'eles:* Thoughts Can Help Liberate

A THANK YOU NOTE FROM SHOLOM MORDECHAI RUBASHKIN

## *To my tayere brothers and sisters in Klal Yisroel, shetichyu*

*Baruch Hashem*, I had some time to visit with my family today, and to share some Torah thoughts on *Pesach* and the *Haggadah*. The children suggested we start with the 15 steps of the *seder*; *Kadaish*, *urchatz* etc, so we started singing it all together. “*Kadaish, glaich ven der tatte kumt ahaim fun shul darfer machen Kiddush....*” As soon as the father comes home from *shul*, he needs to make *Kiddush....*”

Then my little son, Uziel, yells out, “Say it like this! *Glaich ven der tatte kumt ahaim fun jail, darfer machen kiddush!*” As soon as the father comes home from *jail*, he needs to make *Kiddush!*”

We are all *davening* together to our Father in Heaven to free me this week, so that Uziel’s words will come true, and I will be able to say *Kiddush* by the *seder* together with all my family, *sheyichyu*.

We know that “*machshovoh mo'eles*,” that when we think favorably or sympathetically of another Yid, wishing him or her good, the very thought itself accomplishes something. So from the depth of my heart and *neshama*, I want to express my tremendous *hakoras hatov* to all the *Yidden* who think about me and my family, who are sharing our pain and suffering.

## EACH LETTER BRINGS LIGHT AND WARMTH

*Baruch Hashem* for all the letters I’ve received from you and from your children. I thank each and every one for the *chizuk*, and for all of your *brochos* and increase in Torah and *mitzvos*, and for just letting me know in writing that you are with me and my family.

Whether it is with *additional maasim tovim* or *hachlotos tovos*, whether by saying *tehilim*, or *tefillos betzibur....* All of this is *po’el* the *geulah* and *yeshuah* from *Hashem Yisborach*.

Please know that each letter brings light and warmth into a place that is dark and cold. Each letter is cherished that even in the very limited space of my cell, I keep each and every single one with me, so that the light and warmth they give out keeps on shining in this darkness.

Although the schedule and situation here in prison is such that it is not possible for me to answer each one, please know that I thank you for sharing your thoughts and special deeds with me, and lifting my spirits.

There is a powerful teaching from Reb Levi Yitzchok Berditchever on “*machshovoh mo'eles*” how the very act of thinking can bring about a positive result.

In the *Haggadah* we say, “*Baruch Hu sheHakodosh Baruch Hu chishev es hakaitz, laasos kemo sh’eomar*. Blessed is He that *Hakodosh Baruch Hu* calculated the *keitz*” [the time the *golus* ends], to do as He said.

This can be explained by the *Medrash*: the *malach* of *Mitzrayim* complained that the *Yidden* were being freed too early, their “sentence” was not up yet. The *gezairoh* was that the *Yidden* would be enslaved for 400 years and they had been in *Mitzrayim* for only 210. There was still a balance of 190 years for them to be enslaved, the *malach* pointed out.

Why were they being freed before the appointed time?

## THEIR ANGUISH OVER THE FUTURE GOLUS HELPED TO SHORTEN IT

The answer is that *Hakodosh Baruch Hu* made it known to each of the *avos* that their children would be enslaved for 400 years. The knowledge that their descendants would suffer so much gave the *avos* such anguish that the amount of time they suffered over the future torment of their children was included in the 400 years. *Hashem* considered their *tzaar* as part of the *yesurim* the *Yidden* were meant to suffer in slavery.

This is what is meant by “*chishev es hakaitz*” - that the *kaitz*, the end of *golus*, was brought about partly by the pain our fathers experienced as they agonized over the future *golus*.

Even though their pain was mental anguish, not the pain of slavery, it was considered equivalent to actual suffering in *golus*. This thought is hinted at by the words “*chishev es hakaitz*,” because the numerical value of the letters is 190. This is precisely the number of years that our fathers subtracted from the 400 years of slavery by suffering the sorrow of *golus* in their “*machshovoh*.”

Studying this *pshat*, we understand that the *machshovos* of *Yidden* who truly feel the pain of another Yid can actually reduce the pain the other *Yid* will have to endure. What an incredible lesson.

We can also learn from this *posuk* that even as we suffer the hardships of *golus*, we need to look ahead to the *kaitz*, to always to see the *geulah* on the horizon. We should never view *golus* as something that is fixed and inevitable.

Even though *Hashem* gave *Avrohom* a precise and definite time frame regarding how long his children would need to be enslaved in a strange land, the timetable was shortened from 400 to 210 years by including the *hishtadlus* of our fathers.

The lesson is clear that all the *hishtadlus* that so many *Yidden* are doing for me, and all the good and kind *machshovos* that so many *Yidden* have for me will surely shorten the *gezairoh* and *golus*. May *Hashem Yisborach* fulfill the *posuk* “*chishev es hakaitz*” for me and for every Yid and bring the *geulah* quickly, suddenly, this very day.

And my little Uziel will be able to say the 15 steps of the *seder* beginning with *Kadaish*: as soon as Tatty comes home from jail, we make *kiddush!*”

*Yehi ratzon* that we are granted the *chairus proti* together with the *chairus kloli* that we *daven* for. May *Hashem* bring *Moshiach* so we will be able to join him as his table in freedom from all pain and evil, and bring our *korban pesach* this year in the *Bais Hamikdosh hashlishi, omain*.

*A kosheren un frailechen Yom Tov, Besuros tovos.*  
**Sholom Mordechai Halevi Ben Rivka Sheyichye**

# Petition To Supreme Court Focuses On Misconduct, Gross Sentence-Disparity

BY DEBBIE MAIMON

Lawyers for Sholom Mordechai Rubashkin on Monday filed a petition for a *writ of certiorari* for the United States Supreme Court.

Represented by acclaimed attorneys Paul Clement and Nathan Lewin, Sholom Mordechai asked the high court to review his case because of erroneous rulings by the Eighth Circuit Court of Appeals.

Foremost among these rulings, the Eighth Circuit in its Sept. 2011 decision refused to consider evidence of judicial and prosecutorial misconduct, discovered after the trial, which rendered the trial unfair.

The petition also seeks relief from the Supreme Court for the draconian 27-year sentence imposed by Judge Linda Reade.

"This case presents two issues of extraordinary importance to both criminal defendants and the criminal justice system as a whole," the petition stated.

First, the Eighth Circuit held that a criminal defendant seeking a new trial based on evidence that the trial was fundamentally unfair, must demonstrate that the new evidence will probably result in acquittal upon retrial.

But applying a "probable acquittal" standard for new evidence that has no bearing on guilt or innocence but casts real doubt on the "integrity of the trial itself" goes against logic, the petition argued.

Nevertheless, when confronted with the argument that its "probable acquittal" standard makes no sense, the Eighth Circuit refused to budge: even when the new evidence concerns judicial bias or prosecutorial misconduct, it said, to merit a new trial, the evidence must offer compelling proof of the defendant's innocence.

The rule is not only illogical but conflicts with the decisions of the Fourth, Ninth, and Eleventh Circuits," the brief attested.

## TRIAL JUDGE AND 8<sup>TH</sup> CIRCUIT IGNORED 'EYE-POPPING' SENTENCE DISPARITY

The second issue of far-reaching importance is the 8<sup>th</sup> Circuit's failure to address the argument that the trial judge had, *without explanation and against federal sentencing law*, issued a sentence that was wildly out of proportion with the sentences of other defendants convicted of similar offenses.

The 8<sup>th</sup> Circuit ignored this argument in the appeal, affirming the 27-year sentence as "reasonable," without addressing the trial judge's failure to acknowledge its gross disparity, let alone justify it.

"Sholom Rubashkin was given an unusually harsh sentence for his actions. In my entire career," Paul Clement said in a statement to the press, "I cannot recall a similar instance of harsh punishment for a non-violent, first-time offender with a long record of charitable service to his community."

By condoning the trial court's failure to explain why it rejected Mr. Rubashkin's "gross disparity" argument, "the Eighth Circuit upheld an extraordinary 27-year sentence exceeding those of some of

recent history's most infamous fraudsters," the petition stressed.

"The crimes of these fraudsters, unlike those Mr. Rubashkin was convicted of, deprived countless individuals of their life savings. This includes Bernard Ebbers, the former CEO of Worldcom who received 25 years and Marc Dreier, the founder of Dreier LLP, who received 25 years. Jeffrey Skilling, the former CEO of Enron received approximately 25 years, although later had his sentence vacated.

"John Rigas, the former CEO of Adelphia Communications, received 12 years; and Joseph Nacchio, the former CEO of Qwest Communications, received approximately 6 years."

"While perpetrators of massive frauds depriving thousands of stakeholders of their life savings are treated leniently, here a first-time offender received a functional life sentence," the petition argued. "The disparity and unfairness is eye-popping and has garnered the attention of numerous former high-ranking Justice Department officials."

Highlighting the alarm the disparity raised in the legal community, the petition cited a letter to the trial court "from an extraordinary bipartisan group of six former United States Attorneys General and 17 former federal prosecutors and Justice officials" prior to Rubashkin's sentencing.

The signatories expressed concerns over the way federal sentencing guidelines were being misused in the case. They stated that they could not "fathom how truly sound and sensible sentencing rules could call for a life sentence—or *anything close to it*—for Mr. Rubashkin."

## JUDICIAL NEUTRALITY CORNERSTONE OF FAIR TRIAL

Equally troubling, said the brief, was the 8<sup>th</sup> Circuit's decision to reject the argument that new revelations that the trial judge had taken part in months of planning for the immigration raid on Agriprocessors should invalidate the trial.

The judge had not only actively participated in over 12 pre-raid meetings with federal prosecutors; she and federal prosecutors then withheld the information from the defense team. As a result, Sholom Mordechai's lawyers did not move for her recusal.

With her neutrality compromised as a result of months of collaboration with the U.S. Attorney's Office, the judge should never have sat on the case, Rubashkin's lawyers had argued to the appeals court last June. Yet the 8<sup>th</sup> Circuit insisted this newly discovered evidence of judicial bias was irrelevant.

How can this stance be considered logical or fair, the Supreme Court petition wondered. Aren't determinations of guilt or innocence meaningless if the trial itself is a sham? Since judicial neutrality "is so fundamental to a fair trial, its absence automatically requires reversal."

## ISSUES THAT DIVIDE THE NATION'S COURTS

The brief urges the Supreme Court to hear the case not only because of its unique merits but because the issues it raises concern “circuit splits”—clashing decisions by various U.S. Courts of Appeals on identical issues.

Circuit splits can result in vastly different interpretation of the law in different regions of the country, defeating the notion of a uniform “law of the land.” Circuit-split issues such as those raised in the Rubashkin appeal are therefore of sweeping relevance to the U.S. criminal justice system as a whole, the petition pointed out.

As other circuits have recognized, “the probable acquittal test makes sense when the newly discovered evidence concerns the defendant’s guilt or innocence, but is a complete misfit when the newly discovered evidence concerns the fairness of the trial.”

“The Eighth Circuit is simply wrong to insist on driving a square peg into a round hole” the petition said. Had Mr. Rubashkin been prosecuted in any of the circuits that have properly interpreted Rule 33, “his new trial motion would have received the full airing that the interest of justice demands.”

A “full airing” should have included an order for an evidentiary hearing, to find out what exactly took place at the secret meetings between the judge and prosecutors.

This motion should not only have been granted as requested, it should have been assigned to a different judge whose impartiality would not be suspect, the brief added.

Instead, the 8<sup>th</sup> Circuit saw nothing wrong with Judge Reade—whose conduct had prompted allegations of partiality—insisting on her right to rule on the question of her own bias, instead of turning the case over to an impartial judge.

The petition also outlines the many one-sided pretrial and trial rulings that prejudiced Mr. Rubashkin’s defense:

The judge denied the request to have the immigration charges tried first. Had Sholom Mordechai been acquitted of those charges—as indeed they were later all dropped—prosecutors would not have

been able to exploit them as they did in the financial trial, painting the defendant as an incorrigible law-breaker.

Even after severing the immigration charges from the financial, the judge permitted the prosecution to present evidence of immigration violations, while barring evidence that Sholom Mordechai had retained immigration counsel (and thereby had not knowingly violated immigration laws).

Judge Reade did not dismiss the money-laundering counts although they were essentially duplicates of other charges. In other words, the defendant was convicted and sentenced twice for the same offense.

## PUBLIC CONFIDENCE IN JUSTICE SYSTEM IMPACTED

The Rubashkin case presents issues that deeply divide the nation’s courts of appeals and urgently need guidance, Sholom Mordechai’s lawyers argued.

The way the case has been handled impacts public confidence in the fundamental fairness of our criminal justice system, they said.

“In short, when a criminal defendant discovered new evidence suggesting the trial judge should never have sat on his case, he was told that the courts would not even consider the evidence because it did not go to guilt or innocence.

“And when he presented evidence that the sentence he received was wildly disparate, he was told that the courts need not even explain the basis for the disparity.

Not only are these results “doubly unjust,” the petition said, they implicate issues on which the courts of appeals are at cross purposes and desperately call for a plenary review from the nation’s highest court.

Indicative of public concern over injustices in the case, the brief cited the more than 52,000 signatures on the White House’s “We the People” website, urging an investigation into misconduct by the prosecution.

“Furthermore, 50 members of the U.S. House of Representatives have written letters to Attorney General Eric Holder, urging an investigation into the allegations of prosecutorial misconduct,” noted the brief.

It cited the letter signed by 75 U.S. Attorneys and law professors and sent to the DOJ Office of Professional Responsibility, joining the call for an immediate investigation into allegations of *ex parte* communications between Judge Reade and prosecutors.

The petition also cited the recent release of the independent report on the prosecution of Senator Ted Stevens. The disclosure of egregious abuse of prosecutorial power in that report “should focus attention, as well, on the misconduct of the prosecutors in the Rubashkin case.”

“The Supreme Court will surely recognize how outrageous and unjust Mr. Rubashkin’s prosecution and conviction have been,” said Nathan Lewin who argued the Rubashkin appeal in the Eighth Circuit, and who jointly authored the petition for certiorari with Paul Clement.

“The justices will, with G-d’s help, review and reverse the decision so that Sholom will be able to return as soon as possible to his loving family and community.”



Sholom Rubashkin’s lawyer, Paul Clement.

# Amicus Curiae Urge Supreme Court To Hear Rubashkin Case

BY DEBBIE MAIMON

In a sign that the Rubashkin case continues to roil the highest ranks of the nation's legal community, six *amicus* briefs from prestigious legal organizations and renowned legal authorities have called on the Supreme Court to grant the Rubashkin case a hearing.

The briefs are from former Solicitor General Seth Waxman, joined by 86 former DOJ officials and federal judges; the National Association of Criminal Defense Lawyers; The Washington Legal Foundation; The Association of Professional Responsibility Lawyers; a group of 40 legal ethics professors; and the Justice Fellowship.

Legal observers say it is unusual for so many *amicus* briefs to be filed at the "cert petition" stage, *before* the Supreme Court has granted a hearing. The issues of misconduct and gross sentencing disparity in the case were felt to be so disturbing, they compelled legal advocacy groups and ethics experts to file earlier, to urge the Supreme Court to grant a review.

Experts who have read the briefs and noted the signatories' names say the briefs are not merely casual expressions of support from prominent people. They are passionate and persuasive arguments that harshly criticize the rampant injustices in the case. They raise an alarm about the setting of dangerous precedents unless the injustices are remedied.

Taken together, the six *amicus* briefs hammer home a sense of outrage in top echelons of the legal community over the apparent disregard for judicial ethics and fair play that drove the misconduct in the Rubashkin case.

## AMICUS CURIAE TARGET JUDICIAL AND PROSECUTORIAL MISCONDUCT

Three of the briefs focus on the questionable conduct of Judge Linda Reade and the failure of the 8<sup>th</sup> Circuit to address the serious claims of judicial and prosecutorial misconduct in the case.

The briefs severely criticize Reade for colluding with government officials in the Agripocessors raid, and then arranging matters so that she could preside over the prosecutions and trials—while hiding from the defense the extent of her collaboration.

They also admonish the 8<sup>th</sup> Circuit for insisting on a standard for new evidence in a Rule 33 new-trial motion that is wholly irrational when applied to the circumstances in the Rubashkin case.

According to the 8<sup>th</sup> Circuit's ruling, the discovery of judge-prosecutor collusion is not enough to warrant a new trial. Only evidence that can point to the defendant's innocence can prevail in a Rule 33 motion.

But the Rubashkin position was that determinations of innocence and guilt are meaningless if the trial itself was fundamentally unfair.

The briefs call attention to vastly different applications of Rule 33 by other appellate courts that have granted a new trial when a trial was

shown to be unfair. Had the Rubashkin case been heard by a different court, one brief argued, the outcome would undoubtedly have been different. Shouldn't the Supreme Court resolve the split among the courts and clarify the Rule 33's true intent?

## VIOLATION OF UNITED STATES CODE; SUBVERSION OF JUSTICE

Especially incisive is the brief authored by **Seth Waxman**, a former Solicitor General and prominent D.C. attorney, and signed by an impressive list of **86 former DOJ officials and federal judges**. **Among the signatories are 27 federal judges** 2 attorneys general, 1 Inspector General, 2 FBI Directors, 4 Deputy Attorneys General and 1 Solicitor General.

The Waxman brief asserts that the Rubashkin "prosecution and sentencing conflict with the law... and strongly suggest that justice was subverted."

The brief singles out Judge Reade's secret meetings with the prosecution and her involvement in the government's entire raid planning that destroyed all appearance of neutrality, when she presided over the trial.

The shattering of the appearance of impartiality violates the Unites States Code, the brief stated, yet the 8<sup>th</sup> Circuit glossed right over it.

Going even further, the brief attacks the unreasonableness of the 8<sup>th</sup> Circuit in closing its eyes to blatant evidence of judicial misconduct, insisting that no matter how compelling the evidence, it is worthless unless it can point to the defendant's innocence.

What kind of democracy would we have if such a ruling were allowed to stand? It would mean that even in the face of indisputable evidence that a trial was a sham, the justice system has no remedy to offer.

The Waxman brief also criticized Judge Reade for an "absurdly inflated" and "highly disproportionate" sentence that "dwarfed" the sentences of other defendants convicted of similar crimes.

It said that the Rubashkin case "presented an exceptional case for leniency" but Judge Reade ignored her judicial duty to consider the many mitigating factors.

## 'JUDGE READE HAS SHAKEN THE PUBLIC'S FAITH'

Another brief, signed by **40 Legal Ethics Professors**, was authored by Professor Lara Bazelon, a foremost legal ethics scholar, along with noted criminal justice attorney Allison Ehlert.

The brief castigates Chief Judge Linda Reade and the Iowa prosecutors for "the serious violations of law and ethics that occurred as a result of the *ex parte* communications between them in the Rubashkin case."

"Judge Reade has violated judicial neutrality, and has shaken the public's faith in the integrity of the proceedings," the brief asserts.

It notes the numerous calls from law professors, former Deputy Attorneys General, and former U.S. Attorneys, “for an investigation into the allegations that Judge Reade committed misconduct” and that “her failure to recuse herself” invalidated the trial.

The Bazelon brief, more than any other official document in the case, attacks Judge Reade’s assertions that she did nothing wrong, that the secret meetings were confined to “logistical issue of an administrative nature.”

“That is not what the record reveals,” the brief counters, quoting excerpts from the ICE memoranda that cast doubt on Reade’s rationale for her secret sessions with government officials.

Far from being limited to pure logistics, the ICE documents show that “the contacts between prosecutors and trial judge were extensive expansive, unrecorded and undisclosed, until after that same judge imposed an effective life sentence.”

#### ‘THIS EVIL IS ON FULL DISPLAY IN THE RUBASHKIN CASE’

Secret communications between judge and prosecutors “create the appearance of collusion and bias, undermining the legal and ethical foundations” of the justice system,” the brief said. “This evil is on full display in *Rubashkin*.”

The Bazelon brief also stressed that whether the appearance of partiality on the part of the judge warrants that judge’s recusal, should rest on whether “an average person on the street”—*not the sitting judge herself*—would suspect bias.

Yet Judge Reade used herself as the standard for evaluating her conduct, refusing to turn the case over to a different judge who could make an objective assessment.

Her analysis consisted of defending her actual conduct and dismissing the possibility that anyone could view that conduct differently.

She did not perform an *appearance of bias* test—but rather an ‘*actual bias*’ analysis.”

Yet it is clear according to the ICE memoranda that even government officials and prosecutors would have trouble regarding Reade as unbiased. In the ICE documents themselves, she is characterized as a “stakeholder” in the investigation, a description signaling “the Government viewed her as an ally rather than a neutral arbiter.”

#### COMMUNICATIONS WENT FAR BEYOND LOGISTICS

The Bazelon brief is buttressed by a powerful affidavit from Professor Geoffrey Hazard, a renowned legal scholar who served as the principal architect of the Judicial Code and the American Bar Association’s *Model Rules of Professional Conduct*.

Hazard testifies in his affidavit that prosecutorial and judicial misconduct irrevocably tainted the Rubashkin case.

In essence, he said, “Judge Reade and the Government lawyers established and maintained a continuing relationship of substantial *ex parte* communications from the point when the Government planned the raid on Mr. Rubashkin’s enterprise through the filing of the charges against him.”

The communications went far beyond “logistics,” Professor Hazard said. “An important part of the program was orchestrating the arrests and prosecutions “so that they would be on Judge Reade’s docket, and not that of some other judge.”

It was apparently of the greatest importance to have a judge on board who would be invested in the Government’s success, particularly in the culminating event of its investigation—the Rubashkin trial.

Hazard criticized the 8<sup>th</sup> Circuit for making the issue whether the defendant’s new evidence would likely lead to an acquittal in a new trial.

“In my opinion, the issue is whether Defendant has made a showing that the judge’s failure to recuse herself was a structural defect that deprived Sholom Rubashkin, from beginning to end, of a fair trial.”

The evidence is certainly sufficient, the legal scholar said, to show that “this federal judge came to the proceeding with secret informa-

tion” that to any reasonable person would suggest that “her ability to act with integrity and impartiality is impaired.”

#### DUE PROCESS VIOLATED

A fourth brief filed by NACDL (National Association of Criminal Defense Lawyers) and Aleph Institute, authored by legal ethics expert Nathan Crystal, urged the Supreme Court to grant the Rubashkin petition in order to rule on the important issues regarding judicial recusal raised by this case.

It’s human nature that when people work together on a project they begin to consider themselves as part of a team with a common goal, the brief noted. In this case, the contacts were extensive enough for the judge to call for a “final game plan” at the end of a seven-month process.

“If the contacts were as innocuous as the district judge believed them to be, then why did she fail to disclose them? If they were not [innocuous], then it follows that an appearance of partiality, if not actual partiality, *does* exist.”

When the judge proceeded to trial with Rubashkin without disclosure of the extent of her contacts with the prosecutors, that created a clearly disqualifying appearance of impropriety, the brief said:

“We do not know what was said between the prosecutors and the district judge, but given their extensive meetings together, that fact of her exposure to information about [Rubashkin], including the types of charges being contemplated and the nature of his business, would seem a foregone conclusion to any objective observer.

#### JUSTICE FELLOWSHIP: 8<sup>TH</sup> CIRCUIT FAILED IN ‘REASONABLENESS REVIEW’

The brief filed by **The Justice Fellowship**, authored by Washington attorney and sentencing expert Jeff Ifrah and attorney David Deutch, attack the procedural unreasonableness of Sholom Rubashkin’s sentence, and Judge Reade’s refusal to even consider imposing a below-Guidelines sentence.

The brief criticizes the 8<sup>th</sup> Circuit’s failure to give weight to the appeal’s argument that the massive sentencing disparity in the Rubashkin case—27 years for a first time, non-violent offender—are grounds to reduce the sentence, since the sentencing judge failed to justify such a bizarre, disproportionate sentence.

Judge Reade in her sentencing memorandum refused to acknowledge the gross disparity of this draconian sentence, much less justify it as required by contemporary jurisprudence.

The Eighth Circuit compounded the injustice by whitewashing it, declaring that Reade had discussed—and rejected—each possible ground suggested by the defense for lowering Rubashkin’s sentence.

This was untrue, the brief asserted. In fact, Reade in her sentencing memo omitted all mention of the defense’s argument that a functional sentence for a non-violent, first time offender created gross disparities with other sentences in similar cases.

The brief called on the Supreme Court to grant the Rubashkin “cert” petition, and to use the case as a vehicle to address severe problems with federal sentencing guidelines that everyone admits are skewed and in dire need of reform.

“I don’t know whether [Rubashkin’s treatment] by the court was anti-Semitism or anti-Easternism or anti-New Yorkism or anti-outsiderism, but it was anti-something. And it can’t be explained on principles of justice,” said Harvard Law professor Alan Dershowitz in recent comments about the case.

#### A TALE FULL OF SOUND AND FURY

A fifth *amicus* brief by WLF, authored by Professor Doug Berman, a prominent legal scholar on sentencing; and attorney Cory Andrews, focuses on “the substantial flaws in the court’s sentencing of Sholom Rubashkin to a functional life sentence.”

The authors point out that now that federal sentencing guidelines

are no longer mandatory but advisory, rigid adherence to them is not only unreasonable but wrong. Nevertheless, some appellate courts—among them the Eighth Circuit—continue the practice of always affirming within Guideline sentences even when they make no sense.

“Due to the Eighth Circuit’s routine of always affirming within-Guideline sentences, Judge Reade approached the sentencing of Mr. Rubashkin as if only the Guidelines mattered. In turn, the Eighth Circuit affirmed an extreme prison sentence for Sholom Rubashkin, using the rubber-stamp approach it has adopted for within-Guideline sentences.”

The WLF brief urged the Supreme Court review of the Rubashkin case, saying that absent such intervention, the Eighth Circuit ruling will stand as a high-profile reminder that courts can feel free to treat *Booker* [Supreme Court ruling that instructs courts to regard the Guidelines as advisory] as merely a lengthy tale full of sound and fury, signifying nothing.”

#### JUDGE REQUIRED BY LAW TO SELF-DISQUALIFY TO PREVENT APPEARANCE OF BIAS

The Association of Professional Responsibility Lawyers (APRL), authored by Professor William Hodes, - a noted scholar on legal ethics, focuses on the argument that Judge Reade was obligated by law

to disqualify herself from presiding at Sholom Rubashkin’s trial after months of planning the raid with the prosecution.

The brief noted that Congress in 1974 completely revised a section of the U.S.Code that made it obligatory for a judicial officer to disqualify himself in any proceeding in which a reasonable person, *knowing the relevant facts*, would expect the judicial officer to be privy to information that might influence his judgment.

“If such a person knows only that a judge is meeting secretly with one side of a case but not the other, and then not even telling the other side, he will surely believe the judge is “on the team” of the favored side, and will perforce question the judge’s impartiality.”

The brief cites the “extraordinarily long sentence” Judge Reade imposed on Sholom Rubashkin as suggestive of her partiality against him.

If the “average person on the street who knows the relevant facts, also knows that six former Attorneys General, from both major political parties, wrote to Judge Reade recommending that a short term of years for Rubashkin would serve the needs of justice, perhaps they might have different questions to ask about Judge Reade’s impartiality.

Perhaps they might say, “Judge Reade gave Sholom Rubashkin 27 years? Maybe she has it in for the man.”

*Secret communications between judge and prosecutors  
“create the appearance of collusion and bias,  
undermining the legal and ethical foundations of the justice system,” the brief said.*

***“This evil is on full display in Rubashkin.”***



Rubashkin lead attorney Paul Clement.

AP IMAGES

# Achdus in Sefira

A LETTER FROM SHALOM MORDECHAI RUBASHKIN

“*Amar Rabi Akiva, v’ahavta l’rai’acha komocha, zeh klal gadol baTorah.*” In the Zohar, it speaks of a time that the world needed rain. Rabi Shimon bar Yochai was asked to *daven* for rain, and so he said a *drush* on the *passuk* of “*hinei mah tov u’mah na’im, sheves achim gam yachad.*” Soon afterward, the rain came pouring down. This is the power of *achdus*.

With amazing and unconditional *achdus* and *ahavas Yisroel*, *Yidden* have united together as one. People from many different *kehillos* have erased all divisions and separation, *davening* together for a *yeshu’ah* for another *Yid*.

In so many communities, here in the United States and Canada, and in other countries, *Yidden* have shown unconditional *ahavas Yis-*

Whatever my enemy is putting his biggest efforts into, I know that is where I need to put my most efforts to avoid him, and not be tricked.

Prison is the home of the *yetzer hora*, and one gets a good understanding of how the *yetzer hora* accomplishes his goals thru “division and separation” of people. In the chapel on Friday night, there was a new face. He is a *Yid* named Reuven who was brought to this prison. Seeing another *Yid* in this place brings up very mixed and strong emotions. We spoke a little, and he told me that he wears a yarmulke, but his yarmulke was still in transit, as were his *tefillin*, and so he was not able to put on *tefillin* yet that day. I gladly gave him my hat to wear, and since he was in a different unit, I found the *Yid* who is the same unit so that he could use his *tefillin* until his own arrived. Since it was

*This science of division has been mastered,  
so that a thousand people or more can be confined in a small space,  
yet they are still kept apart.*

*roel*, as men and children gathered together to *daven* as a *tzibur*. After *rabbonim* called for the men in Lakewood community to gather at an *asifah*, the *noshim tzidkani’os* came with a complaint: why is there only an *asifah* for the men? So they also organized an *asifah* where thousands of woman gathered *b’achdus*, because we are not just ‘another’ person, we are one *am Yisroel*.

Thousands of letters were sent with words of *chizuk* and Torah, to refresh a tired soul. In each letter, the *ahavas Yisroel* was clearly displayed, the real “*hinei mah tov u’mah na’im, sheves achim gam yachad*” in living color for all *Yidden* to see and enjoy.

It is the unconditional *achdus* and *ahavas Yisroel* that have no limits which are bringing the *geulah* from Hashem. We see how our *ahavas Yisroel* and *achdus*, which are without lines and borders, are effecting others, eliminating their lines and borders, letting them come together in assistance, writing and giving of their time and money to bring to light the travesty of justice occurring.

## SEPARATION AND DIVISION

But the ‘*melech zokein u’ksil*’, the *yetzer hora* and his helpers, attempt to harm our *achdus*.

Dovid Hamelech says, “*me’oivai techkmainee,*” from my enemies I become wise, meaning, from my enemy the *yetzer hora*, “*techkmainee,*” I know what is the most important *mitzvah* for me to keep,

before *shki’ah*, *baruch Hashem* he still had time to put on *tefillin*. We smiled at each other as we parted, but sadly to say we were not able to see each since, and it is already Wednesday!

This is a good example of how prison is a place where separation and division is used. This science of division has been mastered, so that a thousand people or more can be confined in a small space, yet they are still kept apart. The time people are allowed to leave their units to eat is controlled, so there is little or no possibility for interaction, with no congregation of people allowed. Even though Reuven is in a different unit that is only a few yards away, we are physically separated.

All types of people are put together, ignoring their age, education, skills and culture. People who have many years left in prison are together with those that are leaving soon, so there is no common interest that is shared, and so the control of people is easily enabled. This division is done purposely, so that people are not together with those similar to themselves, which would benefit the human side of a person.

These and other means are used, but the greatest tool for divisiveness is injecting wrong information to the people. There is always the “know it all” inmate who knows exactly “what” they are doing and the “why” they are doing something. They claim to have heard from the “staff” about what was said behind the doors. Of course, this “talk” of what was “heard” is a purposeful piece of misinformation, so that the

population stays divided and their reaction to a unhappy or painful new implantation of rules is kept down.

### ACHDUS IN SEFIRAH

In the month of Iyar and through counting *sefirah*, we can learn the lesson of revealing our oneness with Hashem, which enables *Yidden* to have true *achdus*.

Counting *sefirah* occurs throughout the whole month, which makes *Iyar* a month that is special in a way that no other month is: we are doing a *mitzvah* every day of the month. The *mitzvah* is the time of the day itself, making every day and minute we have in this month a *mitzvah* and *kodosh*.

The uniqueness of *kedushah* which cannot be found in any part of the physical world is *achdus*, which is inherently lacking in anything physical. Any object in this world must take up its own space, and it does not allow any other object to invade its space. By its very being and definition, everything that is physical is not able to unite as one with anything else. This is the root cause of all accidents, when two or more physical objects try to unite and merge into one space.

However, unity is possible in those objects, even the intangible, if they contain *kedushah*. In the counting of the *Omer*, there is a unity, in which every day is important to all the days preceding and following it, as if there is even only one day on which the counting is missed, then there is no more completeness. The unity in *kedushah* even affects the *kabolas haTorah* that we are preparing and counting to. When we serve Hashem in the month of *Iyar* with total *bitul* to Hashem, we make the bridge from the month of *Nissan*, of *yetzias Mitzrayim*, to the month of *Sivan*, with goal of *kabolas haTorah*.

### THE LESSONS OF THE PARSHAH

We see this lesson in this week's *parshah*. *Emor* means to talk, so, we need to understand what is the Torah teaching that we should talk about? If it's the words of Torah, we have already been commanded "v'*dibartoh bohm*." Additionally, how does the lesson of *Emor*, to talk, not contradict what Rabi Akivah says, "*seyog l'chochmoh sh'sikah*"?

The *medrash* says, "*emor el hakohanim*"..."*imros Hashem tehoros*..." the words of people are not *tehoros*, for example, a king enters the country and all the citizens praise him. He promises them, tomorrow I will build for you a new bridge, then he goes to sleep, but does not get up! So where is he, and where are his words?! But *Hashem Elokim Emes*, "*shehu Elokim chaim u'melech olam*," because he is *Elokim* of life and king forever.

It says "v'*atem had'vaikim b'hashem elokaichem chaim kulchem hayom*," since we are connected to Hashem, who is always there, we understand that *Yidden* are alive, and therefore so to speak there is also by *Yidden* words that are *tehorah*, words that make things happen.

The *Medrash* continues how in the times of David *Hamelech*, they found the children who did not taste *chait*, and yet because there were *daltorin*, speakers of *loshon hora*, they fell in the battle. *Loshon hora* hurts three parties, the one who speaks, the one who accepts, and the one that is being spoken about.

We see that the *emor* in the *parshah* is that we need to talk only good about another *Yid*. This is the exact opposite of *loshon hora*, and



*In the month of Iyar and through counting sefirah, we can learn the lesson of revealing our oneness with Hashem, which enables Yidden to have true achdus.*

by talking praise of our friend, we make our friend have the praise we speak about!

The *Rambam* says that it's a *mitzvah* for every person to love every *Yid* like his *guf* as it says *v'ohavta l'rai'acha komocha*; therefore, he needs to speak about the praise of his friend!

Why is the person spoken about hurt from *loshon hora*? After all, he was not even there. Since the power of speech reveals that which was hidden, by speaking bad of another, his bad is revealed and therefore he is able to be hurt. Since the *middah* of good is much greater than the bad, we can infer that when we speak good about others and reveal his good qualities, we help the other *Yid*. This is the lesson of the name of "*Emor*", that there needs to be a constant talk in praise of every *Yid*, because this style of talking makes good things happen.

*Yehi ratzon*, that Hashem *yisborach* should free me and take me out of prison '*l'chatchilah ariber*' and bring me home with a *geulah prati*, and all the *Yidden* should be brought together for a *geulah klali*, with the coming of *Moshiach tzidkeinu*.

*A guten Shabbos and a freilechen Lag Ba'omer.  
Sholom Mordechai Halevi ben Rivka*

# How The System Failed Sholom Rubashkin

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BY DEBBIE MAIMON

A hard-hitting article in the prestigious *National Law Journal* calls the Rubashkin case “tragic and frightening,” citing chilling details of federal prosecution and trial, and saying the FOIA laws [Freedom of Information Act] failed him.

FOIA laws were meant to ensure open government and the transparency of the criminal justice system. Had the government complied with Rubashkin’s requests for crucial documents in time for his trial, revelations of misconduct on the part of the judge and federal prosecutors that emerged from ICE documents would have profoundly affected his chances of a successful appeal.

Instead, the *National Law Journal* article points out, the government’s stubborn opposition to releasing the material resulted in one delay after another. When the documents were finally produced, their value was severely compromised.

## DEADLINE FOR GOV’T RESPONSE TO SUPREME COURT PETITION EXTENDED

The article, co-authored by law professor *Robert Steinbuch* and former U.S. Attorney *Brett Tolman*, appeared as the deadline approaches for federal prosecutors to respond to the Rubashkin “cert” petition to the U.S. Supreme Court.

The government twice requested an extension of the deadline, originally set for May 4. The current deadline is July 4. After federal prosecutors file their response the high court will weigh the petition.

The petition, filed by renowned attorneys Paul Clement and Nathan Lewin, asked the Supreme Court to review the Rubashkin case because of erroneous rulings by the Eighth Circuit Court of Appeals.

The appellate court in its Sept. 2011 decision refused to consider evidence of blatant judicial and prosecutorial misconduct, discovered after the trial, which rendered the trial a mockery of justice.

The petition also seeks relief from the Supreme Court for the draconian 27-year sentence imposed by Judge Linda Reade. Both the trial judge and the appellate court “ignored the eye-popping disparity of the sentence,” it said.

The petition cited the Eighth Circuit’s failure to address the argument that the trial judge had, without explanation and against federal sentencing law, issued a sentence that was wildly out of proportion to

the offense.

“Sholom Rubashkin was given an unusually harsh sentence for his actions. In my entire career,” Paul Clement said in a statement to the press, “I cannot recall a similar instance of harsh punishment for a non-violent, first-time offender with a long record of charitable service to his community.”

## KNEE-JERK RESISTANCE TO GRANTING FOIA

Tolman and Steinbuch review some of this background in the *National Law Journal* article. They say the Rubashkin case stands out for the glaring injustices committed by “a federal judge who inappropriately communicated in secret with government agents and attorneys,” robbing the defendant of a fair trial.

Although the injustices in the Rubashkin case should have been righted by the Eighth Circuit Court of Appeals, the authors note the well-known fact that appellate judges are too partial to trial judges, and tend to affirm the judge’s decisions even in the face of compelling evidence that the trial judge has erred.

The difficulty of overturning a wrongful sentence is massive, the authors note, quoting the following advice from a judge: “Don’t get your sleeve caught in the criminal-justice system, because it’s really hard to get it out, regardless of guilt or innocence.”

The purpose of the Freedom of Information Act was to protect Americans from unfair or corrupt criminal justice practices by making it impossible for such practices to flourish in secrecy. FOIA laws are meant to promote transparency. But the government’s “knee-jerk” resistance to most FOIA requests greatly weakens this important tool.

Rubashkin attorneys were forced to file a federal lawsuit to force the government to release the material. “The result was that the critical documents were provided only *after* Rubashkin’s sentencing — directly affecting the defendant’s ability to pursue justice,” Tolman and Steinbuch wrote.

## BLAMING THE VICTIM

The Eighth Circuit denied the Rubashkin appeal because of the late timing of the newly discovered evidence. It should have been acted upon earlier, the judges said.

*“In my entire career,” Paul Clement said in a statement to the press, “I cannot recall a similar instance of harsh punishment for a non-violent, first-time offender with a long record of charitable service to his community.”*

The Eighth Circuit unreasonably blamed Rubashkin for the delay in producing this evidence. Laying the fault on him included putting “the heightened burden on the defendant to show his evidence would have resulted in an acquittal.”

Since the delay was caused solely by the government’s stubborn secrecy and opposition, “*in violation of FOIA*,” the authors note, why should Rubashkin have to suffer the consequences?

Although FOIA laws were meant to protect against tyranny, the article goes on to say, the inertia and foot-dragging endemic to the American criminal justice system emasculate the very important protection for Americans.

#### “BAIL RESTRICTIONS ONLY FOR JEWS”

The authors emphasize an especially odious feature of the Rubashkin case that smacked of religious discrimination; a ruling that they say “articulated special bail restrictions only for Jews.”

Tolman and Steinbuch are referring to the decision to deny Sholom Mordechai bail prior to his trial because of the presumption that as a Jew, he might try to avoid prosecution by fleeing to Israel. That ruling, by implication, was seen as a slur on American Jews as a group.

It took over two months, during which Sholom Mordechai remained incarcerated, before this ruling was overturned and he was released on bail (prior to his trial). Precious time needed to prepare his defense was squandered by this wrongful incarceration.

Calling the federal trial “controversial and politically motivated,” the *National Law Journal* slammed the state child labor case against Sholom Rubashkin that followed afterward as similarly “motivated by politics.”

The state trial put on display a case so fraudulent, that prosecutors were unable to make a single one of the original 9311 charges stick. The jury’s sweeping acquittal on all counts dealt the state a humiliating defeat. The verdict told volumes about the case’s total lack of merit—and raised troubling questions about why it was ever brought to trial in the first place.

#### TOLMAN ANTICIPATED APPEAL ARGUMENTS AT FIVE TOWNS EVENT

Brett Tolman is familiar to Rubashkin supporters from a high-profile solidarity event in the Five Towns in Dec. 2010, at which the former U.S. Attorney of Utah was a key speaker.

Tolman, who also served as counsel for Crime and Terrorism in the Senate Judiciary Committee, was one of the first legal experts to shine a spotlight on evidence that justice was perverted in the Rubashkin case. His speech anticipated several of the arguments later used in the appeal to the Eighth Circuit.

He said, “one doesn’t have to be a lawyer to realize that the magnitude of the interactions between the judge and the prosecutors in this case crossed permissible bounds.”

“Finally, Eric Holder is on the ropes. House members are readying to vote him in contempt of Congress,” wrote the *Wall Street Journal*. The article cites an impending vote by the House to hold him in contempt for refusing to turn over documents relating to “Fast and Furious.”

“Fast and Furious” was an utterly misguided policy that had tragic results when one of hundreds of weapons smuggled into Mexico by U.S. authorities ended up being used by gunmen to kill a U.S. Border Patrol agent.

As Congress sought to discover who gave the orders encouraging gun store owners to sell weapons to intermediaries who then smuggled the guns over the border to Mexican drug cartels, congressional inquiries were met with persistent run-arounds—and then outright refusals for information—from the AG Holder.

“The attorney general has refused to turn over documents

“In my ten years in the Department of Justice, I never encountered anything close to this level of cooperation between prosecutors and the judge in a criminal proceeding,” Tolman said at the Five Towns event.

“The very essence of the legal foundation guaranteeing due process and civil rights is that the executive and judicial branches of government remain separate,” he said. Judicial neutrality is the cornerstone of a fair trial.

“But the checks and balances that are supposed to protect a defendant’s constitutional rights were non-existent here,” Tolman said, in a foreshadowing of the appeal.

#### PUBLIC CONFIDENCE IN JUSTICE SYSTEM IMPACTED

The Rubashkin case presents issues that deeply divide the nation’s courts of appeals and urgently need guidance, Rubashkin attorneys argued in the cert petition to the Supreme Court. The way the case has been handled impacts public confidence in the fundamental fairness of our criminal justice system.

“In short, when a criminal defendant discovered new evidence suggesting the trial judge should never have sat on his case, he was told that the courts would not even consider the evidence because it did not go to guilt or innocence.

“And when he presented evidence that the sentence he received was wildly disparate, he was told that the courts need not even explain the basis for the disparity.

Not only are these results “doubly unjust,” the petition said, “they implicate issues on which the nation’s courts of appeals are at cross purposes and “desperately call for a plenary review from the nation’s highest court.”

Indicative of public concern over injustices in the case, the brief cited the more than 52,000 signatures on the White House’s “We the People” website, urging an investigation into misconduct by the prosecution.

“Furthermore, 50 members of the U.S. House of Representatives have written letters to Attorney General Eric Holder, urging an investigation into the allegations of prosecutorial misconduct,” noted the brief.

It cited the letter signed by 75 U.S. Attorneys and law professors and sent to the DOJ Office of Professional Responsibility, joining the call for an immediate investigation into allegations of *ex parte* communications between Judge Reade and prosecutors.

As is well-known, Attorney General Holder ignored all these communications to the DOJ, opting to stonewall in expectation of seeing the case fade into obscurity. But the filing of six prominent amicus briefs with the Supreme Court supporting Sholom Rubashkin has made it clear that the case continues to roil the highest echelons of the nation’s legal community.

The Rubashkin case remains a hot-button issue in the religious community, with tens of thousands of people treating Sholom Mordechai’s plight as their own, ardently praying on his behalf and that of his family as they await further developments.

demanded by Congress, with his “stonewalling response escalating the issue into a contempt vote,” wrote the *Wall Street Journal*.

Holder’s preference for stonewalling on “Fast and Furious” and other important issues has triggered intense criticism and threatens to become a political liability to President Obama in the upcoming presidential election, the article noted.

“The best outcome would be for Mr. Holder to reach an accommodation with the House Oversight Committee’s Darrell Issa (R., Calif.) that would avoid a contempt vote,” the article noted. “Unfortunately for Holder, he enters the conversation with a highly politicized record.”

His credibility has been weakened by several recent controversial and highly politicized decisions and in many quarters he no longer retains the public’s confidence, the article concluded.

# Thirsting For Kedusha

EXCERPTS OF A LETTER FROM SHOLOM MORDECHAI RUBASHKIN TO HIS CHILDREN

## DEAREST KINDERLACH,

I've been reading about the terrible predicament of our brother in Bolivia, Yaakov Yehudah ben Shaindel *sheyichye*. Imprisoned without bail, without charges, without a trial... *shlepped* around, forced to wait in a cage from early morning till late in the day to be granted a hearing ... Waiting in vain, refused access to his lawyer. The pain of seeing a Jew in such a state is unbearable.

A person is tempted to see this tragedy as the result of a terrible misfortune that "could never happen in a real democracy." This poor person *nebach* fell into the clutches of a corrupt regime in a third world country, a primitive place where prosecutors conspire with judges and the verdicts are predetermined. A person would like to comfort himself with the thought that of course these things would be impossible in a real democracy. And then follows the chilling question: But is that really so?

This terrible situation increases ever more our cry to *Hashem*... Please Hashem, reunite this *Yid* with his family along with every Jew who needs a *geulah proti* today. And for all of Klal Yisroel, please, Hashem, bring the *geulah kloli* now with *Moshiach Tzidkeinu!*

We see the greatness of *Yidden be'achdus*, *Mee keamcho Yisroel*, uniting with *tefillos* and *maasim tovim* for the *zechus* of their unfortunate brothers, which will surely bring redemption from *Hakadosh Baruch Hu*.

The need for *Yidden* to be unified and to show solidarity with one another is exactly the message the Torah wants us to take from the tragedy of Korach in last week's parsha.

The Torah says that holding on to any *machlokes* is an *aveiroh*, using Korach as the prime example of what a *Yid* must avoid. *Velo yihyeh keKorach ve'adoso*; no Jew should be like Korach and his *aidoh*.

Both *Rashi* and *Unkelos* understand that Korach's rebellion began with his act of separating himself. He positioned himself and the followers he recruited away from the *klal*. That was the first step toward launching his *machlokes*.

Why is *machlokes* so bad? The answer is that it goes against the very purpose for which the Torah was given, "*laasois sholom bo'oilom*," to bring *sholom* into the world through Torah and *mitzvos*. When *Yidden* are able to unite our lower world of *gashmiyus* with our Creator, and make the world a dwelling place for *Hashem Yisborach*, that is *sholom* at its highest form.

Keeping the lower and higher worlds separate, on the other hand, by causing *pirud* and *machlokes* between people, is the exact opposite of *sholom*.

## PRISON AND SEPARATION

A most graphic and extreme example of this condition is prison, whose very purpose is division and estrangement between people. Not only does it separate families from each other, a husband from his wife, a father from his children, a son from his parents. But even for the inmates in prison, separation and divisiveness is a daily staple of life.

Here, in the housing designed for the needs of approximately 60 people, 150 are crammed in. This crowding is compounded by putting two people into a space originally designed for one, and changing the space for Day Rooms designed for rehabilitation into crammed dormitories.

The only place for a person to have a few minutes to be in his own space, to sit and think without another person hovering over him or the *tumoh* box broadcasting around him, is in the Public Area. But this area is too small for the number of inmates in the unit and lacks enough tables to accommodate everyone. So each table becomes the prized possession of a group who gets to "own" the table and to reserve seats for their own.

This results in people being separated according to ethnic background and fiercely guarding their turf from the "others." The white supremacists have their table(s), the Latino Spanish speakers have their table (s), and the Mexicans who speak Spanish but are not liked by the Latinos have their table(s). The Italians have their table(s) and the Muslims have their table(s) and the list would continue only there is no more space for another table!

Woe to one who does not abide by the unspoken laws of "separation," as we witnessed here through a recent stabbing. So separation can turn deadly, both in the physical and spiritual sense.

Coming back to Korach, the *Noam Elimelech* explains that Korach wanted to create the same separation between himself (*as kohain gadol*) and *Klal Yisroel* as the *rokiah* that *Hashem* made on the 2nd day of creation that separates the upper waters from the lower waters.

What possible connection could there be between the *rokiah* that separates the waters and the *machlokes* of Korach?

In *chassidus*, water is the source of *taanug*, enjoyment. *Hashem* made a *rokiah* to divide the upper spiritual worlds and their *taanug* of *kedusha*, and the lower worlds where *taanug* is physical.

Korach aspired to be a *kohen gadol* but in his view, a *kohen gadol* was not meant to interact with the lower mundane world. This view was in total conflict with Aharon Hakohen's concept of *kohen gadol*. Aharon's high spiritual status did not prevent him from being involved in the mundane world. He was the true "*rodef sholom*," doing everything in his power to bring people closer to Torah.

The mistake Korach made is that he was stuck on the concept of separation symbolized by the *rokiah* on the second day of Creation. He never absorbed the lesson of the third day of Creation, when Hashem showed that the separation between the higher and lower worlds was not meant to be a permanent one.

Even though a separation is needed between the upper and the lower worlds, there must also be a connection between them, to enable *kedusha* to flow down into the lower world.

#### DRY LAND STIMULATES THIRST

That was the concept of the *yabosha*, the dry land, that Hashem revealed on the third day of Creation. Man's job is to remove, through his *avodas Hashem*, the barriers between the two worlds; to draw forth the *Getlichkeit* and *lichtikeit* from the spiritual world and instill it into the dark, parched physical world.

What happened on the third day of Creation was repeated in a sense in the third month by *matan Torah* when Hashem came down on *Har Sinai*, "*Vayaired Hashem al Har Sinai*," and the "lower world" went up: "*Ve'el Moshe omar, 'alah.*" This demonstrated the importance of bridging the two worlds, that they are not meant to remain separated.

Just as a person's thirst grows when he spends time in a dry land, so too the yearning for *kedusha* increases in a place that is devoid of it. Because of the separation from *kedusha*, the yearning to bask in Hashem's light is so much greater. And that itself—the great longing to get past the roadblocks that block a person from *kedusha*—is the very purpose of the roadblock.

What a powerful lesson. When we experience things that seem to pull us down in our *avodas Hashem*, whether they are setbacks caused by natural events or difficulties caused by man, a Yid must know that they all come from *Hashem*. Their goal is to increase a person's longing to overcome the darkness and remove the barriers between him and his *avodas Hashem*.

That will surely bring greater light than we can ever imagine by increasing our yearning to connect with the *kedusha* of the upper world and to rejoice with that connection, with the coming of *Moshiach Tzidkeinu binheira biyomeinu*, when *Hashem* will be revealed to the whole world.

Love,  
Tatty

## 51<sup>st</sup> Letter To AG Holder Slams Government Actions Against Rubashkin

BY DEBBIE MAIMON

In one of the most sharply worded letters from congressmen to Attorney General Eric Holder about the Rubashkin case, Rep. Nydia Velazquez, D-N.Y., harshly criticized the federal prosecutors and trial judge for their unethical behavior.

She said the prosecution of Sholom Rubashkin "raises very serious issues of judicial and prosecutorial misconduct, resulting in an unfair and disparate sentence."

"I believe these allegations are sufficiently serious to warrant an investigation by you," Congresswoman Velazquez wrote. Her letter is the 51<sup>st</sup> letter to Holder by Democratic and Republican congressmen demanding that the attorney general review the case.

Calling attention to the excessively harsh sentence, Velazquez reminded Holder that it "had been criticized by many lawyers and legal scholars, including six of your predecessors."

She went on to scrutinize the process by which the government and judge arrived at the sentence, shining a light on questionable actions taken by the government against Agriprocessors after the raid.

"After the firm went into bankruptcy as a result of the May 2008 raid, the government deliberately hampered the ability of the trustee to sell the company's considerable assets at a fair price, which would have minimized any loss to the Iowa bank that had extended credit to the company," the congresswoman wrote.

Her letter went on to describe how the government was responsible for lowering the value of Agriprocessors through the actions of "its trustee who mishandled inventory at the Postville plant."

"Moreover, the government unnecessarily included a forfeiture clause in the indictment; further reducing the marketability of the plant's considerable assets. The resulting decrease in the value of Agriprocessors significantly inflated the 'loss' for Sentencing Guidelines purposes," the letter noted.

Rep. Velazquez minced no words in driving home the point that government scheming "had the effect of significantly boosting Rubashkin's Sentencing Guideline numbers. The letter stressed that ramping up the guideline numbers provided artificial justification for the judge "to impose an excessive and disproportionate

sentence."

Rep. Velazquez's letter went on to decry "other troubling aspects of this case, such as the fact that the federal judge who presided over the trial improperly engaged in numerous ex parte discussions with the Office of the United States Attorney and immigration officials."

"None of this was disclosed by either the judge or the prosecutors to the lawyers representing Rubashkin. They discovered it only after reviewing a large quantity of documents received post sentencing as a result of an earlier FOIA inquiry," the congresswoman noted.

The letter admonished the Department of Justice for its unwillingness to date to review the Iowa prosecutors' handling of the Rubashkin case. It singled out Lanny Breuer, Assistant Attorney General for the Criminal Division, who was on several occasions petitioned by Rubashkin attorneys to investigate glaring injustices in the case, but refused to do so.

Brushing the requests aside, Breuer suggested the attorneys take up their concerns with the U.S. Attorney's office for the Northern District of Iowa [the very individuals whose misconduct prompted 51 congressmen to protest to Holder], Rep. Velazquez noted ironically.

The congresswoman closed her letter to Holder with a pointed request "that you expressly and formally inquire into the manner in which Sholom Rubashkin was sentenced, and into what appears to have been a tainted and secret relationship between the trial judge and the government."

Rep. Velazquez's letter was made public as Eric Holder was voted in contempt of Congress last week by the powerful House Oversight Committee, for his stonewalling tactics and misleading Congress in the Fast and Furious gunwalking scandal. A vote from the full House of Representatives is scheduled for Thursday of this week.

Lanny Breuer, too, has come under fire in the wake of troubling evidence that he knew far more about the scandal than he claimed to have known in his testimony before Congress.

# AG Eric Holder Voted In Contempt

BY DEBBIE MAIMON

Eric Holder last Thursday became the first attorney general in American history to be voted in contempt of Congress after he refused to turn over documents subpoenaed in the Fast and Furious probe. 17 Democrats joined their Republican counterparts in supporting a measure that passed 255-67.

Holder was defiant in the face of the House contempt vote. He denounced the action as “the regrettable culmination of a misguided and politically motivated investigation during an election year.”

House Minority Leader Nancy Pelosi, D-Ca. along with 100 Democrats served as Holder’s echo chamber, staging a walk out as the vote took place and saying they would be “non-participants in a witch hunt” against the attorney general.

Republicans responded that the contempt citation was the last resort in their attempt to hold the executive branch accountable for the tragic consequences of Fast and Furious.

“In the real world Americans are expected to comply with subpoenas. Is the attorney general any different? No he is not,” said Rep. Dennis Ross, R-Florida. “The attorney general can stonewall all he wants. The attorney general can misremember all he wants. But whether he likes it or not, today responsibility will land on his desk.”

Rep. Ted Poe, R-Texas, warned that “even the attorney general cannot evade the law. It’s time for America to find out the truth. (It’s) time for a little transparency. Today is judgment day. That’s just the way it is.”

## ISSA DROPS BOMBSHELL

One of the most dramatic parts of the heated congressional debate that preceded the contempt vote occurred when Rep. Darrell Issa, R-Ca, chairman of the House Oversight Committee, entered the details of a secret wiretap application from the “Fast and Furious” operation into the Congressional Record.

That move provoked an outcry that the material was under federal seal and the congressman should not have had access to it. Informed sources say Issa obtained the classified documents from “whistleblowers”- U.S. field agents involved with the Phoenix-based Fast and Furious operation who went to Congress with their concerns after Border Patrol Agent Brian Terry was killed.

Weapons traced to the Fast and Furious program that were found near Terry’s body after he was murdered by members of a drug gang sparked the congressional investigation.

Issa worked around the legal restrictions covering the classified affidavits, using Congress’ protection under the “freedom of speech and debate” clause. He told House members that the affidavit he was referencing for the Congressional record showed

clearly that federal agents repeatedly lost track of guns they knew for certain were being trafficked back to cartels in Mexico.

This was a violation of Justice Department policy that should have raised red flags with top department officials who signed off on the wiretaps, Issa said.

“The affidavit explicitly describes the most controversial tactic of all: abandoning surveillance of known straw purchasers, resulting in the failure to interdict arms,” Issa told House members. He stressed that the wiretap application contradicts Holder’s prior claim that such documents offered no evidence that “gunwalking” had taken place.

In an interview with the press, Speaker of the House John Boehner, R-OH, said Holder intransigence was responsible for the standoff that led to the Thursday vote, the first time Congress has held any sitting Cabinet member in contempt.

In a last ditch attempt to stave off the contempt vote, Holder had offered to turn over some revealing Fast and Furious documents — but not all — if the House agreed to drop the contempt proceedings and close the investigation, the Speaker of the House told reporters. But neither he nor Rep. Darrell Issa, who has led the probe, was prepared to agree to that.

“The idea that we’re going to turn over some documents, and whatever we turn over is all you’re going to get and you have to guarantee that in return you’re never going to seek contempt — no deal,” Boehner said.

According to Issa, there are 240,000 Fast and Furious documents available. The Justice Department has turned over 7,000. Of those 7,000, the majority are covered in black ink due to extreme redaction. Just before the Oversight Committee contempt vote, Issa narrowed his focus from 70,000 documents to 1300, yet Holder still failed to deliver anything substantial.

## JUSTICE DEPT SHIELDS HOLDER FROM PROSECUTION

Following the contempt vote, the Justice Department moved immediately to shield Holder from prosecution.

The U.S. Attorney for the District of Columbia, Ronald Machen, is empowered to bring the case before a grand jury for further investigation. But Machen works for Holder and takes his marching orders from him. He wasted no time in declaring, the day after the contempt citation, that he would not proceed with any form of prosecution since the actions imputed to Holder “do not constitute a crime.”

“Therefore the department will not bring the congressional contempt citation before a grand jury or take any other action to prosecute the attorney general,” Machen’s assistant wrote in a letter obtained by Fox News.

Machen's back was fully covered since President Obama had already asserted executive privilege over the documents in question, in effect blocking Congressional access to them.

Along with the criminal contempt resolution, however, the House also passed a civil contempt measure, enabling Congress to sue for access to information. The resolution also paves the way for the courts to challenge Obama's decision to invoke executive privilege.

Boehner told ABC News this week that Republicans are wasting no time in starting the process of filing a civil suit to compel the Department of Justice to surrender the relevant documents.

#### OBAMA'S ALBATROSS ?

Although the White House rallied around Holder, the unprecedented contempt citation prompted speculation that Holder could become a political liability to President Obama in the November presidential election.

Following a string of controversial measures by his department, Holder's popularity has plummeted over the past three-and-a-half years, turning him into one of the most unpopular members of Obama's Cabinet.

From his response to the Fast and Furious probe to his lawsuits against state immigration laws and his campaign to halt voter ID laws, the attorney general has managed to repeatedly antagonize

the Department of Justice has eroded. As legal wrangling over Obama's executive privilege rights in the Fast and Furious investigation is prolonged, however, public outrage is likely to wane.

The administration's game plan, say observers, might be to tie up the executive privilege issue in litigation long enough for other key election issues—such as the economy and "Obamacare"—to force it under the radar.

#### SCANDAL SLOW TO HIT HEADLINES

Long downplayed by an Obama-loyal media, Fast and Furious only rose to the level of a national scandal in the past month, as continued stonewalling by Holder led to a vote of no-confidence by House Republicans, and eventually the threat of a contempt vote.

In the wake of the actual vote by the House, many Americans are just discovering key details of the affair. They are just learning that the contempt vote was a culmination of a year-long clash between the Department of Justice and Congress over a program that allowed over 2000 military-grade weapons to cross the border and fall into the hands of Mexican drug gangs.

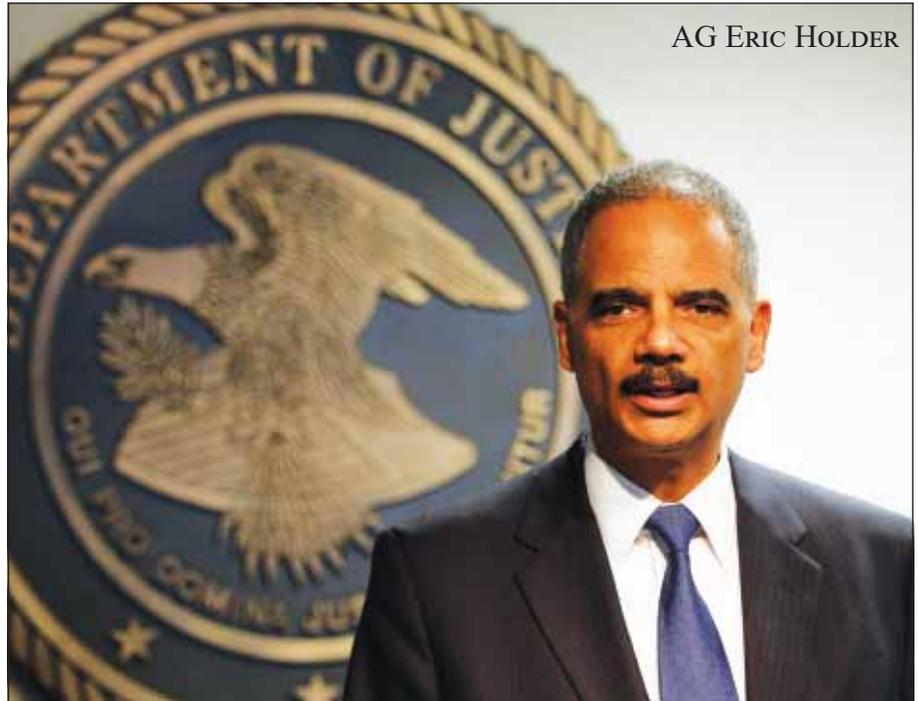
U.S. ATF (bureau of Alcohol, Tobacco and Firearms) agents who should have intercepted the guns and arrested the middlemen were ordered to take no action. The rationale was presumably to track the guns to the cartel leaders who would then be more easily

*"Even the attorney general cannot evade the law. It's time for America to find out the truth. (It's) time for a little transparency. Today is judgment day. That's just the way it is."*

REP. TED POE, R-TEXAS

*"In the real world Americans are expected to comply with subpoenas. Is the attorney general any different? No he is not."*

REP. DENNIS ROSS, R-FLORIDA



AG ERIC HOLDER

conservatives, and even some Democrats.

"The reason he is unpopular is that he is one of the most incompetent attorneys general in U.S. history," said columnist Charles Krauthammer. "He is the guy who brought on gratuitously the fiasco of the Kalid Sheikh Mohammed trial in New York that even Democrats rebelled against. He is the guy who has led a department that has been either totally ignorant or disingenuous or worse on the Fast and the Furious scandal."

The contempt vote could contribute to Holder becoming a contentious figure during the presidential campaign, as opponents try to cast him as too politically costly for the president to keep on board.

At present, polls show that the American public finds it difficult to take Holder's word at face value and that public confidence in

apprehended and prosecuted.

If indeed that was the plan—and many question that such a harebrained scheme could have ever been adopted by responsible people—it failed miserably.

To all indications, no serious effort was ever made to trace the whereabouts of these weapons. Instead, the government simply allowed them to disappear into the underworld, where, as could be expected, they were used to commit hundreds of murders.

One of the victims was U.S. Border Patrol agent Brian Terry. Two guns found near his body were traced to weapons that "straw purchasers" had funneled to drug cartel leaders.

That discovery, divulged to Congress by outraged ATF agents forced to stand by impotently as guns were allowed to walk across the U.S.-Mexican border, sparked an 18-month investigation led

by Rep. Darell Issa.

Although the media suppressed the story for most of this time, the wall of silence finally collapsed under Issa's relentless probing.

Despite testifying nine times before the committee about his role and that of DOJ officials in Fast and Furious, Holder never provided satisfactory answers to why the Justice Department initially made false claims to Congress in Feb 2011 that its officials had never knowingly allowed guns to "walk."

After whistleblowers unmasked that claim as untrue, the Department of Justice retracted its false statements but refused to divulge any background about who or what was responsible for the deception, insisting on keeping this information "privileged" and off limits to Congress.

#### WHISTLBLOWERS THREATENED WITH RETALIATION

According to Rep. Issa and Sen. Grassley, D-Ia., two of the key whistleblowers have been placed under the supervision of ATF official Scot Thomasson who allegedly threatened to "take them down."

Grassley and Issa said they have asked the Inspector General to immediately investigate these allegations.

When Special Agents John Dodson and Pete Forcelli went public last year, Thomasson headed up ATF Public Affairs. According to an eyewitness, quoted on Fox News, Thomasson stated "We need to get whatever dirt we can on these guys (whistleblowers) and take them down."

When asked if the whistleblower allegations were true, Thomasson purportedly said he didn't know and didn't care. The accounts are contained in a May 3, 2012 House Oversight memo attached to Congress' contempt report against Attorney General Eric Holder.

Dodson went public about the agency's controversial gunwalking tactics in an interview with CBS News in February 2011. He later testified before Congress along with Forcelli.

"It is difficult to understand why ATF leadership would put two of these courageous whistleblowers at the mercy of an individual who made such reckless, irresponsible and inaccurate comments about them 18 months ago," say Grassley and Issa in their letter to the Inspector General.

The letter also asks "what steps, if any, are being taken to ensure that Thomasson does not use his new position to engage in a campaign of retaliation along the lines he expressed a desire to conduct last year."

## THE HIDDEN AGENDA?

The popular premise behind the Fast and Furious operation is that it was motivated by the need to find compelling evidence to make an effective criminal case against hard-to-nab drug leaders.

Yet critics have pointed out the fallacy at the heart of this assertion: Without any serious effort surveillance or tracking system, how could letting guns flow across the border have conceivably produced a provable criminal case against anyone?

What then was the legitimate law enforcement purpose of this exercise?

Why supply already heavily armed drug gangs with even more guns?

Obama's claim of executive privilege designed to keep the sought after documents under seal suggests direct White House involvement in the Fast and Furious operation, critics say. If so, what was the Obama administration trying to accomplish by increasing the drug dealers' firepower?

Some may recall that in 2009, Obama advocated resurrecting the Clinton-era ban on the sale of military-style semiautomatic rifles by claiming that 90 percent of the guns seized after shootings in Mexico came from the United States. This statistic became an oft-repeated talking point for gun-control advocates.

Eventually discredited, the false statistics caused gun control advocates to suffer a credibility setback.

Now it emerges that the Justice Department has been running guns to Mexico for no rational law enforcement purpose. Many wonder whether Holder — as the direction of the White House — was trying to inflate the number of guns sold to straw purchasers in America and found to be used in Mexican crimes.

Could it be that the reckless operation fed a White House agenda to create artificial "proof" of the need for stricter gun controls in this country?

Why else would Holder stonewall Congress, to the point of being held in contempt? And why would Obama muddy the waters even further, placing himself in the crosshairs of this fiasco by asserting executive privilege?

Democrats pooh-pooh these suspicions as "ridiculous conspiracy theories." Yet until the public has the benefit of the full record, the questions persist.

One year ago today, Americans had no idea that the Obama administration was funneling guns to Mexico at the same time it blamed the lack of robust gun control regulations for wreaking havoc in that country.

The public has learned many of the details in the last year, but there is still so much that does not make sense or add up. The discovery that the Mexican government was kept in the dark about the Fast and Furious program has added fuel to speculations about a hidden Administration agenda.

Perhaps most troubling of all is this question: if Special Agent Brian Terry knew the full extent of what his government was doing, might the former Iraq veteran have had a better chance?

# Rubashkin Legal Team Braces For Government's 'Important' Deadline

BY JACOB KAMARAS, JNS.ORG

Another important date for Reb Sholom Mordechai Rubashkin looms July 25, when the U.S. government is scheduled to file a brief that will likely ask the Supreme Court not to hear his case.

Sholom Mordechai - sentenced to 27 years in prison following the immigration raid on the Agriprocessors plant in Postville, Iowa - in 2011 lost his bid for a new trial before the U.S. Court of Appeals 8th Circuit.

Through Freedom of Information Act (FOIA) requests, Sholom Mordechai's lawyers obtained documents showing that Iowa federal judge Linda Reade, who sentenced him, cooperated with government agents and prosecutors regarding the immigration raid. Sholom Mordechai's representation, therefore, argued before the 8th circuit that Reade was biased against Sholom Mordechai and should have recused herself from his fraud trial.

Shortly after the 8th circuit rejected this argument, Paul Clement - who recently led the multistate challenge to Obamacare in the Supreme Court - joined the Rubashkin team as its lead attorney. The government requested three extensions beyond the initial May 5 deadline to file a Supreme Court brief, but Clement expects no further delay past July 25.

In the following interview, Clement spoke with JNS.org about the upcoming brief and what comes next.

**JNS.org:** *What is the significance of the government's July 25 brief, and what are you expecting?*

**Paul Clement:** "The first thing to note is that the government's request for a third extension is rather unusual and that it suggests that the government is working hard on this brief, and it has not been a straightforward brief.

"It's obviously a tremendously important brief. The government usually in this situation will explain to the court why it thinks that the Supreme Court should not take the case. There's been no indication yet that the government is going to do anything other than that. The government does have the option of what's called confessing error or acquiescing, and so they don't have to tell the court not to take the case, but they do in virtually every case. They only acquiesce or confess error once or twice a term. So, we certainly have encouraged them to confess error on at least one of the issues in the case (regarding concerns over Judge Linda Reade's bias)...but given the odds here, we're certainly ready for that brief to tell the court not to take the case."

**Can you elaborate on why you believe the government should confess error in this case?**

"The thing about the 8th circuit decision that we're trying to get the Supreme Court to review that I think is the most difficult to defend is this notion that when a party like Sholom Rubashkin comes

up with new information that suggests that the judge should have not sat on the case - and that's what we have here, there was a Freedom of Information Act (FOIA) request that revealed that there were these extensive meetings between the judge and the prosecution team - under those circumstances, the 8th circuit has basically held that new information that suggests that the judge should have never sat on the case is essentially irrelevant and won't get considered, unless the defendant can also show that information demonstrates that they are likely to be acquitted on the merits. And the problem with that is that really, one doesn't have to do with the other.

"A defendant is entitled to a fair trial in order to determine whether or not they are guilty or innocent. If you have new information that suggests the judge should have never sat on the case, that ought to be enough to get that information considered as to whether or not the fundamental guarantee to a fair trial was violated. The 8th circuit is saying that even when you have information that suggests the judge never should have sat on [the trial], unless you can also show essentially your factual innocence, then we won't even consider that information. And that seems to us to be either inconsistent with the law in other courts, but also just fundamentally incorrect."

**How do you feel about the abovementioned FOIA request being processed by the government only after Rubashkin was sentenced?**

"When you talk about something as fundamental as the guarantee to have the judge that's overseeing the case be impartial, you don't want that kind of determination to be foreclosed based on considerations of timing or technicalities."

**Is it possible that the government will ask for a fourth extension on its brief to the Supreme Court?**

"You can never say never, but it would be very unusual, I think, for the government to give another extension. Typically, these extensions are granted in increments of 30 days. Here they agreed with us that they would only [need] an additional 20 days [for the latest extension to July 25]. I think that reflects, at least in my understanding, that this will be the last extension they request."

**After the brief is filed, what is the next step for your legal team?**

"The very important next step is that we will file our reply brief, and we will explain why the [Supreme] Court should take the case.

"We'll probably file that roughly two weeks after the government files its brief. There's not a hard deadline for that brief, but we want to get it in before the justices start considering the petition. Then the justices will consider the petition as part of their review of literally a couple thousand petitions over the summer, and then we should learn whether the court is going to take our case, probably at the end of September."

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# Gov't Brief Opposing Rubashkin Petition Distorts The Record

BY DEBBIE MAIMON

The Government Brief opposing Sholom Rubashkin's petition to the Supreme Court to review his case (Writ of Certiorari), was finally submitted last week after four extensions, and was surprisingly devoid of fresh arguments.

Instead, it took refuge in a well-worn strategy that has been a government hallmark in the Rubashkin case: blurring and manipulating the facts to prop up arguments that would otherwise fail.

The government brief needed to counter the two key arguments presented in the "cert" petition by attorneys Paul Clement and Nathan Lewin. The first was that Judge Reade should have recused herself and her failure to do so rendered the trial fundamentally unfair, which constitutes grounds for a retrial.

The second argument was that the Eighth Circuit failed to address the complaint that the trial judge had issued a sentence that was wildly out of proportion to the offense, while ignoring without explanation all mitigating reasons for a lesser sentence.

With regard to the first argument about new evidence that should have disqualified Judge Reade, the government had earlier rejected this claim as irrelevant. Even granting that such evidence existed, the government said, it would be sufficient to warrant a retrial *only* if it could point convincingly to the defendant's innocence. In other words, the evidence would have to result in a "probable acquittal."

## 'DRIVING A SQUARE PEG INTO A ROUND HOLE'

But the Rubashkin team in its appeal to the 8<sup>th</sup> Circuit *en banc* and in its cert petition showed how this position conflicts with rulings by the Fourth, Ninth, and Eleventh Circuits, and is totally illogical. Aren't determinations of the defendant's guilt or innocence meaningless if the trial itself is a sham, as for example in cases of witness tampering or jury tainting?

In the same vein, since judicial neutrality "is so fundamental to a fair trial, its absence automatically requires reversal," the Rubashkin team argued.

As other circuits have recognized, "the probable acquittal test makes sense when the newly discovered evidence concerns the defendant's guilt or innocence, but is a complete misfit when the newly discovered evidence concerns the fairness of the trial."

"The Eighth Circuit is simply wrong to insist on driving a square peg into a round hole," the Rubashkin petition said. Had Mr. Rubashkin been prosecuted in any of the circuits that have properly interpreted Rule 33, "his new trial motion would have received the full airing that the interest of justice demands."

In response, the government re-tooled its original position, trying to shore up its stance about the "probable acquittal" standard. It now agrees that certain kinds of evidence, such as proof that the

jury or the judge was tainted, can indeed warrant a retrial—without offering proof of the defendant's innocence.

But in the cases cited by the Rubashkin team as precedents, the new evidence *had the likelihood* of affecting the verdict, whereas Rubashkin himself, the government argues, admits the verdict was not affected by Judge Reade presiding over his trial.

## PREPOSTEROUS DISTORTION

This is a preposterous distortion. When did Sholom Rubashkin ever acknowledge that the trial's outcome was not influenced by Judge Reade's coziness with the prosecution?

Not only is this fiction flatly contradicted by facts on record, it flies in the face of everything we know about human nature.

Let's take a closer look at this invention. It actually originated with the Eighth Circuit. Attorney Nathan Lewin was asked by Judge Riley at the June 2011 appeal hearing whether he could show evidence of prejudice in Judge Reade's trial rulings that arose from her pre-raid meetings with prosecutors.

Lewin answered that while he had no concrete evidence of prejudice, implications of bias ran straight through numerous rulings that harmed Sholom Rubashkin at trial. These harmful rulings were listed in several pages of the appellate brief, he told Judge Riley.

What did the Eighth Circuit judges do? They pounced on Lewin's statement that he "had no concrete evidence," taking it out of context and using it in their decision to reject the appeal.

"...We find no evidence that Judge Reade's decision to remain on the case prejudiced Rubashkin's verdict," the panel said, pointing to Lewin's failure to show evidence of *actual* bias. "Since Rubashkin concedes that his new evidence would not likely affect the jury's verdict on retrial, the district court did not err in denying his Rule 33 motion."

That finding reemerged in the government's current brief which asserts, absurdly, that Sholom Rubashkin himself never claimed that Judge Reade's bias harmed him and influenced the trial's outcome.

## THE LIE SERVES A DUAL PURPOSE

Nothing could be further from the truth. But the lie is a convenient one and serves a dual purpose.

The lie is asking us to believe that Sholom Rubashkin himself accepts the guilty verdict as fair. That he believes that whether the judge was honest, crooked, biased, unbiased, made no difference at all in the outcome of his trial. Therefore this new evidence, inasmuch as it would not have affected the guilty verdict, is worthless. This is utter nonsense.

The defense stated its confidence in both its written briefs and in

oral arguments that given a fair trial, Sholom Rubashkin would be acquitted of all charges, just as he was acquitted of all 9311 State charges in the 2010 child labor trial.

The defense merely claimed that there was no need to prove the obvious: that a judge's bias affects the outcome of a case by the discretionary decisions he or she makes. Any degree of prejudice can surely affect the outcome even if it cannot be proven.

#### DENYING HUMAN NATURE

The lie has a second purpose. It presumes as fact something fundamentally untrue about human nature; that one can become a stakeholder in a given operation and still be objective about its outcome.

This is a notion that defies the most elementary truths about how the human mind works. [In Jewish law, for example, it is a given that even the slightest connection a judge has to one of the two litigants affects objectivity, whether or not the judge is even aware of it.]

Lewin put this well when he explained the breakdown of reason in the Eighth Circuit's decision.

"The court's opinion denies a fundamental truth about human nature," Lewin said at the time in an interview with *Yated*. "It's axiomatic that a judge who should be recused but remains on the case is bound to cause the defendant harm. But can I prove it in the sense of pointing to a letter, an email, a verbal statement of malicious intention? No, I can't. But that is not the issue."

"Judicial bias can manifest itself in ways that evade detection," attorney Mark Weinhardt wrote in his brief to the 8<sup>th</sup> Circuit en banc. Since a judge has enormous leeway in discretionary rulings, she can easily influence the trial's outcome while cloaking her bias in deceptive legal maneuvers. Forcing a defendant "to climb into the judge's head," as it were, and prove precisely how her pre-raid collaboration slanted the trial, is unreasonable.

The controlling issue, therefore, Lewin pointed out, *is the appearance of bias*; whether the judge's neutrality would be doubted by the "average person on the street" hearing of the judge's psychological investment in the law enforcement operation.

The defense has submitted affidavits from leading judicial and legal experts all attesting to the appearance of bias in Judge Reade's conduct. These documents have been referenced before every court – yet to date they have been completely ignored by the District Court, the Appellate Court and the present response of the government to the Supreme Court.

#### 'THIS EVIL IS ON FULL DISPLAY IN RUBASHKIN'

One of the six amicus briefs submitted in support of Rubashkin's cert petition summed up the arguments about the appearance of bias incisively.

"Secret communications between judge and prosecutors create the appearance of collusion and bias, undermining the legal and ethical foundations of the justice system," the Bazelon brief said. "This evil is on full display in *Rubashkin*."

The Bazelon brief also stressed that whether the appearance of partiality on the part of the judge warrants that judge's recusal should rest on whether "an average person on the street"—*not the sitting judge herself*—would suspect bias.

Yet Judge Reade used herself as the standard for evaluating her conduct, refusing to turn the case over to a different judge who could make an objective assessment.

Her analysis consisted of defending her actual conduct and dismissing the possibility that anyone could view that conduct differently.

Yet it is clear according to the ICE memoranda that even government officials and prosecutors would have trouble regarding Reade as unbiased. In the ICE documents themselves, she is char-

*The lie presumes as fact something  
fundamentally untrue about human nature;  
that one can become a stakeholder  
in a given operation and still be objective  
about its outcome.*

acterized as a "stakeholder" in the investigation, "a description signaling "the Government viewed her as an ally rather than a neutral arbiter.

The government cannot refute the claims of judicial impropriety so they simply fail to address them, as if they didn't exist.

#### NO MERCY DESPITE MITIGATING REASONS

The second issue that Lewin and Clement felt warranted Supreme Court review was that Judge Linda Reade, in refusing to consider mitigating reasons for issuing a behind-the-guidelines sentence, failed to give her reasons for that refusal.

The claims go to a section of the Code which allows a defendant to make a request for less jail time than the guidelines indicate. Rubashkin's cert petition to the Supreme Court pointed out that there is a conflict among the appellate courts as to whether or not the sentencing judge must explain the reasons for denial. Lewin and Clement suggested that this case would be a good vehicle for the Supreme Court to resolve the issue.

The government's response to this argument can only be described as feeble. It asserts that the judge did in fact address the claim of a disproportionately harsh sentence, even though she failed to explain why she refused to issue a below-the-guidelines sentence in view of numerous mitigating reasons to do so.

Here too, in terms of the government's consistent approach, obfuscation has been the norm. The most essential and persuasive arguments for a mitigated sentence are ignored. They are left totally unaddressed by the circuit court, the appeals court and in the government's response to the cert petition.

An avalanche of communication by hundreds of acclaimed law professionals and experts in letters to the judge and in briefs to the various courts, all decry the sentence as grossly unjust. Those letters and briefs underscore the claim that the sentence is excessively harsh in contrast to the guideline recommendations.

None of the excellent arguments in these submissions have ever been addressed by the government.

The government response bears the signature of Assistant Attorney General Lanny Breuer together with that of the Solicitor General. (Mr. Breuer, son of Holocaust survivors, is currently embroiled in his own mess, thanks to his alleged role in the Fast and Furious scandal.) Breuer, on several occasions had been petitioned by the defense and others to investigate the glaring abuses in the Rubashkin case, but refused to get involved. His signature on the government response brief, however, signals that his don't-involve-me stance has now shifted.

Considering the manipulation of the truth and the strategy of ignoring the issue that marks the government response, nothing much has really changed. The brief is unfortunately consistent with that attitude that has defined Breuer all along regarding the burning issues in the Rubashkin case: Stonewall. Ignore it. Maybe it will go away.

# Reading Eichah and Kinnos in Cell Number 217

It is *Yud Alef Menachem Av* and I want to share with you what *Shabbos Chazzon* and *Tisha B'Av* were like here in cell number 217.

*Shabbos Chazzon* was spent learning, saying *Tehillim* and *davening*. *Seudah shlishis* was, *boruch Hashem*, the largest *seudah shlishis* of all *Shabbosos*, but not close to *seudas Shlomo beshaato*. We sang *Mizmor LeDovid* and *Bnei Heicholah*, and then the time came for *Maariv* and *boruch hamavdil bein kodesh lechol*.

Even in the tiny cell, the drastic change was felt: of coming from *Shabbos kodesh*, a day of *taanug* and *menuchah*, and going into a day of fasting and *aveilus* for the destruction of the *Bais Hamikdosh*, the start of the long and bitter *golus* we are still in.

One of the *inyonim* of *aveilus* is not to sit on a chair until *chatzos* of *Tisha B'Av* day.

Since there is not much here, the only choice was to sit on the floor while reading *Eichah* and *Kinnos*. As the sounds of the officer announcing that he was about to lock us in for the night were heard, I moved the chair in the cell aside, creating a small space to sit, with my feet just about touching the other wall. My cellmate was watching from his top shelf (called a bed) and he likely wondered, "If this is expressing his personal pain he feels in captivity, separation of family and loss of freedom, if this is showing his pain and sorrow over his loss, then why is he doing this now?"

I began to read *Eichah* quietly, and it became clear to me what I would answer: Even when one is in captivity, in a place called prison, he is mourning the loss of the *Bais Hamikdosh* and the *golus*. Sitting on the floor in mourning of the *Bais Hamikdosh* shows that it is not about ourselves, but that we are fortunate to be servants of Hashem. We have an *avodah* to do that is greater than anything we are, and, as a matter of fact, we are *botul* to what Hashem wants. Only what He wants matters.

So even though one may experience a difficult and painful period, a *Yid's* life is not for himself. What he feels has no comparison to the pain that the *Shechinah* is feeling, pain which is infinitely greater than his own. The *Shechinah* is in *golus* together with us *Yidden*, and that is the real pain that we are concerned about and ask Hashem to end now. While all year round this may be the *avodah* of *tzaddikim*, on *Tisha B'Av* every *Yid* sits on the floor to mourn the loss of the *Bais Hamikdosh* and the *golus haShechinah* together with the *golus* of the *Yidden*.

Since good is infinitely greater than bad, after *Tisha B'Av* we need to remember that we are not to be concerned with ourselves. Rather, we care only for the *ratzon Hashem*. When we do our *avodah* in an infinite way, knowing no boundaries in learning Torah and doing *mitzvos*, we are connected to *Hakadosh Boruch Hu*.

When we bring the "Alef" of *alufo shel olam* into "golah" (*Gimmel, Vov, Lamed, Hey*), we have "geulah" (*Gimmel, Alef, Vov, Lamed, Hey*). As we connect to Hashem, Who has no boundaries, we are able to break all the boundaries of *golus*. We have our *geulah proti* together with the *geulah kloli*.

As I was sitting on the floor, facing the piping under the sink, the

thought of *geulah* came to mind. I remembered that the last time I got to view the cell from a similar angle was the night before *Pesach*, the night before the *Yom Tov* of *cheirus*, during *bedikas chometz*. It became a cheerful, uplifting thought which gave a whole new meaning to what *Tisha B'Av* is in its *penimiyus*, since *Pesach* and *Tisha B'Av* have a strong bond between them. It is shown by the fact that *Tisha B'Av* is always on the same day of the week as *Pesach*. This is because the *penimiyus* and purpose of *golus* is the *geulah sheleimah*.

When we pass the test of *golus* by putting the *alufo shel olam* into it, and we see that Hashem is everything, we reveal the *penimiyus* of *golus* and the fulfillment of the *nevu'ah* that these days will be turned into *Yomim Tovim*. If 400 years in *Mitzrayim* gave the *Yidden* the *Yom Tov* of *Pesach*, just imagine the great *Yom Tov* we will have after 2,000 years of this *golus* - the infinitely greater *simcha* and *cheirus*, a *geulah* that is not followed by *golus*.

We were so fortunate to have some volunteers come for a *minyán* and *krias haTorah* in the morning. In the *aliyah* that I was fortunate to receive, among the many *pesukim* is the *posuk* of "Atoh horeisoh loda'as ki Hashem hu ha'Elokim, ain od milvado."

What I ask all of you is to only think about this *posuk* as the preparation for the next battle. We need to know that as Hashem has made *nissim* in that case, and He hardened the hearts of *Mitzrayim* to make battle, which we saw was only so that Hashem will perform His great *nissim*, so too, what we see now is only so that Hashem will perform *nissim* and free me right away. Our preparation is by learning Torah and doing *mitzvos*, because "ain oid milvado."

After the brief but wholesome 50 minutes we had together in the *minyán*, the *Kinnos* were read in cell 217. In the background, there were sporadic outbursts of laughter and levity from those watching some show, which was in total contrast to the sad events written in the *Kinnos*. Imagine reading the tearful, heartbreaking story of the children of *Rav Yishmoel Kohein Gadol*, or the viciousness of how they murdered the *Asarah Harugei Malchus*, and then hearing a roar of laughter and clapping on the tables. This reminds me of what *Rabi Akiva* said to his friends, explaining why he was laughing while they were crying. He said that when he sees that the first *nevu'ah* was completed, he is reminded that the next *nevu'ah* will be fulfilled as well. When he sees what those who violate Hashem's will receive, how much more will those who do His *ratzon* receive.

So, as we ready ourselves to see Hashem fight our battle, we need to know that "ain od milvado." Therefore, we need to have *bitachon* only in Hashem, Who will send His *yeshuos* and *nissim* just as He has done before, which makes our victory absolute, one hundred percent. We can increase our *bitachon* in Hashem, and we show it by increasing our learning Torah, doing its *mitzvos*, and taking on *kabbalos tovos*. In this *zechus*, may Hashem save me, together with all the *Yidden* who need a *geulah proti* today, and all the *Yidden* with a *geulah kloli* of *Moshiach Tzidkeinu*.

*Ah gutten tomid* and *besuroos tovos*.

*Sholom Mordechai ben Rivkah*

# Rubashkin Brief Hammers Home the Injustice

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BY DEBBIE MAIMON

In a brilliant, hard-hitting reply brief, attorneys Nathan Lewin and Paul Clement shredded the Government's arguments challenging Sholom Rubashkin's "cert" petition to the Supreme Court. The brief hammered home the injustice of the case which it says "must not stand."

To briefly sum up the relay of legal filings to the Supreme Court:

The April "cert" petition asked the Supreme Court to overturn the 8<sup>th</sup> Circuit Court of Appeal's ruling which denied Sholom Mordechai's motion for a re-trial, and upheld the outrageous 27-year sentence.

The 8<sup>th</sup> Circuit's ruling rejected the defendant's Rule 33 motion, based on newly discovered evidence [through an FOIA lawsuit], that the trial had been compromised by the lack of an impartial judge.

The 8<sup>th</sup> Circuit insisted that they could not even consider the trial's alleged flaws, because only new evidence that offered proof of the defendant's innocence could be grounds for a retrial.

That rigid stance in effect said that even if it were proven beyond a doubt that the judge or jury members were bribed, there would still be no legal recourse.

The 8<sup>th</sup> Circuit's position flies in the face of logic and justice, and conflicts with the law in other circuits, the attorneys argued in the cert petition. It so violates the bedrock constitutional right to a fair trial that it requires Supreme Court intervention.

## GOVERNMENT SPIN

The government response was to doctor up the 8<sup>th</sup> Circuit's position to make it sound less irrational. But Lewin and Clement collapsed that effort in their August 9 brief by noting that the 8<sup>th</sup> Circuit called its interpretation of Rule 33 "clear and binding," language that signaled no flexibility at all.

Despite the government's attempts to spin the 8<sup>th</sup> Circuit's ruling [pretending it said something it did not], the net effect was to highlight the ruling's flawed logic, Lewin and Clement argued.

The attorneys marveled at the government's failure to "even attempt to defend" the 8<sup>th</sup> Circuit's interpretation of Rule 33, because failure to defend it is tantamount to admitting it's wrong.

"Respondent [i.e. the government] does not even attempt to defend the Eighth Circuit's construction of Rule 33 that precludes consideration of newly discovered evidence [that does not pertain to innocence], no matter how clearly the new evidence undermines the integrity of the proceedings," the attorneys asserted.

"Nor does respondent deny that the Eighth Circuit's rule squarely conflicts with the law in other circuits."

## TAKING REFUGE IN INVENTED DISTINCTIONS

The government tried to justify the 8<sup>th</sup> Circuit's denial of the Rule 33 motion by creating an artificial distinction between claims of actual bias and the appearance of bias.

No evidence of Judge Reade's actual bias was presented, the government brief argued; the claim was only the *appearance* of bias, which does not invalidate a trial.

Lewin and Clement brushed this distinction aside as pure invention, unsupported by any legal precedent. The law does not differentiate between claims of "actual bias" and "appearance of bias," they said.

"The legal decisions of many circuits on [this question] do not support that distinction, or offer any reason to slice the bologna so thinly." The law treats appearance-of-bias claims with the exact same seriousness as actual-bias claims.

The reason for this is self-evident. Suppose a video existed of a judge declaring his passionate hatred of a particular defendant. The jury returns a guilty verdict and this same judge hands down a life sentence. Suppose the video then surfaces and the defendant plays it before an appeals court, citing it as absolute proof that the judge was biased against him.

If proof of "actual bias" is the only yardstick to be used in gauging claims of a judge's partiality, even a video of the judge railing against the defendant won't meet the bar. Who can say with certainty that the judge's hatred translated into bias? Who can say if it determined or even influenced the trial's outcome? Of course it is possible, even likely, but can it be proved?

Actual bias and appearance of bias are both equally taboo because at the end of the day, only G-d can distinguish between them. Human beings cannot read minds or plumb hearts.

Actual bias and appearance of bias are also equally dangerous because both destroy public confidence in the judicial system, the brief makes clear.

## 8TH CIRCUIT: JUDGES ARE ABOVE BIAS

The judges of the 8<sup>th</sup> Circuit seem to think differently. Their actions reflect a belief that judges are above bias, even in situations where bias is so blatant, that to deny it is folly.

One can't help but recall that the 8<sup>th</sup> Circuit invited Judge Linda Reade to sit with them to hear cases on the very same day they were scheduled to hear the Rubashkin appeal, as well as on the day before.

Two of the three judges who heard the appeal spent untold hours conversing and fraternizing with esteemed colleague Linda Reade for two days, including just minutes before they were asked to judge her conduct in the Rubashkin case.

Was anyone surprised when the panel of three handed down an opinion that rubberstamped Reade's rulings and rejected all critique of her conduct?

[Appearance of bias, anyone? Oops. Forgot. Appearance doesn't count. It's only *actual* bias that's a problem. And fortunately, judges are above that, right?]

In addition to puncturing the government's artificial distinctions, Lewin and Clement lash out at the government for causing an erosion of public trust in the judicial process by whitewashing judicial misconduct in the Rubashkin case.

"Independent experts and scores of *amici* [friends of the court] have attested to the damage that the trial judge's actions have had upon perceptions of a fair criminal justice system," the brief says.

The attorneys cite "an extraordinary bipartisan array of *amici* urging Supreme Court review of the case... including former Attorneys General, United States Attorneys, and federal judges; leading criminal law, legal ethics, and sentencing scholars; and four national organizations."

### SILENCE IS ADMISSION

In the same vein as the government's failure to defend the 8<sup>th</sup> Circuit's holding on Rule 33, its silence on sentencing issues raised by the Rubashkin petition to the Supreme Court should be viewed as an admission of error, Lewin and Clement argue.

The government by its silence conceded that Judge Reade "did not consider or explain [her] basis for rejecting [Rubashkin's] argument for a below-Guidelines sentence, which would have resulted in vacatur of his extraordinary 27-year sentence in other circuits."

In simple terms, the law states that when mitigating circum-

stances are present, a sentencing judge must consider a defendant's request for a lower sentence than that advised by the Sentencing Guidelines. The judge cannot simply brush the request aside, without a word of explanation.

Especially in a case where the sentence is wildly out of proportion to the offense and grossly exceeds the punishment meted out to similar offenders; and especially where the mitigating circumstances are so abundant, the judge is obligated to explain her reasons for the astounding harshness.

Judge Reade refused to do so. Ignoring public outcry and the protests of a broad array of legal experts, she sentenced a first time, non-violent offender with a stellar history of kindness and public good works to a virtual life sentence, without a word of justification for the astounding severity.

"Justice demands a statement of reasons and abhors a ukase [a dictator-style edict]," Lewin and Clement wrote.

### WHICH 'LAW OF THE LAND' WILL PREVAIL?

The attorneys note the irony that had the appeal been heard in the Third, Sixth and Seventh Circuits where decisions have made it clear that a judge must respond to serious arguments for a lowered sentence, the defendant would have surely prevailed.

In Delaware; New Jersey; Pennsylvania; Kentucky; Michigan; Ohio; Tennessee; Illinois; Indiana or Wisconsin, Judge Reade's sentence would have been thrown out. But since the 8<sup>th</sup> Circuit had jurisdiction over the case, Sholom Rubashkin is suffering a torturous 27-year sentence.

Should there be a different law of the land based on which region in the country one resides, the brief asks. Shouldn't the Supreme Court use the Rubashkin case as a vehicle to clarify the law, making it uniform throughout the United States?

## LOOK ONLY TO HASHEM

With the filing of Sholom Rubashkin's response to the government, the relay of legal briefs to the Supreme Court in the case has ended for the time being, with a response from the Court expected in September or October.

Writing from prison last week, Sholom Mordechai acknowledged the powerful briefs his attorneys have produced on his behalf, and the many people who have written to him with *divrei chizuk*, and their *tefillos* that the legal efforts will bring about his release.

"*Rosh Chodesh Elul* is a fitting time to say thank you all of my brothers and the families who have the heart to think of me, and the time to write me letters or email... You should all have a *kesivah vechasima tovoh*."

Referring to the brilliant legal work his attorneys have done, he adds, "Although Hashem requires us to make this *sibah* (*hishtaldlus*), we are not allowed to attach any importance to it. We make a *sibah* and a *keli* in *teva* only because we are commanded to. We work at it as best as we can and appreciate those who give of themselves and their talent to help us, knowing all the while that we look only to *Hashem* for our *yeshua*, not to human efforts.

"We do not *koch zich* in what this one or that one said. We only *koch zich* in learning Torah and doing *mitzvos* with *bitachon* in *Hashem*.

"May *Hashem* reveal His unlimited *rachamim* and *koach* and quickly bring the *geulah proti* we are all *davening* for, to every single *Yid* and their families, and the *geulah kloli* that we are waiting so many years for, with the coming of *Moshiach Tzidkeinu*."



# Rubashkin Supporters Urge Supreme Court To Hear Case

BY DEBBIE MAIMON

On September 24, the justices of the Supreme Court of the United States met to decide which cases to add to their docket for October. Tens of thousands who are watching developments in the Rubashkin case are hopeful that *Rubashkin vs. The United States* is selected for review.

Rubashkin's "cert petition," filed in April, asked the Supreme Court to grant him a new trial or to shorten his draconian 27-year sentence.

For friends and supporters, the Rubashkin case is about one of the most malignant miscarriages of justice in recent times. Those who have closely followed the case know it is about how a mix of powerful adversaries and government officials deftly manipulated the law in order to destroy a good man, and put him away for life.

For countless others, the case is much larger than the appalling cruelty meted out to a particular individual. It is emblematic of disturbing and far-reaching issues affecting the country as a whole.

The Rubashkin saga, legal experts say, puts on display the vast unchecked power of federal prosecutors bent on winning convictions, and deeply flawed federal sentencing guidelines that lead to wildly inflated penalties.

The Supreme Court is currently in a position to address these burning issues through the vehicle of the Rubashkin case.

## THE SCREENING PROCESS

About ten thousand "cert petitions" (*writs of certiorari*) asking the Supreme Court for a review are filed each year, yet only a fraction of these are accepted.

About 80 percent are formally rejected when the justices convene for the selection process. Only the slimmest percent of the remaining petitions are accepted for review, and put on the calendar for the upcoming Supreme Court term.

The screening process begins months before the justices actually meet. Soon after they convene on September 24, they take care of the first order of business—compiling and releasing a list of the rejected cases. It is obviously not good news to find oneself on that early-release list.

The fate of the other cases is then decided during private conferences at which only the nine Supreme Court justices are present. Cases are discussed one after another and put to a vote. Four votes are necessary for a case to be included in the Supreme Court docket. The chief justice is the first to cast his vote, followed by the other justices in order of seniority.

Controversial cases that stir up debate among the judges are often kept on the "conference list" and discussed at later meetings until a vote is finally taken on whether to grant the *writ of certiorari*. By the first of October, the selection process is complete.

"My sense is that the Rubashkin case is among the 20 percent that are yet to be decided," said Rubashkin attorney Nathan Lewin in an in-

terview with *Yated*. "It's clear that the issues the case raises have broad relevance. They are not narrow interests belonging to a single religious or ethnic group."

Lewin, who along with acclaimed attorney Paul Clement, filed the cert petition, emphasized that six prominent legal organizations had filed *amicus* briefs supporting the petition, and that if anything would boost the case's chances of being heard, it would be these respected voices.

"Injustice alone, no matter how severe, is not going to sway the judges in favor of hearing a case," Lewin explained. "The Supreme Court is not looking for opportunities to correct injustice. What interests the judges are cases that offer a vehicle to define general legal principles that are important for the country. We feel the Rubashkin case offers this opportunity."

Asked if he had a message for the Jewish community at this time, Mr. Lewin referred to the coinciding of the Supreme Court conference with the *yemai ratzon*. "This is the time of year when *Hakadosh Boruch Hu* is especially close and wants to grant *rachamim*... Let us hope the Supreme Court will see the merits of this case... I say this not because it's a so-called 'Jewish case,' not because it's about a religious man with a beard, but because of its very serious implications for the country."

The renowned attorney said the case holds special interest because of key issues raised in the appeal that highlight conflicts between different circuits. The main conflict is over the issue of newly discovered evidence that a trial was fundamentally unfair, which formed the basis of Sholom Mordechai's appeal to the 8<sup>th</sup> Circuit in September 2011.

The motion was based on FOIA revelations that the trial judge had been deeply involved in the planning of the ICE raid that led to Sholom Mordechai's arrest, and failed to disclose this. With her neutrality thus compromised, she should have recused herself as the law requires, the appeal argued. Failure to do so, is grounds to vacate the trial.

The 8<sup>th</sup> Circuit disagreed. They ruled that the appearance of partiality on Judge Reade's part failed to invalidate the trial because it didn't offer proof of the defendant's innocence.

Rubashkin's attorneys rejected that line of reasoning as a complete misreading of the law, in addition to being irrational. (How can a defendant's innocence or guilt be determined if the trial itself is a sham?) They urged the Supreme Court to resolve the conflict between circuits over how to interpret a law that cuts to the very heart of one of our most cherished freedoms - the right to a fair trial.

## WITH LIBERTY AND JUSTICE FOR ALL?

The case raises troubling questions about federal sentencing guidelines which most legal minds agree are badly in need of reform.

The cert petition noted the sad irony that Sholom Mordechai's sentence would have been vacated had his appeal been heard by the Third,

## A Message From Sholom Mordechai Rubashkin

*Baruch Hashem*, our year started with our *tefillos* to *Hashem Yisborach* for a *shonoh tovoch u'mesukoh*, in both the physical and spiritual sense.

Here, too, in this place of darkness within darkness, with the help of four *Yidden* who had the *mesiras nefesh* to come into such a cold dark region for *yom tov*, we were able to be *mispalel* with a *minyán* and *kriyas haTorah, baruch Hashem*. And with *tekiyos* that surely went straight up to our Father in Heaven.

We pleaded with *Hashem* to redeem Yaakov Yehudah ben Shaindel and Yonoson ben Malka. We davened that each and every *Yid* in prison, no matter where or what kind of prison, should be granted his personal redemption.

The concealment of *kedusha* in this place called prison is described in the *posuk* in this week's *parsha*, "*Ve'onochi haster astir ponai bayom hahu*, I will utterly conceal my face on that day."

The doubling of the word "conceal" is explained by the *Baal Shem Tov* to mean that the "concealment" itself will be concealed. It will be so deep and penetrating, it will not even be felt as concealment but will appear to be the normal state of things.

The concealment will even reach a point where it is perceived as its very opposite, as in darkness being called light.

When there is such a great concealment, *Hashem* is telling us that this comes from "*Onochi*," the name of *Hashem* that signifies a very high form of Divine revelation, higher than that symbolized by His other names.

"*Onochi haster astir ponai*" means that only the Aiber-shter Himself has the power to hide the light of *Hashem* to such a degree that darkness is called light. This reversal is so beyond the natural order that only *Hashem* can make such a transformation in which darkness is distorted into light, and evil is called good.

The darkness and concealment is so thick it envelops everything. But when we recognize from where this deeper-than-deep conceal-

ment is coming from, we are lifting the veil on the presence of "*Onochi*," even in a place that seems totally devoid of *Hashem's* presence.

That explains the great hidden *brocha* in the *posuk* that appears on the surface to be a terrible punishment and curse.

It's as if *Hashem* is telling the *Yid* that when he sees a concealment-within-concealment—total absence of *ruchniyus*—a Jew needs to know that it is all being orchestrated by *Onochi*. Do not allow yourself to be fooled into thinking that there is any force outside *Hashem's* will that that can cause this concealment.

The *pasuk* is telling us, hold firm in your *bitachon* in *Hashem* that He Himself will take you out of your *tzoroh*. *Tracht gut vet zain gut*. *Bitachon* causes the hidden good to be revealed good. That is essentially the whole purpose of our *avodas Hashem*; to reveal the hidden good and the *kedusha* of *Hashem* for ourselves and all the nations to see.

This may be the reason we read this particular *parsha* in the *aseres yemai teshuvah*. *Teshuvah* has a unique power to transform *zedonos*, deliberate sins, into the very opposite, *zochiyos*. How fitting to use the *koach* of *teshuva* to break through the veil of *hester ponim* so that a *yid* can see the *Onochi*, and rejoice in his knowledge of *Hashem's* presence even in the pit of darkness. One transforming force uncovering another one.

As we learn in *Shaar Habitochon*, we are supposed to take steps to influence events in our favor, not because these steps actually accomplish anything but because that is what *Hashem* wants. But instead of putting our trust in our own efforts or the efforts of others, we are to depend exclusively on *Hashem*. Only He is capable of producing results, and rescuing us from our *tzoroh*.

*Yehi rotzon* that *Hashem* reveal Himself fully within the darkness and double concealment, with the *geulah* for all *Yidden* with *Moshiach Tzidkeinu*. And may He grant each and every *Yid* a *gmar chasimah tova*, with revealed good.

Sixth and Seventh Circuits, where decisions have made it clear that a judge must respond to serious arguments for a lowered sentence.

Judge Reade refused to do this, and the 8<sup>th</sup> Circuit whitewashed that refusal.

In Delaware, New Jersey, Pennsylvania, Kentucky, Michigan, Ohio, Tennessee, Illinois, Indiana or Wisconsin, Judge Reade's sentence would have been thrown out, the attorneys attested. But since the 8<sup>th</sup> Circuit had jurisdiction over the case, Sholom Rubashkin remains condemned to a virtual life sentence.

Essentially, his fate is being determined not by law but by *location*, the attorneys protested.

This injustice, said attorney Paul Clement in a just-released documentary that explores prosecutorial power and "runaway" sentencing, "is exactly what the sentencing guidelines were designed to prevent."

"They were designed," he said, "to avoid a world where your sentence was going to be dictated virtually by what courtroom you walked into and which judge you had."

"Sholom Rubashkin was given an unusually harsh sentence for his actions. In my entire career," Clement said earlier in a statement to the press, "I cannot recall a similar instance of harsh punishment for a non-violent, first-time offender with a long record of charitable service to his community."

Rhetorically addressing the 8<sup>th</sup> Circuit for its failure to recognize the "eye-popping" disparity of Rubashkin's sentence, Clement posed this question: "If the judges [in other circuits] are saying the guidelines are too high, and since he's a first time offender or because he's not likely

to recidivate, we're going to depart downward, why aren't you [judges of the 8<sup>th</sup> Circuit] doing that here?"

Lack of uniformity in the law, and the appearance of judicial bias against a defendant by the judge, erodes respect for the justice system, legal experts say. It boosts the perception that laws are manipulated to conform to the whims of a particular judge or prosecutor, and one cannot expect fairness from the system.

### FOR JEWS ONLY

The Rubashkin case has raised other burning issues. An especially odious feature of the case was the denial of bail prior to the Rubashkin trial in a ruling that smacked of religious discrimination. The ruling, based on the presumption that as a Jew, Sholom Mordechai might try to avoid prosecution by fleeing to Israel, was seen as a slur on American Jews as a group.

It took over two months, during which Sholom Mordechai remained incarcerated, before this ruling was overturned and he was released on bail (prior to trial). Precious time needed to prepare his defense was squandered by this wrongful incarceration.

"The hallmark of our system is our judicial system in that everyone gets a fair trial," said Clement. "Our judicial system *ought* to be the gold standard... It *ought* to be something that the public has confidence in."

For anyone acquainted with the facts of the Rubashkin case thus far, "confidence in the judicial system" does not quite capture the prevailing sentiment. Will the Supreme Court's decisions change that? We will soon know.

# Documentary Takes Deep Look At Prosecutorial Excess

BY DEBBIE MAIMON

A new documentary that examines the power federal prosecutors wield in the criminal justice system features the Rubashkin saga.

The film, “*Unjustified*,” by acclaimed producer Nicholas McKinney, takes a searching look at excessive prosecutorial power in this country. It was immediately picked up by some of the most popular law blogs as an important commentary on a nationwide problem.

Using the Rubashkin saga as a case in point, the film shows how justice is often subverted in our current legal system due to the enormous power wielded by prosecutors, who enjoy “absolute immunity” even when guilty of misconduct.

The documentary explores the vast discretion prosecutors have to “pile on” (duplicate and multiply) charges, essentially creating slam-dunk cases that coerce guilty pleas. The film also highlights the vast sentencing discretion enjoyed by judges, many of whom use that power capriciously and unjustly.

Under the present system, 95 percent of all federal prosecutions are settled through plea bargains, due to trials being too risky and costly for defendants to afford. This makes a mockery of the fundamental right to a fair trial.

The documentary follows the trajectory of the Rubashkin case over the past four years, beginning with the ICE raid on Agriprocessors in May 2008, followed by Sholom Mordechai’s arrest and trial for bank fraud and immigration violations five months later.

“*Rubashkin v. United States* started as the largest immigration raid in U.S. history and ended in a

bank fraud case concerning a \$35 million loan that cuts to the heart of our nation’s judicial excess,” a press release about the documentary states.

## PURE THEATER

Following his 2009 conviction on fraud charges, Sholom Mordechai still faced a state trial over 9311 counts of child labor. The court proceedings were pure theater, with Guatemalan witnesses repeatedly contradicting themselves on the stand and admitting to having previously lied to officials.

The jury’s sweeping acquittal on all counts dealt the state of Iowa a humiliating defeat. The verdict spoke volumes about the case’s total lack of merit—and raised troubling questions about why it was ever brought to trial in the first place.

The documentary cites the widespread support the case has drawn from all sides of the political spectrum, from U.S. Congressman Ted Poe to former U.S. Attorneys General Richard Thornburgh and Ed Meese, to former U.S. Attorney General Janet Reno, U.S. Congresswoman and DNC Chair Debbie Wasserman Schultz, as well as the Iowa ACLU.

Lead trial lawyer Guy Cook speaks out forcefully in the documentary about the travesty of justice in which Judge Reade teamed up with federal agents in planning the ICE raid and then failed to disclose this to the defendant. “That involvement, and the failure to disclose it, robbed Sholom Rubashkin of due process,” Cook said.

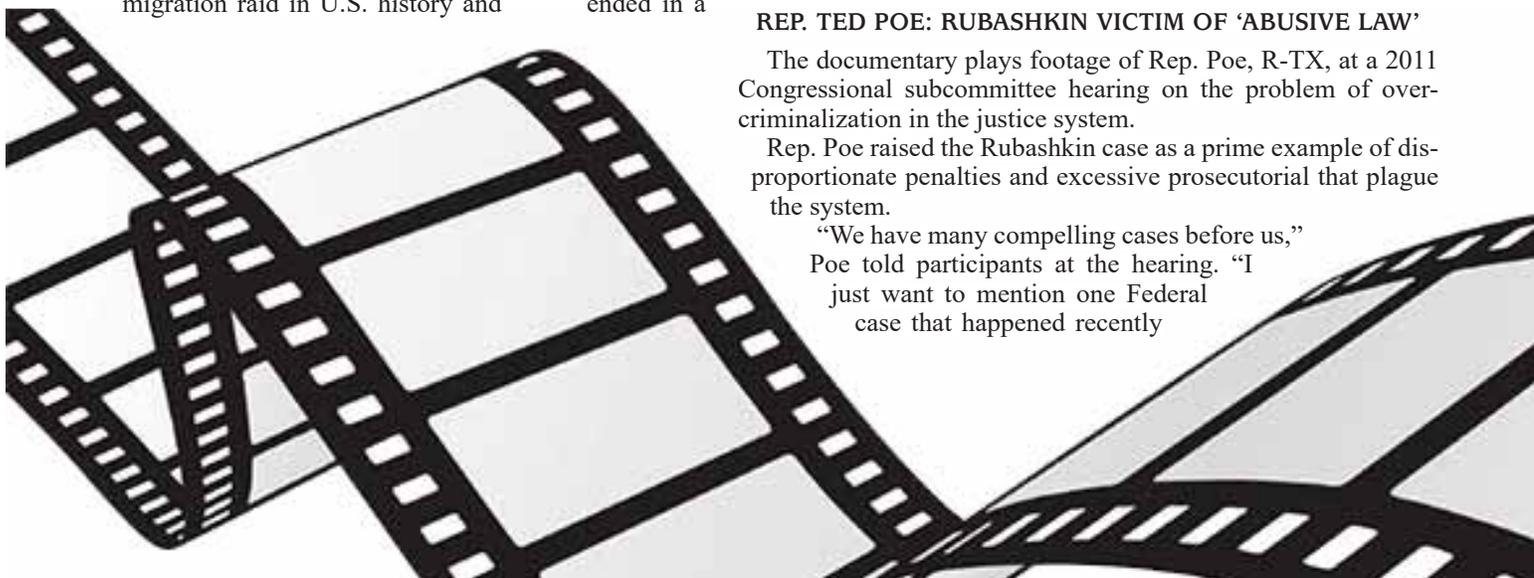
## REP. TED POE: RUBASHKIN VICTIM OF ‘ABUSIVE LAW’

The documentary plays footage of Rep. Poe, R-TX, at a 2011 Congressional subcommittee hearing on the problem of overcriminalization in the justice system.

Rep. Poe raised the Rubashkin case as a prime example of disproportionate penalties and excessive prosecutorial that plague the system.

“We have many compelling cases before us,”

Poe told participants at the hearing. “I just want to mention one Federal case that happened recently



that is worthy of mention.

He went on to relate that in Iowa, “there was a kosher slaughterhouse operated by Sholom Rubashkin, and he was sentenced to 27 years in the Federal penitentiary for some financial crimes.” Extra time was added on to his sentence, Poe explained “because he violated that “sacred” law - the Packers and Stockyard Act - for not paying cattle suppliers within 2 hours of delivery of the cattle.”

“Rubashkin is the only person I know of who was ever prosecuted under this act that was passed in 1921,” Poe said. And he was prosecuted even though *all cattle suppliers were paid in full, and the latest one was paid just 11 days late.*”

“He was a few days late with his checks - a dastardly deed,” Poe scoffed. “This is an example of a really abusive law. But since it’s on the books as a felony, prosecutors were able to get him on it.”

“*Unjustified*” also features a clip of Rep. Debbie Wasserman Schultz, D-Fla, addressing AG Eric Holder at a House Oversight Committee about a letter she wrote to him regarding the Rubashkin case.

“I just want to touch on that letter here,” she said. “It appears that the sentence is incredibly excessive, and the judge who levied that sentence engaged in inappropriate *ex parte* communications.”

Shultz was just one of at least 51 members of congress who wrote separate letters to Holder demanding an investigation into allegations of prosecutorial and judicial misconduct in the Rubashkin case.

Some of the letters detailed the way the government deliberately bankrupted Agriprocessors after the raid, preventing its sale to a new owner when it was still a valuable enterprise and could have repaid the company’s outstanding \$26 million bank loan.

The plant was finally sold for pennies on the dollar. The government then charged Sholom Rubashkin with defaulting on the loans and used the “\$26 million loss amount” - which the government itself had caused - to drive up his prison sentence.

#### ODDS STACKED AGAINST DEFENDANT

“We have this idea of due process where two fair-minded lawyers argue before an impartial judge,” said the documentary’s producer, Nicholas McKinney, “but in reality the system - and the power of prosecutors to “pile on” charges - stacks the odds against defendants.”

He points once again to the Rubashkin case as an example. After an unprecedented seven superseding indictments piled on the charges against him, the accused faced over 160 counts of fraud and immigration violations, tallying up to over 1000 years of prison time. Prosecutors brazenly declared

their intent to recommend a life sentence.

The harshness and excessive zeal in seeking to punish a first-time, non-violent offender with a life sentence shocked veteran justice officials. Protests streamed forth from six former attorneys general and some of the most prestigious Justice Department veterans, forcing the Iowa prosecutors to back down, the documentary relates.

This segment of the story is related on the film by former U.S. Attorney Alan Vinegrad, who says the decision of six former attorneys general to get involved in the case by writing to Judge Reade was “unprecedented,” and clearly signaled that the federal prosecutors were grossly out of line.

Shamed by the criticism, the prosecutors trimmed the “life” recommendation down to a 25-year sentence. Ignoring the legal luminaries who urged moderation, Judge Linda Reade signaled her disdain for them by adding on two years to the recommended 25-year sentence.

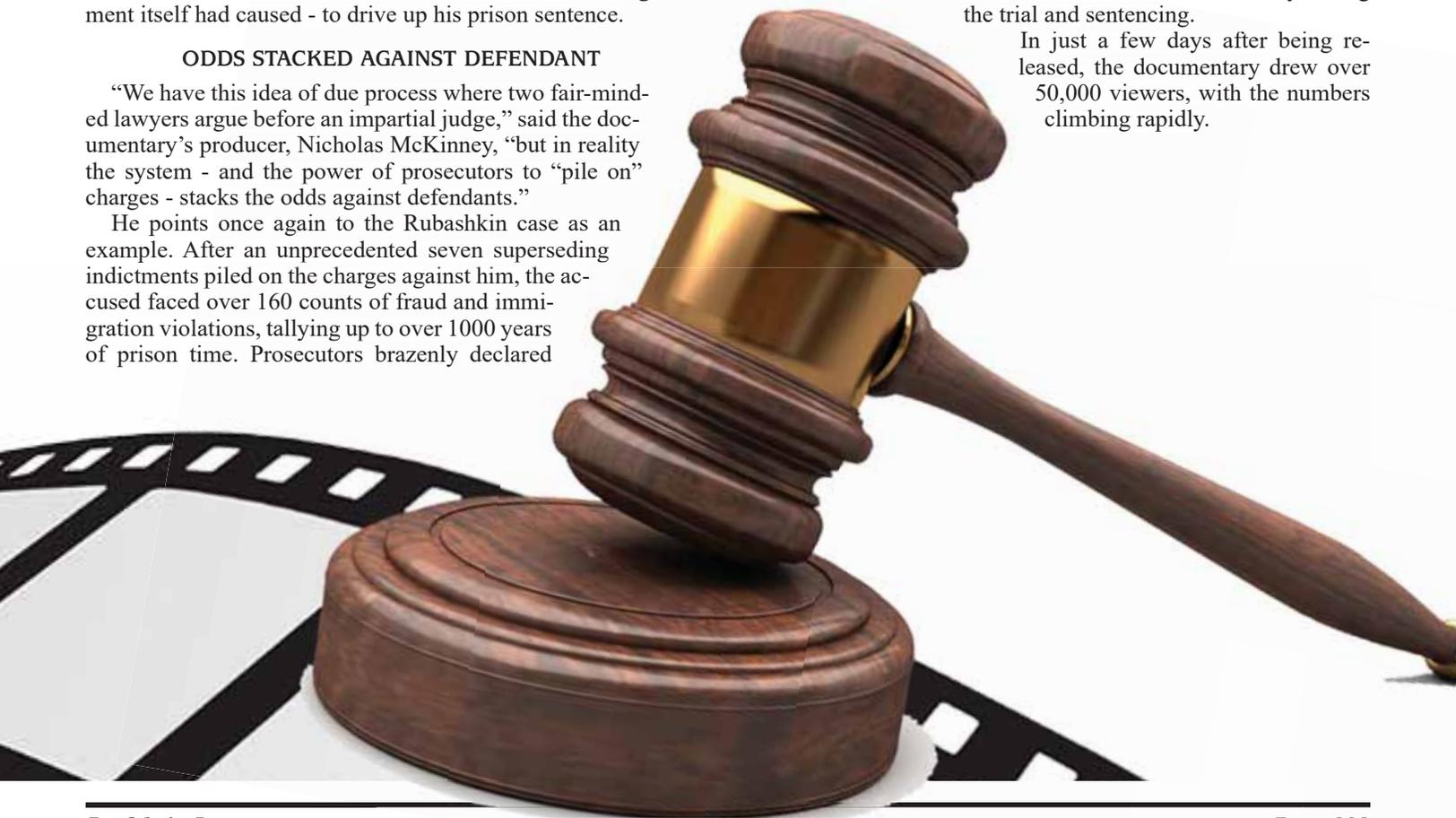
The film documents the legal twists and turns of the Rubashkin case and includes interviews with Paul Clement, former U.S. Attorney A. Jeff Ifrah, and American University law professor Angela Davis, an expert on prosecutorial power.

The documentary closes with Vinegrad summing up the government subterfuge at the core of the Rubashkin case, in which crucial information was withheld from the defendant about Judge Reade’s collaboration with the prosecutors.

“If you’re in Sholom Rubashkin’s shoes,” Vinegrad said, “you have a right to know that the judge who is going to be presiding over your case met for a period of 7 months [with federal agents], going over ever little every aspect of the raid against your plant and your workers. And with charges that ultimately became part of your indictment. Sholom Rubashkin had a right to know all that.”

Since he was kept in the dark about Judge Reade’s sweeping involvement, he and his lawyers did not demand her recusal, and were left at her mercy during the trial and sentencing.

In just a few days after being released, the documentary drew over 50,000 viewers, with the numbers climbing rapidly.



# Some Cases Refuse To Die

BY DEBBIE MAIMON

The Supreme Court's rejection of the Rubashkin appeal continues to stir outrage and deep distress among Sholom Mordechai's supporters and advocates, including his legal team.

"The Supreme Court's refusal to consider the Rubashkin case -- which is the greatest injustice I have seen in more than 50 years of law practice -- was very distressing," said lead appellate attorney Nathan Lewin. "But the legal battle is not over. There are, in American legal history, a few famous cases 'that will not die.' The Rubashkin case is in that league.

"The Torah teaches that *tzedek* does not come easily; it must be pursued. Even at this juncture, there are legal avenues for overturning a fundamentally unfair trial."

Agudath Israel released a statement immediately following the news of the Supreme Court's rejection.

"Agudath Israel of America is deeply saddened by the Supreme Court's refusal to review the case of Sholom Rubashkin," the statement said. "Serious questions have been raised as to the fundamental fairness of his trial and sentence, and he surely deserved a full hearing from our nation's highest court. It is noteworthy that a broad and distinguished array of legal scholars and experts has declared the case to be a miscarriage of justice. As such, the justices have sadly squandered an opportunity to right a terrible wrong."

## A SAD DAY FOR JUSTICE

Guy Cook, Sholom Rubashkin's lead trial lawyer, who also worked on the final draft of the cert petition to the Supreme Court with Nathan Lewin and Paul Clement, called the Supreme Court's refusal to hear the Rubashkin appeal "a very sad day for justice."

"The monumental injustices in this case screamed out for review," Mr. Cook said in a lengthy interview with *Yated*. "At the core of this travesty is a grave violation of due process, and the decision to deny the Sholom an opportunity to reverse this failure is indeed troubling.

"The case presented an opportunity to uphold the rule of law, to prove that prosecutors and judges cannot circumvent the law with impunity," he said.

Given the high level of public interest, and given the number of legal scholars and organizations, as well as the array of formal attorneys general and former U.S. Attorneys that stood behind Sholom's appeal, it is extraordinary that the Supreme Court turned it down," Cook said.

"The many amicus briefs carried the signatures of scores of weighty legal authorities who saw this case as an important vehicle to set the record straight on matters important to the country," he added. "That their opinions were not heeded is beyond disappointing."

"These legal experts were impartial—they had no 'dog in the fight'—yet their passionate calls for a review were ignored," he said.

The Iowa attorney underscored what he felt were the two most glaring

injustices in the case that cried out for rectification: First, "the judge's improper involvement with the prosecution prior to court proceedings—and her failure to disclose it—robbed the defendant of a fair trial," he said.

Secondly, Cook noted "the wrongful application of the sentencing guidelines, and the legal and procedural errors that were used to justify an appallingly harsh sentence where there was no criminal intent."

"Here was a defendant who had no intention to hurt anyone, to cheat anyone out of anything. Here was a case in which no one was hurt—until the government dropped their nuclear bomb on Agriprocessors and caused the company's bankruptcy.

"The government then orchestrated the impoverishment of the business by preventing its sale to new owners while it was still valuable, thus causing the failure of the bank loan, and driving up the loss amount in order to drive up the prison sentence."

"Sholom Rubashkin, who was not responsible for this loss amount, was then sentenced to a virtual life sentence because of financial losses *the government itself had caused*," Cook recapped.

"These injustices were simply ignored," the attorney said. "The 8<sup>th</sup> Circuit's opinion was notable for its whitewashing of the issues."

"Their ruling did not address any of the core arguments raised in the appeal," he said. "If you knew nothing about this case except what was discussed in their ruling, you'd think that was just an ordinary criminal prosecution, when it is *anything* but that."

Asked if he saw an ethical problem with the 8<sup>th</sup> Circuit's decision to invite Judge Linda Reade to sit with them on cases the same day as the Rubashkin appeal was being heard, Cook said the move "raised real questions about whether justice was being honored."

## QUINTESSENTIAL MAN OF FAITH

Asked about the remaining post-conviction remedies available in the Rubashkin case, Cook said a second FOIA lawsuit had been filed by a Washington firm on behalf of Sholom Rubashkin, for the release of volumes of information that till now have been withheld from the defense.

"At least 30 percent of the FOIA documents we received were heavily redacted," Cook said. "The lawsuit is demanding full disclosure of the ICE documents and other government materials related to the 2008 raid. It is also seeking to have the case moved from Iowa to Washington where the federal agencies responsible for the documents are based.

Asked how this could benefit Sholom Rubashkin, Cook indicated that new revelations of misconduct or other foul play could possibly lead to a new motion for retrial, as well as increased pressure of the Department of Justice for an investigation.

"Nothing is impossible for a man of faith," he said, "and Sholom

# Excerpts From Sholom Mordechai's Letters To His Children

## AFTER RECEIVING THE DEVASTATING NEWS OF THE SUPREME COURT'S REJECTION OF HIS APPEAL

*A Guten Moed Dear Kinderlach, Sheyichyu,*

*Boruch Hashem hatov vehamaitiv. Gam zu letovoh, and yeshuas Hashem k'heref ayin.*

*Hashem will send His help very quickly and bring me home to you. We have bitochon in Hashem in our time of need and He answers our tefillos.*

Remember that true *bitochon* in *Hashem* means that even when the person has no natural means to obtain help, he still has *bitochon* and *menuchas hanefesh* because *Hashem* is not limited by the natural order; He is above it. So what difference does it make whether there is a *natural* means of salvation? We stay focused and certain in our *bitochon* only in *Hashem*, who will surely help and has unlimited avenues.

As *Dovid Hamelech* says, "*Hashleich al Hashem yehovcha vehu yechalkelaka!*" Throw your burdens on *Hashem* and He will support you. The word "*yechalkelaka*" is connected to the root word *keli*, which means that when we throw our *pekel*, our *tzoros* on *Hashem*, and only look to Him for help, then *Hashem* makes Himself the *keli* through which salvation will come.

All we were asking from the human justice system was to allow ourselves to be heard, as should be the norm in a civilized society, about a serious failure of the system that denied a citizen a fair trial. But we were not granted that opportunity, even though so many legal scholars and so many thousands of people demanded a review.

We were also asking for an explanation for the extreme and unusually harsh punishment since no reason was given as required by law. But shockingly, Ethe pleas of so many concerned officials and scholarly opinions were ignored. What a profound lesson in what the *posuk* tells us: *Al tivtechu b'nedivim, b'ven odom...*" Do not place your trust in officials, in mortal men... because salvation will not come from them.

We made the "*keilim*" as *Hashem* wanted us to make, but perhaps *Hashem* wants to show us that putting our trust in human channels—even if only a little bit—was misplaced.

Now we can turn to what the *hailege Rushiner* said on *kapital yud gimmel*, that there can be a *hester ponim* from *Hashem* only as long as there are "*aitzos benafshi*," human strategies that we depend on.

As long as we trusted in this or that strategy, there could be a *hester, chas v'sholom*. But now that we see that the best and most promising *aitzos* are ineffective, says *Dovid Hamelech*, we turn to the only One who can help, and there can be no more *hester ponim*.

*Hashem* is *tachlis hatov*. He hears what we ask Him for and He himself will make the *keili* to bring the *geulah proti* I need, and the *geulah keloli* we all need, with *Moshiach tzidkeinu*.

Kinderlach, go dance *simchos beis hashoeiva!* B'ezras *Hashem*, I will join you also.

*Be'ahava raboh,  
Besimcha gedoloh,  
Besuros tovoh,  
Tatty*

## DANCING WITH THE AIBERSHTER

*[Letter written on Motzo'ai Yom Tov:]*

*Dear Kinderlach, sheyichyu*

*Baruch Hashem* for the volunteers who had the *mesiras nefesh* to come to the prison on *Hoshana Raboh* to make a *minyan!* What a present from *Hashem* to be able to say *Amein yehai shmai raboh*. To know that I am connecting with all the *Yidden* who are saying this with me gives me such *koach*.

And what a difference to be able to sing *Halel besimcha*, to shout out with all one's heart, "*Ono Hashem hoshiah noh!*" To be able to say *hoshanos* and to hear *krias haTorah* with a *minyan* on this holiest of days, and to have *birkas kohanim!* No words can describe the preciousness of these things in this place of darkness.

Since it was Sunday and all rooms in the chapel were taken, *maariv* and *hakofos* were scheduled for outside in the *sukkoh*, to be followed by the *Yom Tov* meal. I was looking forward to the singing and dancing with the *sefer Torah* that would accompany the "*seudah*," before we had to return to the units for the nightly lock-in.

But I overlooked the possibility of rain.

As we came to the *sukkoh* for *maariv* and *hakofos*, the sound of a light drizzle met us. We stood around, very disappointed. Then a few people left, leaving only about five of us.

The *sukkoh* was still dry so we *davened maariv* and began *Atoh Horaisoh* hurriedly. We did each *hakofoh* way too quickly, as the raindrops began coming through the *schach*. We were forced to stop to take the *sefer Torah* out of the *sukkoh*, waiting there under the overhang, until 7:30 when the *sefer Torah* had to be returned to the chapel.

We exchanged a hurried *gut yom tov* and the few stragglers with me all went back to their units.

But since we were technically allowed to be in the *sukkoh* until later, I decided to stay there for my *seudah* and remain there as

Rubashkin is the quintessential man of faith. If you speak to him, he will tell you that miracles are possible. And indeed, I can attest to that."

"Miracles have happened in my own family," the attorney shared with this writer. "My son was waiting for a year and a half for an or-

gan transplant. His case seemed almost hopeless. Sholom and many of his family members were praying for him. Miraculously, the organ transplant just recently came through. My son was operated on and is now recovering. Yes...I do believe that justice in this case is still possible."



long as I could. After all, it was *Shemini Atzeres*, *Zman Simchosainu*, and we were supposed to be enveloped in *kedusha*.

Sitting there alone in a drenched *sukkah* in the middle of a prison yard on the night of *Shemini Atzeres*... thoughts weighed me down about the little bit of *simcha* that we had been anticipating but which had vanished. Those thoughts were mixed with imagined scenarios of the wonderful *simcha* that Yidden were right now enjoying in their warm, lit-up *shuls*.

Visualizing in my mind the crowds of joyous Yidden singing and dancing together, it was hard to hold on to any degree of *simcha* in such a desolate situation.

The only sounds around me were of the chilly rain falling outside and I was getting wetter by the minute.

Then “the old foolish king” [*yetzer horoh*] came along with his “grand idea” of how to celebrate Yom Tov in the rained-in *sukkah*. Just sit there and think, he said, about the contrast between the *simcha* you could and should be enjoying, and the sadness of being *alone*, cut off from all those you belong with! And the old foolish king urged on the tears, because that would really prove how much I appreciate and yearn for *simchas yom tov*, right?

But Hashem *always* helps. Pushing away the advice of the old fool that would only plunge me into despair, I remembered how once, the Rebbe was dancing during *hakofos* and pulled a *Yid* into the dancing. Later, he apologized to this person for pulling him in, but the man waved off the apology, saying that it was an honor to dance with the Rebbe.

The Rebbe responded, “*Tantzen darf men mit der Aibeshter*” –you should be dancing with the Al-mighty!

It came to me all of a sudden that the order of the day was to dance, and it did not matter that there was nobody else there, because it was about *tantzen darf men mit der Aibeshter*. And at this moment, there was no choice but to take this literally.

Since the Sefer Torah had already been returned to the chapel, I took a *sefer* to use in its place, holding it on the right, next to the heart. The sounds of a *freilicher hakofos* song filled the *Sukkah*, drowning out the sound of rain.

*Hakofo Alef* began, with the table serving as a *bimah*, and each “orbit” stirring up more and more *simcha*, until the announcement came, “*Ad kan hakofo aleph!*”

*Hakofo Bais* began, to the *nigun* of “*Vesomachto bechagecho.*” The very words of the song propelled a lonely *Yid* into the *simcha* of

*Shmini Atzeres* and *Simchas Torah*. For a few wonderful moments, I was in a *shul* filled with rejoicing Yidden—far from the wet, cold, slippery *sukkah* in a prison yard. The song would have lasted much longer but—*ad kan hakofoh bais!*

To the song of “*Atoh bechartonu mekol ha’amim,*” *hakofoh gim-mel* took off. How well we have learned through the bitter *golus* the different languages of all the nations. We are so thankful to Hashem for raising *Yidden* above and beyond the lies and corruption of the cultured “language-nations.”

As the *hakofos* continued, the wet *sukkah* no longer felt wet, and the cold was replaced with the warmth of the words of the songs that brought comfort to the heart of a *Yid*.

“*Ashreinu ma tov chelkeinu!* The words rang out during *hakofoh vivv*. “How fortunate and lucky are we, what a blessing to be a *Yid!* How good is our portion with Hashem. How beautiful is our inheritance; the *Torah hakedosha* that Hashem gave us *Yidden!*”

The *hakofos* would have continued much longer but a guard came to the *sukkah* and ordered me to leave. Going into cell 217, I realized that my shoes and pants had part of the muddy *sukkah* floor smeared on them, which somehow made me happy. After finishing learning the daily *shiurim*, the idea occurred to me to make my cellmate part of the *simchas yom tov*.

I began describing the scenes taking place in *shuls* everywhere, and the experience of spending *Simchas Torah* in Brooklyn where this inmate happens to be from... the thousands of *Yidden* that come together to dance with the *Sifrei Torah*. Then I “demonstrated” to him some of the dancing and some of the songs, and for a short while, this cold, bleak cemetery of a cell was transformed into a place of life. *Simcha* is literally *poretz geder*, it tears away all boundaries and transports a person to a different realm.

On *Simchas Torah* day, we davened and made *hakofos* in the Chapel *besimcha gedolah*, *Sefardim* and *Ashkenazim* together—with *achdus* and *ahavas Yisroel*.

Dearest *Kinderlach*, go into the new year now with *simcha* and *bitochon* in Hashem who will send His *yeshua* in a revealed, good way. We take with us all the *brochos* from the month of *Tishrei* to last us a whole year. May each and every day be filled with Hashem’s *brochos* in *gashmius* and in *ruchnius!*

*B’ahava raboh,  
Tatty*

# Rubashkin Attorney Speaks Out About New FOIA Lawsuit

BY DEBBIE MAIMON

An attorney from the Washington-based Jones Day law firm, in an exclusive interview with *Yated*, said he hopes a current multi-pronged FOIA lawsuit on behalf of Sholom Rubashkin will uncover significant evidence that can be instrumental in gaining relief for him.

The lawsuit was filed by Mr. Larry Rosenberg in September 2011, in a second, much broader effort to obtain full disclosure from all four federal agencies involved in the 2008 federal investigation leading up to the Postville raid, and the subsequent Rubashkin trial.

“What’s undeniable, based on the record,” Rosenberg said, “is that there was an egregious breach of judicial ethics on Judge Reade’s part. She became so deeply invested in the criminal investigation that she lost objectivity and made matters worse by failing to disclose this involvement.”

“At the time, the defense team had no idea Judge Reade was so compromised. She had refused other requests for recusal from other defendants in the case - and as every attorney knows, you antagonize a judge by asking them to recuse. It seemed the wisest route was not to alienate her.”

“Failure to ask for her recusal, however, put Sholom Rubashkin at an immense disadvantage for an appeal,” Rosenberg noted.

“The grossly disproportionate sentence Reade imposed is a clear giveaway that something suspicious is at play here,” he stressed. “That kind of sentence is so out of line with a fraud case, it automatically invites suspicion.”

“Put that together with evidence of a judge deeply embedded in the criminal investigation and the wildly inflated sentence may still be shocking—but it’s no longer so mysterious.”

## CURRENT FOIA LAWSUIT TARGETS FOUR FEDERAL AGENCIES

An initial FOIA lawsuit targeting only ICE produced materials (post-trial) that uncovered Judge Linda Reade’s leading involvement in the raid that should have disqualified her from presiding over the trial.

But the 8<sup>th</sup> Circuit Court of Appeals sidestepped the evidence of Reade’s collusion, rubberstamping the government’s position that Rubashkin’s new-trial motion should be denied. Evidence of Reade’s collusion with prosecutors was also the lynchpin of a Cert Petition to the Supreme Court, which was denied last year.

“What is different about the current litigation,” commented Rosenberg, “is that it is far more sweeping and all-inclusive, and also more focused. It addresses the Washington ‘parent’ agencies instead of the Iowa state regional offices, with 40 paragraphs detailing the fullest possible range of information.”

All relevant documentation from ICE, the FBI, the Marshall’s Service and the Executive Office of the U.S. Attorney that pertains to the 2008 raid and Postville prosecutions, is being sought in this FOIA lawsuit, said Rosenberg. “That includes every email and document filed with these agencies that record or report communications with Judge Reade during the time frame in question.”

The possibility of uncovering “a smoking gun with far more incriminating power than the redacted ICE documents produced,” is therefore more likely, the Jones Day attorney said.

This evidence can be used in a number of ways, one of which is a “Habeas Corpus” motion, which produces conclusive evidence that the accused has been wrongfully incarcerated. In this case, using compelling proof of a judicial lack of neutrality, the defense would petition for a review of the case before an impartial judge.

## MORE GOVERNMENT STONEWALLING

Rosenberg said the government has been surprisingly aggressive in resisting the FOIA requests, dragging its feet interminably, or claiming it has already released the information when it has not. “The FBI has been the most recalcitrant of all the agencies,” he noted.

The stubborn resistance to giving over documents to which the public is legally entitled is just plain wrong, the attorney said. It means more motions, legal briefs and litigation, all of which is costly. “This suggests the government, with its unlimited pockets, could be waging a war of attrition, hoping the accused will simply run out of money and give up.”

The encouraging note in all this, said Rosenberg, is that “if we don’t get relief, the case will go to the D.C. Circuit Court of Appeals, which has a long record of vigorously enforcing FOIA. We have a strong case and I’m optimistic. At the end of the day, I’m hopeful we’ll get a significant amount of information that can be used to help Sholom Rubashkin.”

————— Pre-Pesach Thoughts —————

## A Letter From *Sholom Mordechai Rubashkin* To His Children

The buildup to *Pesach* is for most of us an emotionally charged time that, perhaps more than any other *Yom Tov*, heightens the joy and warmth of family bonds. Poignant memories of the *Pesachs* of our childhood and the *Pesach* we strive to fashion with our own children and loved ones are rolled tightly together setting us aflame with the pride of being part of a powerful, ancient chain stretching boldly into the future.

This vision overlays the strenuous tasks that usher in the *Zeman Cheiruseinu*, reminding us that nothing of real value comes easily. It is a time fraught with urgency and a prayer on one's lips that it all comes together the right way, and a priceless spiritual opportunity for ourselves and our children is mined to the hilt.

It is telling testimony to the *pintele Yid* that even in homes far from *Yiddishkeit*, families still gather together on *Seder* Night in response to an indescribable yearning to belong more truly to each other and to the Jewish people, and to discover what it is about *Pesach* that speaks so stirringly to the soul.

Let's pause in our frenetic preparations to open a window on the pre-*Pesach* world of someone cut off from his family and what the anticipation of the *Yom Tov* is like for him. The following excerpts of a letter from Sholom Mordechai Rubashkin to his family provide insight into how one person experiences the *Zeman Cheiruseinu* with none of the emotional and spiritual aspects that many of us take for granted.

*Dearest Kinderlach,*

*Baruch Hashem*, we are busy, even here, making preparations for our *chag ha'geulah*. The idea that the *preparation* for a *mitzvah* can be even more important than the *mitzvah's* performance actually takes on special meaning in prison. That's because the readiness and longing for redemption is so real and tangible here, more so than the celebration of *yom tov* itself, since true *cheirus* and *simcha* cannot exist in prison. These joyous states of being only exist as "*kemoh*" or "*ke'ilu*" – a reflection of the real thing.

A story my father, *sheyichye*, once told me when I was a child, brings out this idea of people and situations presenting themselves in a certain light, while in reality being a mere imitation of the real thing.

The city of Kotzk is famous for the great and holy *tzaddik*, the Kotzker *Rebbe*, who lived there. Also living in Kotzk was a righteous *yid*, Reb Yisroel, a devoted *chossid* of the *tzaddik*. Reb Yisroel once traveled to a distant city for a few weeks, and when he returned, his friends eagerly asked him to describe what he saw and did there. All Reb Yisroel would say was that he went to the theater.

Of course they knew this was impossible for a *yid* of his stature, so they prodded him to explain.

“Well,” he said, “when I came to the *shul* there, I was given a tour of the building and the people said, “See! Just Like in Kotzk!” We saw people *davening* and my guide said, “See, just like in Kotzk!” Every time they showed me something, they said fondly, “Isn’t it wonderful? Just like in Kotzk.”

“It was like being in a theater,” explained Reb Yisroel, “where nothing is as it seems to be. The costumes and the props and the stage are all designed to create an artificial likeness. Everything is *kemoh* – just like— but not really.”

I remember a Yerushalayim hotel receipt we kept as a memento of the most amazing time Mommy and I spent in Yerushalayim, when Chaya Mushka, *shetichye*, was studying in Eretz Yisroel. We had the *zechus* to visit her there, to spend a *shabbos* in Yerushalayim and to visit many *mekomos kedoshim* in Eretz Yisroel where the *kedusha* is truly palpable.

Traveling in a car, we were always gazing out the window to steal a glance at the places we would have liked to visit but couldn’t, taking in as much as we could for the few days we were there,

The taxi driver liked to point out different sights he found interesting. When we passed an overhead rail, he called out, “*Tireh shom! Zeh kemoh b’ America!*—Look there, just like in America!—and he did this repeatedly at many other sights.

After a while, it became a little irritating and also comical. I asked him why he was so impressed with “*kemoh b’ America*,” attaching so much importance to something and somewhere outside himself. Why not be impressed with himself as a *yid* who *Hashem* has given the merit to live in *Eretz Yisroel*? A *yid* is not a *kemoh*, and the Holy Land is not a *kemoh*.

#### DON’T BE AN IMITATION YID

When you think about it, *kemoh* is a metaphor for *gulus*, where one is not *chas v’sholom* dying, but not really living. *Pesach* is about attaining freedom for our *guf* and our *neshama* so that we are really alive, not *kemoh* alive. Real life is *cheirus*, living out day by day who one really is (not *kemoh*) and becoming the person one was meant to be.

For that, we need to be a *yid* and stop being a *kemoh*, an imitation. It’s a truth that applies universally to every single *yid*, no matter where he is. But it is especially so here.

Here in prison, everything is “*kemoh*” – a hollow resemblance of the real thing. A punishment facility is *kemoh* a “correction facility.” Solitary confinement is *kemoh* a place for “personal safety.” A prisoner is *kemoh* an inmate. Years of time wasted is *kemoh* time “served.” One eats *kemoh* food; wears *kemoh* clothes; a cell is *kemoh* a room; a hard shelf is *kemoh* a bed.

A walk outside in fenced in areas with a sprinkling of grass is *kemoh* a walk in a park as a free man. The prison itself is *kemoh* a palace with countless rooms and doors — except no door to freedom.

The way the *yom tov* of *Pesach* is celebrated in prison follows this parallel universe of *kemoh*. A prisoner wears regulation clothes that are *kemoh* the *yom tov* clothes he wants to be attired in. A folding table in the chapel is *kemoh* a *seder* table; a meal together in the chapel is *kemoh* a *seder*. Reciting the *Hagodoh* in the chapel is *kemoh* doing the *mitzvah* of *sipur yetzias Mitzrayim* to your beloved children. Drinking grape juice is *kemoh* wine for the *arboh kosos*. And on and on with the imitations.

[Eating *moror*, however, is not *kemoh*, and the *shiur* is more than *b’hidur*!]

Sadly, there isn’t even a *kemoh* when it comes to *davening* with a *minyan* or for *krias HaTorah*.

So, dear *kinderlach*, you see why preparing for my *geulah proti* here is not *kemoh*, but all too real. Because we are all so ready and so full of longing for *geulah* from this place. And even more so, for our *geulah shleima* with *Moshiach tzidkeinu*.

On *Pesach*, we thank *Hashem* for freeing us from being slaves to Paroh and his *avodas perech*. What is *perech*? *Chazal* say it alludes to *peh rach*, a soft mouth, referring to the gentle, beguiling words that Paroh used in his scheme to enslave the *yidden*. By hiding behind benign words and deceptive euphemisms, Paroh was able to mask his true intentions and lure the *yidden* to work as hard as they could. He then used their patriotic performance to gauge their abilities, and enslaved them according to these quotas. This is the paradigm of repaying good with evil.

*Seform* say that *perech* also alludes to *pirud*, separation, because one of the harshest facets of the *shibud mitzrayim* were the decrees separating Jewish families; husbands from wives, fathers from children. We thank *Hashem* and celebrate for His putting an end to these cruel decrees and for uniting families that were torn apart.

Today, as we prepare for *Pesach*, let us all ask *Hashem* to make it happen that every single *yid* is *zoche* to be happily united with his family! If we try, we can bring the unlimited *simcha* of *Purim* that is *poreitz geder* into the month of *Nisson*, the *chodesh* of *nissim* that has the power to break the shackles of all natural limitations, and usher prisoners to freedom.

*Yehi Ratzon* in this month of *nissim* that *Hashem* performs miracles for all *yidden*, granting each and every one their *geulah proti* and together with the *geulah kloli* of our people, together with *Moshiach tzidkeinu*.

*Besuros tovos and much love,*  
*Tatty*

# New Legal Front Opened

BY DEBBIE MAIMON

With the assembling of a new and powerful legal team to launch a post-conviction motion known as a “2255 motion,” family, friends and supporters of Sholom Mordechai Rubashkin are hopeful that this fresh legal effort will ultimately win him justice and freedom.

Sholom Mordechai has been imprisoned for almost four years. His case, which began in 2008, has drawn an overwhelming level of support from hundreds of former Department of Justice officials, from federal judges and law professors, congressmen, and senators, as well as tens of thousands of citizens across the country who see his 27-year sentence as grossly unjust.

Many view the case as emblematic of one of the gravest flaws of a justice system that, despite its many virtues, can incarcerate a good man virtually for life, for a first-time, non-violent offense.

Those who follow the case and are familiar with the evidence of judicial and prosecutorial misconduct that tainted the Rubashkin trial, are stunned when the 8<sup>th</sup> Circuit denied his appeal.

That denial and the Supreme Court’s refusal to review the case in April 2012 stirred outrage and dismay. Given the high level of public interest, and the list of legal luminaries, scholars, formal attorneys general and former U.S. Attorneys who stood behind Sholom Rubashkin’s appeal, it was deeply troubling to many that the Supreme Court turned it down.

“... A distinguished array of legal scholars and experts have declared the case to be a miscarriage of justice. As such, the justices have sadly squandered an opportunity to right a terrible wrong,” noted Agudath Israel of America in a statement at the time.

## A CASE THAT WILL NOT DIE

“The Supreme Court’s refusal to consider the Rubashkin case – which is the greatest injustice I have seen in more than 50 years of law practice - was very distressing,” said lead appellate attorney Nathan Lewin. “But the legal battle is not over. There are, in American legal history, a few famous cases that will not die. The Rubashkin case is in that league. Even at this juncture, there are legal avenues for overturning a fundamentally unfair trial.”

In the current legal effort, Sholom Mordechai is being represented by attorneys Jim Wyrsh and J.R. Hobbs of the prestigious Wyrsh Hobbs Mirakian law firm in Kansas City, Missouri.

Together, Wyrsh and Hobbs have successfully litigated numerous post-conviction cases in the 8<sup>th</sup> Circuit Court of Appeals, including Section 2255 motions, in which the court is asked to vacate the judgment; to re-sentence the defendant or to grant a new trial.

Wyrsh and Hobbs will be joined by Professor Douglas Berman, a nationally recognized authority on criminal law and sentencing. “2255 actions are not only the only way, but often the very best

way, to unearth and document flaws in the prosecution and sentencing of a defendant in a high-profile case,” Professor Berman has said. “The best lawyers have a terrific track record of getting death sentences reversed through habeas appeals, and Mr. Rubashkin is serving a functional death sentence.”

In a phone interview with *Yated*, Mr. Wyrsh said he had met with Sholom Mordechai at Otisville Prison and had extensive discussions with him and others knowledgeable about the case. “We’re still in the preliminary stages... we’re exploring numerous strategies, but it’s clear this man is entitled to relief. There are substantial issues here that could be raised effectively in a 2255 motion,” Wyrsh said.

Experts say the most common grounds raised in a 2255 motion is evidence that the defendant’s counsel provided ineffective assistance, a violation of the Sixth Amendment. Other possible claims include violations of due process or prosecutorial misconduct. A claim that was raised on appeal, however, is usually not permitted to be raised in a Sec. 2255 motion.

An exception to this rule - of acute importance in the Rubashkin case - is when new evidence has been uncovered that challenges the legality of the criminal conviction, the sentence, or the propriety of the judicial proceedings that led to these outcomes.

This provision is of special relevance in the Rubashkin case, particularly in the ongoing FOIA lawsuit effort to obtain classified documents from the FBI and other federal agencies that took part in the 2008 raid of Agriprocessors.

## ATTORNEYS ANTICIPATE NEW FINDINGS FROM FOIA LAWSUIT

The lawsuit was filed by Mr. Larry Rosenberg of the prominent Jones Day legal firm, in September 2011, in a second, much broader FOIA effort to obtain full disclosure from federal agencies involved in the 2008 federal investigation leading up to the Rubashkin trial.

An initial FOIA lawsuit targeting only ICE produced materials (post-trial) that uncovered Judge Linda Reade’s leading involvement in the raid that should have disqualified her from presiding over the trial.

But the 8<sup>th</sup> Circuit Court of Appeals sidestepped the evidence of Reade’s collusion, rubberstamping the government’s position that Rubashkin’s new-trial motion should be denied. Evidence of Reade’s collaboration with prosecutors was also the lynchpin of a Cert Petition to the Supreme Court, which was denied the following year.

“What is different about the current litigation,” commented Rosenberg in a phone interview with *Yated* earlier in the case, “is

that it is far more sweeping and all-inclusive, and also more focused. It addresses the Washington ‘parent’ agencies instead of the Iowa state regional offices, with 40 paragraphs detailing the fullest possible range of information.”

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This evidence can be used in a number of ways, one of which is a “2255 motion,” which produces conclusive evidence that the accused has been wrongfully incarcerated. In this case, using compelling proof of a judicial lack of neutrality, the defense would petition for a review of the case before an impartial judge.

#### FOIA LAWSUIT AT CRITICAL POINT

The FOIA lawsuit is at a critical point. After interminable stone-walling on the part of the government, costly delays and foot-dragging, all plaintiff motions and government countermotions have finally been filed in a Washington, D.C. court and await a judge’s ruling.

That ruling will determine whether the federal agencies involved will be forced to turn over significant documents, from which new evidence that may be crucial to Sholom Rubashkin’s

fate may be obtained.

One example of potential new findings that could be instrumental in an “ineffective counsel” motion is evidence that important evidence that would have moved Sholom Mordechai’s attorneys to request Judge Reade’s recusal, was withheld from them until after the trial.

If evidence shows that the government’s failure to heed FOIA laws in a timely fashion, *before the trial*, crippled the Rubashkin attorneys’ ability to defend him properly, that would constitute a strong “ineffective counsel” argument, legal sources close to the case affirmed.

Mr. Wyrsh told *Yated* that he and his co-counsel and legal partner, Mr. J.R. Hobbs, will be consulting with all the other attorneys who are working on, or have worked on the case, including Jones Day attorneys and renowned appellate attorneys Nathan Lewin and Paul Clemente.

The attorney expressed his firm’s resolve to invest its best effort to obtain relief for Shalom Rubashkin.

“We’re going full throttle on this, working to get a full handle on all aspects of the case, with the input of some of the top legal minds in the country who have given Sholom Rubashkin their best,” Wyrsh said.

“This is a mission not only of the mind but the heart.”

He added that with an October 1 deadline for the 2255 motion to be filed, “time is of the essence.” A vigorous fund-raising effort is underway by friends and supporters of Sholom Mordechai to enable him to have a final chance at justice in the U.S. Court system.

— Shavuot Thoughts —

## A Message From *Sholom Mordechai Rubashkin*

*Tayere Yidden, sholom uverocho!*

Coming from the inspiration of *Lag Ba'omer* and a stronger sense of *veohavtah leraiachah komochah*, the *klal godol baTorah* as taught by Rabi Akiva, we are so gratified to be *zoche* to see this *klal godol* translated from idea into action.

Just as *Yidden* joined ranks together as one as they stood together at *Har Sinai* before *kabolas haTorah*, *Yidden* have united in compassion with a fervent *bakoshah* to our Father in Heaven to help free a fellow Jew and to re-unite him with his family and *klal Yisroel*. May He send His *yehushah bekorov!*

*Kol hamevoraich misboraich*, just as you are being *mechazek* me and my family so greatly in this dark and cold place, so may you too be blessed and strengthened. May *Hashem* shower you with all His *brocha*. May He answer all your needs, in *beni, chayai, umzonei reveichai*, in great abundance and in a revealed good way.

*Borcheinu ovinu kulonu k'echod*. We ask *Hashem* to give us His *brochah* for physical and spiritual goodness, in the merit of being *kulonu k'echod*, and knowing that our *ahavas Yisroel* brings great *nachas ruach* to our Father in Heaven, just as we, too, experience, when our children are united and love each other.

I think about the *hashgochah protis* and the symbolism of the name of the legal petition being presented to the appeals court. It's a Latin expression called "Habeus Corpus," which literally means, "Produce the body [from jail]."

The emphasis is on the word "body," as opposed to saying, "Produce the person," because the *guf*, the body, is all they can imprison. The *Yiddisher neshomah* is out of reach, never to be imprisoned or enslaved, *boruch Hashem!*

From *Matan Torah* we are given the *koach* to release the *guf* from its physical imprisonment and unite it with the *neshomah*. As *Hashem Yisborach* can bring an end to each and every *Yid's* personal *golus*, so may He break the *gezeirah* that has imprisoned me and torn me from my loved ones.

In the *haftorah of novi Yechezkiel* that is read on *Shavuot*, the *novi* describes the lofty vision he saw Above. He describes the *demus* of the *malachim* and the *merkovoh*, with a detailed description of the Holy upper worlds of which we have no comprehension.

The question is, why is this *haftorah* selected for the day of *Matan Torah*? We know that the *maaseh merkavah* is permitted to be learned only by those who are on a lofty spiritual level.

One of the answers given by *meforshim* cites the *pesukim* in the *novi* that describe how the *novi* saw the *demus*, the likeness, of what exists above in the holy spheres.

In the same vein, *Hashem* showed the *Yidden* at the time of *Matan Torah* that the upper worlds and lower worlds are not whol-

ly and permanently separate. Everything below has its roots in the *keudsha* and *ruchniyus* above.

Just as the image seen in a mirror reflects all the details of what is captured in the reflection but does not embody the objects themselves, our world, too, is a reflection, a *demus*, of what is happening Above, in the upper spheres. Everything in our world has its *shoresh* Above.

The *gilui shechina* at *Matan Torah* was not restricted to that event and that period of time exclusively. It was a *koach* granted to the *Yidden* and implanted in their hearts and in the hearts of their descendants, to enable them to elevate themselves in their *avodah* and become *dovuk* to *Hakadosh Baruch Hu*.

It was as if a new law of nature was introduced into Creation at *Matan Torah*, nullifying the *gezeira* that once kept the *elyonim* from descending to the *tachtonim*. That force removed the impenetrable barrier between the worlds that kept the *kedushah* of the upper spheres flowing down to the lower world. Now the interaction between the two worlds became contingent on the *avodah* of the *Yidden*.

So we take this lesson and focus on our *avodah* to *Hashem* Above, that he should bless our *avodas Hashem* with *hatzlochah* and *brochah!*

All of us need a *yeshuah* from *Hashem* in one way or another. And this is my *bakoshah nafshis*, my heartfelt prayer to each and every *Yid*. Please let us continue with this wave of *ahavas Yisroel* that began on *Lag Ba'omer*, and by doing something together on one designated day that is tied to *ahavas Yisroel*, may we draw down from Above the personal *yeshuos* and personal *geulah*, as well as the *geulah shleima* each one of us prays for.

Let us all try to deepen our understanding of the *klal godol baTorah*, *Ve'ohavtoh lerai'acho komocho*, each '*shevet*' discussing it in whatever way will most inspire them to *ahavas* and *achdus Yisroel*. Whether it is through learning *Toras hanigleh* or learning from the *penimius Hatorah*, the key is to have *kavonah* that we all are doing the same thing and at the same time.

Even though we are in different time zones, our Father in Heaven is above time. When *Hakadosh Baruch Hu* sees our *Ahavas Yisroel* and pure intentions, He will unite us all and elevate us above the confines of time and place.

May He open His treasure house of *brochos* that surpass the limitations of our physical world. And may we be *gebenched* by our Father in Heaven, the *Baal Rachamim*, with our *geulah protis* and our *geulah kloli* now, with *Moshiach Tzidkeinu*.

*A freileichen* united *yom tov* and *tomid*,

*Besuros tovos*,

Sholom Mordechai Halevi ben Rivkah, *sheyichye*

# Breathtaking Abuse of Power

FIFTH ANNIVERSARY OF POSTVILLE RAID

BY DEBBIE MAIMON

Last week's commemoration of the 5<sup>th</sup> anniversary of the Postville raid has stimulated debate across the nation over whether anything has been learned from that infamous operation and its massive abuse of federal power.

During the 2008 military-style ICE raid that destroyed the town and the region's economy, 600 local and national lawmen in riot gear swooped down on the Postville meat-packing plant, pounding doors open and arresting and shackling hundreds of defenseless men and women.

The vast majority were herded onto buses, detained in make-shift jails, and subjected to fast-track criminal convictions - 94 a day - for entering the country illegally. Many had been living with their families in Postville for years.

After being forced into plea deals to avoid lengthy jail terms for "identity theft" (a charge later invalidated by a Supreme Court ruling), the arrestees were jailed for five months and afterward deported.

Almost none had previous criminal records. Never before - or since - were illegal immigrants in this country arrested and fast-tracked to jail en masse simply for being undocumented.

## 'WALK FOR JUSTICE'

### BEGINS NEAR JUDGE READE'S COURTHOUSE

Symbolic of the lingering distrust people harbor about the federal institutions involved in the raid, organizers of a remembrance event in Iowa last week began the program with "A Walk for Justice," across from the District Court in Cedar Rapids. In an article in the *Iowa Gazette*, organizers were quoted as saying that they chose this location "because of the Court's role in the raid." The reference to Judge Linda Reade, who presides over that court, is unmistakable.

After becoming a virtual arm of the prosecution, as FOIA documents describe her pre-raid involvement, Reade then presided over the criminal proceedings, convictions and sentencing of hundreds of arrestees, "repeatedly violating the Code of Judicial Conduct," in the words of an attorney close to the case.

The level of her pre-raid involvement was deemed remarkable even at the time, long before FOIA materials revealed her secret meetings with prosecutors, and her "stakeholder" status in the eyes of ICE officials planning the enforcement action.

Reade's extraordinary collusion with the prosecutors prompted a scathing critique by the former president of a prominent immigration advocacy group, AILA [American Immigration Lawyers Association].

## 'IOWA COURT WAS DRIVING THE TRAIN'

"The Iowa federal district court [Judge Linda Reade] was driving the train, fatally compromising its own integrity as an independent branch of government," wrote then AILA President Charles Kuck in 2008.

"The tracks laid down to carry this new 'enforcement train' were designed to force rapid guilty pleas under the threat of serious jail time, avoid the inconvenience of trials, limit access to immigration counsel, eliminate the prospect of all future relief, and impose criminal sentences simultaneously," the AILA attorney said.

The brutal treatment of these undocumented workers and the fast-track justice that railroaded them into waiving their rights, sparked an uproar at the time. Civil rights groups, immigration advocates and defense lawyers demanded an investigation.

Their outcry galvanized a 2008 congressional inquiry into allegations of due process violations. The investigation was stymied, however, by conflicting reports. A DOJ spokeswoman testified that local officials in Iowa ran the operation and were responsible for strategic decisions, while Iowa prosecutors insisted the orders came from Washington.

In the end, the official spin on the story won the day. Federal authorities in Washington testifying at the hearing portrayed the operation as compassionate and humane. They denied all allegations of verbal and physical abuse, as well as all charges of civil rights violations.

With hundreds of immigrants jailed or deported and unavailable for interviews, the protests and clamor gradually faded. The congressional inquiry wound down without resolving the most critical questions.

## QUESTIONS RE-SURFACE

Last week one of these burning questions resurfaced as the Senate began hearings on amendments to a sweeping immigration reform package, in part inspired by the harrowing events in Postville 5 years ago.

Rep. Bruce Braley, D-Iowa, told a *USA Today* correspondent that he pressed federal immigration officials for explanations about the origins of the Postville raid.

"Why Postville? What led to a raid of this magnitude in rural Iowa?" Braley said he asked them.

Although Postville was not the only large federal raid in the previous decade, it stands out as the most notorious for its human rights violations.

Federal agents no longer storm into workplaces in military gear, with guns drawn. They no longer haul out hundreds of workers in splashy and expensive shows of force more suited to a counter-

terrorism operation.

Although Braley received no meaningful response from the officials he questioned, answers may soon emerge, thanks to a FOIA lawsuit awaiting a critical ruling from a Washington, D.C. judge.

#### GOVERNMENT: IMPORTANT TO PROTECT JUDGE READE'S 'PRIVACY'

Four years after Sholom Rubashkin began serving a 27-year sentence, his case refuses to die. A new legal front has been opened with the assembling of a new and powerful legal team with a record for success with post-conviction remedies. Countless friends and supporters who believe a good man was unconscionably railroaded by the government have joined ranks to raise funds for the endeavor.

This legal effort is being buttressed by a FOIA lawsuit that seeks to force the government to turn over official documents from six federal agencies that planned and executed the raid. The agencies are legally required to turn over the documents but have stalled the process with deliberate delays for more than a year.

Jones Day attorney Larry Rosenberg told *Yated* that the reasons cited by the government for withholding the material are “frivolous.”

“Their briefs say they are protecting Judge Reade’s privacy,” he said. “We find that argument absurd. A public official acting in his or her official capacity is not entitled to privacy. That’s precisely what the Freedom of Information Act is all about.”

“This nonsense about protecting Judge Reade’s privacy makes us even more determined to get those documents, and to get them without redactions (blacked out information),” Rosenberg said.

A Washington, D.C. judge is actively considering a motion for summary judgment or status hearings on the case, the attorney said, and her ruling could come any day.

If the Court orders the release of information, some burning questions might finally be answered, such as why and by whom Agriprocessors was targeted, when it is widely known that the livestock industry across the nation uses illegal immigrants extensively.

Echoing Rep. Braley’s question, with 19 million illegals and a cloudy policy at best, why was Agriprocessors singled out? Was this a political favor one politician or organization owed another? What role did the labor unions play?

We may discover why the DOJ ignored the demands of 85 congressmen, and an array of former federal prosecutors and prominent legal scholars, that Holder open an investigation into evidence of glaring prosecutorial abuse in the Rubashkin case.

An Iowa attorney familiar with the complexities of the case put it this way: “If Americans had any idea of the ruthlessness behind this story... of the scheming by people in power and the forces of bias... how they railroaded people without a shred of regard for their human rights, there would be rioting in the streets.”

#### SORDID PROPAGANDA

Using hindsight, it’s illuminating to turn back the pages to the May 2008 to review the government campaign of misinformation that paved the way for the destruction of Agriprocessors, the prosecution of Sholom Rubashkin, and the massive collateral damage that decimated Postville. Thanks to the success of this sordid propaganda, the true facts are still not well known.

Prosecutors, aided by the media, had done their best to sensationalize the alleged “crimes” that led to the raid. News headlines, quoting the federal indictment, broadcast to the world lurid allegations about rampant worker abuse at Agriprocessors.

They painted the slaughterhouse as a cesspool of crime, where a meth lab operated and illegal weapons were stored--*allegations which vanished from the radar screen after the 2008 raid took*

*place, never to be heard again.*

The orchestrated uproar about immigration violations, child labor, worker abuse, exploitation and dangerous working conditions at Agriprocessors continued for months, demonizing the name “Rubashkin” and making it all but impossible to find a fair-minded, neutral jury.

These libels were shattered only two years after the raid, at Sholom Rubashkin’s state labor trial, where he was forced to defend himself from over 9,000 counts of labor violations. At the time, he was incarcerated in Iowa, awaiting sentencing for financial offenses.

The state charged him with knowingly hiring minors at Agriprocessors and subjecting them to dangerous working conditions. In addition to these charges, the presiding judge, Nathan Callahan, allowed prosecutors to air allegations about harsh working conditions, shortchanging workers’ salaries, and forced overtime. Any evidence pointing to human rights violations at Agriprocessors was allowed to be introduced.

#### STUNNING ACQUITTAL

In perhaps the most defining moments in the Rubashkin saga, *the government produced no testimony or other evidence of physical molestation, forced labor, shorting of pay, extortion, severe injury or abuse.*

Testimony from a number of witnesses established that safety training and safety equipment at the plant were a foremost priority. Plant manager Chaim Abrams testified that \$100,000 a year was invested in safety equipment, protective safeguards and training.

Regardless of budget cuts at various times throughout the plant, he said, no cutbacks were ever made in the area of safety. Allegations had been raised that workers were forced to pay for their protective equipment, but no witnesses brought this complaint in court. It turned out to be one of many unsubstantiated libels spread by opponents.

Other myths were punctured on the witness stand. Claims that no medical insurance was available to the workers were shredded. The truth was brought home most eloquently by the testimony of a government witness that he chose to remain at AgriProcessors, due to the medical treatment he was afforded by the plant’s insurance plan for an ear-related ailment.

#### WORKPLACE INJURIES LOWER THAN NATIONAL AVERAGE

Plant manager Chaim Abrams testified to an affirmation from the plan’s insurance carrier that AgriProcessors’ record of workplace injuries fell below than the national average at slaughterhouses. This was borne out by the fact that after a five year period, insurance premiums paid by AgriProcessors for its workers so exceeded the amount of claims filed, the company received a sizeable refund - virtually unheard of in the slaughterhouse industry.

Aaron Goldsmith, a Postville resident and Aaron Goldsmith, a Postville resident and former city councilman, testified that his own research had confirmed Abrams’ testimony. In addition, Goldsmith testified that he had once asked Senator Tom Harkin - no great friend of AgriProcessors - how Postville’s meat-packing plant compared with others across the country in terms of safety and cleanliness.

“Aaron, I’ve visited meat-packing plants across the country. AgriProcessors is one of the cleanest and most well-run,” Goldsmith recalled Harkin telling him.

#### POISONOUS CHEMICALS?

The “poisonous chemicals” the workers were said to have been exposed to turned out to be nothing more than dry ice and chlorine bleach, present in concentrations similar to those used in everyday households.

A third “chemical,” anhydrous ammonia, posed no danger because it ran in enclosed pipes, and workers were not exposed to it, defense expert Rodney Heston explained.

Despite two years of preparation, and millions of taxpayer money invested in flying in witnesses (former Agriprocessors employees) from Guatemala and Mexico where they had been deported after the raid, prosecutors could not prove a single allegation.

They had approached trial with a mammoth 9311 child labor counts. Those numbers were exposed as wildly inflated, as they asked the judge to dismiss 90 percent of them the morning the trial began.

The remaining charges were so lacking in credibility that the jury, after a month-long trial, threw them all out, handing Sholom Mordechai a sweeping acquittal on all counts.

#### SENATOR HARKIN “REMEMBERS”

What is astounding is that the media, as well as people in positions of power and influence, continue to recycle the discredited lies about “worker abuse” at Agriprocessors, as if the trial and acquittal never happened. Media reports, too, continue to repackage the libels.

Iowa Senator Harkin, quoted above in the Goldsmith court testimony (“Aaron, I’ve visited meat-packing plants across the country. AgriProcessors is one of the cleanest and most well-run,”) is a prime example of such cynical, opportunistic behavior.

In an interview last week with the Iowa *Gazette* about the 5<sup>th</sup> anniversary of the Postville raid, Harkin discussed his memories of the Postville raid.

“[The senator] remembers a situation ‘that was not a high point in American jurisprudence or the application of justice,’” the *Gazette* wrote.

“First of all, these poor workers were being exploited anyway,” Harkin said. “They were working in harsh conditions, and there were indications of child labor violations and unsafe conditions,” he said. “And then to have this [ordeal] happen.”

[This is the same Tom Harkin who lavished praise on then Assistant U.S. Attorney Stephanie Rose, a key player in the Postville prosecutions, when she was nominated for U.S. Attorney in 2009. Two years later, when she was nominated to the federal bench, Harkin once again threw all his political weight behind her.]

Meanwhile, for almost everyone in the Postville saga, the world continues to turn and life moves on. The immigrants have long been released to rejoin their families, large numbers of them (including many of those deported) returning to Postville and the reopened meat packing plant.

But for Sholom Mordechai Rubashkin languishing in prison, four years into an outrageous 27-year sentence, justice is still denied.

# Chilling Chapter In The Rubashkin Saga

REVISITING MAGEN TZEDEK

BY DEBBIE MAIMON

The 5<sup>th</sup> anniversary of the Postville raid a few weeks ago recalled not only the notorious law enforcement blitz that crushed Postville and collapsed America's largest kosher slaughterhouse. It also marked the inception of an aggressive campaign to turn the fiasco into a launching pad for a new Conservative "ethics" *hechsher* known as *Magen Tzedek*.

The story behind *Magen Tzedek*, which *rabbonim* protested as a scheme to redefine *kashrus* and falsify *halacha*, remains one of the most disturbing chapters of the Rubashkin saga.

*Magen Tzedek* grew out of the smear campaign waged against Agriprocessors and the Rubashkin family before and after the 2008 immigration raid. It became a rallying point for Conservative leaders to galvanize their struggling movement, and they enjoyed a burst of public acclaim from 2008 to 2010, before slowly fizzling out.

Lately, the nearly defunct organization has been in the news again, with advocates calling for its revival.

Vigorously promoted by the Conservative movement which hoped to use the initiative to win a market share in the lucrative *kashrus* certification, its social justice agenda catapulted its founder, Rabbi Morris Allen of Minnesota, to national prominence.

Reports in the secular Jewish press touted *Magen Tzedek* as the wave of the future. At last *kashrus* in America would no longer be the exclusive provenance of Orthodox rabbis. In addition, Conservative rabbis said, under the new *hechsher*, the meaning of *kashrus* would expand to address far more than the "nitpicky minutiae" of *halacha*. It would encompass fair and humane treatment of workers, animals, and the environment.

"The first kosher foods carrying the new [*Magen Tzedek*] seal should be on supermarket shelves before Rosh Hashanah," a spokesman for the movement gushed in a March 2011 press release.

Yet the roll-out never happened. The "15 major companies" Allen professed to be negotiating with never came on board and the movement and its founder have since slid into obscurity.

With calls for its revival recently issued by voices in the secular Jewish camp, it is instructive to review the history of this movement, how it was born and why it now sits in the dust.

## 'SYSTEMIC ABUSES'

At the height of its popularity, *Magen Tzedek's* chief marketing pitch was its promise to resolve what it called the "systemic abuses" in the kosher slaughterhouse industry.

Its founder, Rabbi Morris Allen, continually referred to the "gross human rights violations" at Agriprocessors as evidence of the need for an ethics *hechsher* that would combine "social justice compliance" with *kashrus* laws.

To legitimize his new agency, Allen insisted those human rights vio-

lations were endemic at the Postville plant, and prevalent throughout the Jewish meat-packing industry. His incendiary rhetoric continued even after the 2010 labor trial exposed the falsity of these allegations about Agriprocessors, and cleared Sholom Rubashkin of all labor charges.

## DEVIL'S HANDSHAKE

Allen had previously joined forces with the Jewish Labor Committee (JLC) which worked hand in hand with the UFCW. These agencies, in the years preceding the Postville raid, had waged a bitter battle to coerce unionization of Agriprocessors.

The campaign against Agriprocessors began in 2005, when the UFCW attempted over many months, without success, to unionize the plant in traditional ways, such as enticing workers through promises of higher pay, better medical benefits, and so forth.

Acknowledging the failure of traditional methods, the union shifted gears and launched a "corporate campaign." This is a strategy described in the union's own literature to its members as a multi-pronged war of attrition waged against a given corporation, until the company either surrenders to unionization or is forced to shut down.

### War of Attrition

In the battle to unionize a plant, a key tool is lodging accusations and complaints against the company for violations of federal regulations. The company is then penalized and fined, with the union parlaying the NC's (noncompliance citations) to the public as proof of dangerous or unscrupulous business practices.

The company may be forced to hire public relations consultants to counter the negative publicity, pouring its resources into damage control, often to the neglect of its business.

If the charges are fought in court, the company bleeds financially through formidable legal fees. Either way, the war of attrition eventually exacts a massive toll.

Regulation is so out of control in American that any businessman, at any given time, is almost certainly guilty of noncompliance with a number of federal regulations. It is beyond human ability to be familiar with the tens of thousands of OSHA, EPA, IRS and other regulations. "The unions realize this—indeed, they lobbied for many of the regulations in the first place," notes the *Wall Street Journal*.

## UNION-ALIGNED FORWARD TRASHES AGRIPROCESSORS

The UFCW's war of attrition geared up after it witnessed the success of the *Forward*—a union-aligned newspaper—in trashing Agriprocessors in 2006 with a series of libelous articles.

Building on negative publicity generated by PETA's prior assaults against the company, the *Forward's* articles painted the meat-packing plant as a filthy, dangerous worksite where inhumane treatment of ani-

mals and workers abounded.

Magen Tzedek drew its life from this mudslinging. As one examines the record, it is hard to escape the evidence of lies, cruelty and deceit upon which the organization rested.

Rabbi Allen and his Conservative colleagues assert that Magen Tzedek was created as a response to unethical treatment of workers in Agriprocessors. But the paper and media trail they left behind them in the company's wreckage tells a far different narrative.

An in-depth look at the record exposes the roots of Allen's social-justice program as mired in the slander he himself spread about the Postville plant and the Rubashkin family.

Allen had carefully crafted a social justice agenda that, once it was paired up with a *hechsher*, would assure him of a profitable niche in *kashrus* certification. But a solution without a real-life problem to hang itself on is a non-starter. With the attacks on Agriprocessors by the animal-rights people and the *Forward*, Allen had a ready-made scandal to build on. All he had to do was continue to fuel it, turning the alleged worker abuse at Agriprocessors into "systemic abuses" throughout the kosher food industry.

When the "worker-abuse" bubble burst at Rubashkin's state trial, with all labor charges unanimously thrown out by the jury, Magen Tzedek was in danger of losing its *raison d'être*. Allen kept his organization alive by continuing his tirades against Agri and Sholom Rubashkin, as if the trial had never happened.

In one of the worst excesses of slander, he appeared on an installment of the *American Greed* series with Jewish labor activist Avram Lyon, pitching the movie's message to thousands of viewers that Sholom Rubashkin was a greedy corporate boss, under whose tenure terrible abuses were perpetrated against the immigrant workers.

Lyon and Allen knew the truth. The paper trail they left in the form of correspondence with Sholom Rubashkin in 2006, after a fact-finding tour at Agriprocessors, opens a window into what they really witnessed at the plant. It shines a light on their later fabrications about that encounter.

### 'LURID CRIMES'?

Allen first became involved with Agriprocessors in the summer of 2006, some months after a series of articles appeared in the *Forward* newspaper attacking the plant for inhumane treatment of immigrant workers, and for "breeding fear, injury and short pay" among them.

An article by Nathaniel Popper accused Agriprocessors of forcing its immigrant workforce to live in squalor and fear, too intimidated to protest their exploitation and ill-treatment by their employers. The article offered no evidence or official documentation to back its allegations. None of its quotes from supposedly live interviews with Agri employees identified the speakers by name.

The libel generated a firestorm, prompting immediate fact-finding tours by Rabbi Asher Zeilingold of Minneapolis together with the Spanish-speaking Dr. Carlos Carbonera (who later testified about his findings at Sholom Rubashkin's Sentencing Hearing in April, 2009).

Rabbi Menachem Genack of the OU and a group of Orthodox rabbis and laymen toured the plant as well. These groups published reports that not only refuted the *Forward's* rabid allegations but noted Agriprocessors' high ratings for safety and lower rates of worker accident and injury.

Morris Allen, too, conducted his tour as part of a five-member team, including labor activist Vic Rosenthal, and Avram Lyon, [who posed as a friend of Allen who was merely curious about how the kosher plant operated]. While in Postville, Allen teamed up clandestinely with union reps. His collaboration with the union was exposed when their secret meeting was unexpectedly discovered.

Allen's group had been previously welcomed and personally given a tour by Sholom Rubashkin at the request of Rabbi Zeilingold. The commission agreed that the tour would be for the sole purpose of checking out the *Forward's* allegations. After his secret meetings with the union

came to light, the Rubashkin management grew wary of his motives. Few realized at the time how deep his involvement with the union ran, and that they had unwittingly let the fox into the chicken coop.

### TESTIMONY FROZEN IN TIME

The fateful tour of Agri went well. Much later it would be used deceptively by Allen as a tool to bludgeon Sholom Mordechai for his mistreatment of immigrant workers. But immediately following the visit, Allen penned a letter of warm appreciation to him, with an enthusiastic, even congratulatory message.

"I want to thank you for the time you and your staff spent with us last week. All of us were impressed with the consideration shown us," Allen wrote, going on to praise the Rubashkin family and the Agriprocessors workforce. "You have much to be proud of as regards the production of Kosher meat."

Allen went on to say the commission's members "were impressed by the Rubashkins' contributions to Postville and encouraged by their commitment to making Agri a plant where the values displayed on your website are able to be lived out fully." [*Morris Allen letter to Sholom Rubashkin, August 2006*]

And in a subsequent lengthy letter dated December 2006, Allen praised Sholom Rubashkin for being accessible and approachable to his workers.

"We spoke with many people when we were in Postville.... A recurrent theme we heard was that when there is a chance to speak with you directly, concerns are heard."

One examines the letters in vain for the slightest hint of disturbing findings about terrible working conditions, oppressive company policies or inhumane treatment of employees as alleged in the *Forward* articles. Not a word about any of these allegations appears in these letters, or any other correspondence from Allen to Sholom Rubashkin.

### RUBASHKIN-BASHING BEGINS

Months later, Allen did an about face. He began to publicly malign the meat-packing plant for "inadequate or non-existent worker safety training," for "concern about unsafe chemical use" and "unclean and unsafe lunchroom conditions." (*Forward, Dec. 2006*)

Allen's slandering of the kosher slaughterhouse in interviews with the media went hand in hand with actively pumping up the need for Magen Tzedek as an ethics watchdog for kosher food companies. (*New York Times*, July 2007, Rabbi Morris Allen Blog, Oct. 2007).

There were awkward moments when his innovations hit a snag. One such moment happened in an interview with a *NY Times* reporter when Allen was asked if he had been able to validate the *Forward's* allegations.

"We were not able to verify everything," he hedged, "but we found things that were equally painful..."

He went on to air his dissatisfaction over low starting wages and the need for more safety training in Spanish. But when pressed as to whether he could corroborate the tales of squalor, forced labor, rampant injuries, dirty facilities and lack of safety training that he came to investigate, Allen artfully circumvented the subject.

### SURPRISE IN ST. PAUL

In an interview with *Yated* in 2011, former Postville Council member Aaron Goldsmith noted that at some point in Allen's dealings with Agriprocessors, it became obvious that he was working in close cooperation with labor and union activists.

Goldsmith had accompanied Sholom Mordechai to St. Paul, Minn., to what had been billed as a private meeting with Allen. He recalled his surprise upon discovering two others sitting with Allen in the social hall where the meeting took place.

"We walked into the room and there are two men connected with labor organizations whom Sholom had met during their previous visit to Agri as part of the Conservative commission - Avi Lyon and Victor Rosenthal! We were taken aback. A meeting with Rabbi Allen had become a forum

for labor activists. They put their agenda right on the table.”

The meeting focused on a bid by Allen and Lyon to have input into upper management decisions regarding some of the company’s policies. “To gain leverage with Sholom, they had pledged to use their media contacts to rehabilitate Agri’s reputation. That image had been badly tarnished by the *Forward’s* attacks, the earlier PETA campaign and union harassment,” Goldsmith recalled.

Allen eventually began to press Sholom hard for concessions, relaying demands by the labor activists in his own name. A December 2006 letter from Allen to Sholom Mordechai shows Allen arrogantly issuing instructions and demanding to be kept in the inner loop where top management decisions were discussed.

“Sholom found himself entangled in manipulation by these people whom he had allowed into the plant for one purpose alone - to verify the truth of the *Forward’s* allegations,” commented a source close to Sholom Rubashkin. “That now appeared to have been a pretext to gain entry to the plant and to assert control.”

But the plan imploded. In January 2007, Sholom Mordechai thanked Allen for his interest and suggestions but politely made it clear that senior management would not be sharing internal affairs and decisions with him.

### ALLEN SHOWN THE DOOR

Sholom Mordechai’s move was bolstered by a letter from Rabbi Zeilingold (shared with *Yated* by a Rubashkin family member), asking him not to “allow Rabbi Morris Allen and members of his Conservative commission on *kashrut* any further access to your facilities or records. From this day forward, no inspections are to be made by this group.”

“In the entire matter of Rabbi Allen and the commission’s visits to Iowa, Rabbi Allen’s dealings with me and with you have been dishonest and underhanded. Therefore, he is not to be trusted.”

“Rabbi Allen gained entrance into your Postville plant through my auspices. At my specific request, you graciously extended to him every courtesy.”

In his letter, Zeilingold explained why he felt used. Allen had insisted his visit to Agriprocessors was for the purpose of investigating the *Forward’s* charges. Instead, he had carried out a different agenda and was badmouthing the meat-packing plant over issues that had nothing to do with the purpose of his visit. (*Zeilingold letter to Rabbi Allen, January 2007*)

Zeilingold said he believed that the commission discovered that the *Forward* article was a falsehood and all of their subsequent “findings” were a result of their collaboration with the labor union. In other words, they had already written their agenda before they visited the plant.

“After the break-off of talks, Allen turned on Agriprocessors with a vengeance,” a former senior management officer at the plant testified.

By mid-2008, aided by Morris Allen’s smear campaign; by a media geared up for a feeding frenzy; powerful friends such as Labor Commissioner Dave Neil; and congressmen hungry for union support in an election year, the union had set the stage for the final knockout blow against Agriprocessors - the infamous ICE raid.

### THE BOYCOTT

By September 2008, three months after the raid, Allen and other Conservative rabbis were calling for a ban on Agriprocessors products.

The *Wall Street Journal* in an article that month disclosed that “Rabbi Morris Allen, a Conservative rabbi from Mendota Heights, Minnesota, has called on consumers to avoid the company’s products.... The Rabbinical Assembly, the association of Conservative rabbis, issued a statement [to the same effect.] It quoted Deuteronomy: “You shall not abuse a needy and destitute laborer.”

“Reaction has been swift,” the *WSJ* went on to report. “Synagogues and blogs are rallying in support of the ban. And this week the Conservative movement is set to release guidelines for an initiative called

*Hechsher Tzedek* [later renamed *Magen Tzedek*]. “

Rubashkin-bashing became a steady staple of Allen’s interviews and media appearances. In one of his worst excesses, Allen appeared in a documentary about the Postville raid, leading a demonstration against Agriprocessors, denouncing Sholom Rubashkin for “deplorable” labor practices.

Residents had gathered on the first anniversary of the raid to protest the government operation that had crushed the town. Allen and Conservative colleagues turned the event into an anti-Rubashkin demonstration, busing in hundreds of people. After a ceremony in the Postville church, Allen led demonstrators down the street to the entrance of Agriprocessors, where he lamented the abuses and “terrible exploitation” that took place at the plant.

Casting himself as the immigrants’ protector, Rabbi Allen preached humanity and compassion toward those less fortunate, all the while slinging arrows at a beleaguered fellow Jew struggling to save his company and family from destruction.

On several subsequent Shabbosim at Twin Cities’ Conservative synagogues, the rabbis distributed pamphlets telling of their recent trip to Postville where they had interviewed Agriprocessors’ workers at the labor union offices. They spread appalling stories of abuse - including physical abuse, harassment, and exploitation of workers.

Here is Allen in 2009, speaking at a HIAS immigration rally, painting Agriprocessors as a virtual house of horrors:

“From my own knowledge of what was happening in Postville, I can tell you that the plant should have been infiltrated not by the immigration folks but by the labor department, the Health and Human Services department, by OSHA! They would have been able to protest what the migrant workers were incapable of raising their voices against: the extortion, the forced labor, unsafe conditions, long hours and the intimidation and exploitation and endless types of abuse that went on here!”

### PITILESS ATTACKS AT A PERILOUS TIME

Immediately following Sholom Mordechai’s federal trial, Allen, preening himself as an expert on the case, reminded the public that “as the founders of *Magen Tzedek*, we were on the ground in Postville from the virtual start... bearing witness to the terrible worker conditions at [Agriprocessors.]

He castigated “the Rubashkin family’s flagrant disregard for the law and ethical behavior.” Allen warned the public to brace itself for shocking disclosures in the upcoming state labor trial. “The heartbreaking stories that will emerge in the course of this trial will be as cringe-worthy as they are criminal,” he advised.

--*Statement From the Hechsher Tzedek Commission Regarding The Conviction of Sholom Rubashkin, Rabbi Morris Allen, 2009*

These remarks were written about Sholom Mordechai moments after his federal trial concluded with a guilty verdict, and he was hauled off to prison and denied bail. Across the world, people following the case, strangers as well as the thousands whose lives had been touched by his kindness, wept at the outcome of the trial.

Sholom Mordechai still faced sentencing by judicial authorities who would take into account evidence of good character and decency when weighing his sentence. At such a vulnerable time, Allen’s merciless assault was akin to throwing a lighted match on gas-soaked material.

Publicity is a double-edged sword. As *Magen Tzedek’s* advocates call for its revival, they must anticipate scrutiny of its sordid origins. Rabbi Zeilingold of Minnesota, in a past letter to the editor of *Jewish Week*, briefly summed up how he viewed those origins:

“*Magen Tzedek* is built on fraud, on the anguish of an innocent Jew. In my opinion, it is nothing more than a symbol of the most unethical and contemptible standard of human behavior.”

“They can call it *Tzedek*. I call it falsehood and deceit.”

With Allen’s movement struggling to climb back into the limelight, a hard look is in order at what lies behind its humanitarian facade.

# Rubashkin Teleconference Rallies Thousands

BY DEBBIE MAIMON

A teleconference on *Shivah Assar B'Tammuz*, providing an update on current legal and investigative frontiers in the Rubashkin case, drew nearly 20,000 listeners from all parts of the country, testifying to the abiding concern in the religious community over the fate of Sholom Mordechai Rubashkin.

Hosted by Chazak and by Kol Mevaser Hotline, and emceed by Rabbi Aron Eisenberg of Monsey, the program featured a nationally recognized authority on criminal law and sentencing, Professor Douglas Berman of Ohio State University. Berman discussed the current legal initiative, the “2255 Petition,” being prepared by Rubashkin attorneys Wyrsh, Hobbs and Mirakian, a prominent law firm in Kansas

City, Missouri.

The Nitra Rov, Rav Menachem Meir Weissmandl, delivered a stirring address, urging listeners not to forget the plight and day-to-day misery of a person torn for so long from his family and freedom, and the indescribable *tzaar* of his family.

As a close and longtime friend of Sholom Mordechai, Rav Weissmandl testified to his deep *yiras Shomayim* and trust in Hashem, his overflowing *ahavas Yisroel*, and his ongoing struggle to rise above the physical and spiritual wretchedness of imprisonment.

Rav Weissmandl told listeners that he is “*mei'id* on Reb Sholom Mordechai that no matter how bleak his situation is, he has never let go of his sensitivity to another *Yid* and his determination not to be defeated by his situation. “Visitors are astounded by his smile, his warmth, his conviction that Hashem will bring him home,” said Rav Weissmandl.

he program concluded with a poignant description of a recent visit with Sholom Mordechai by his son, Getzel, and the recitation of *Te-hillim*.

## NATIONALLY RECOGNIZED AUTHORITY URGES SUPPORT FOR 2255 PETITION

Professor Douglas Berman, an expert in sentencing guidelines and other legal issues, has been an outspoken advocate for justice for Sholom Mordechai since his 2009 conviction. Berman was one of the first prominent legal voices to express outrage over the 27-year sentence, keeping the case in the limelight on his popular legal blog.

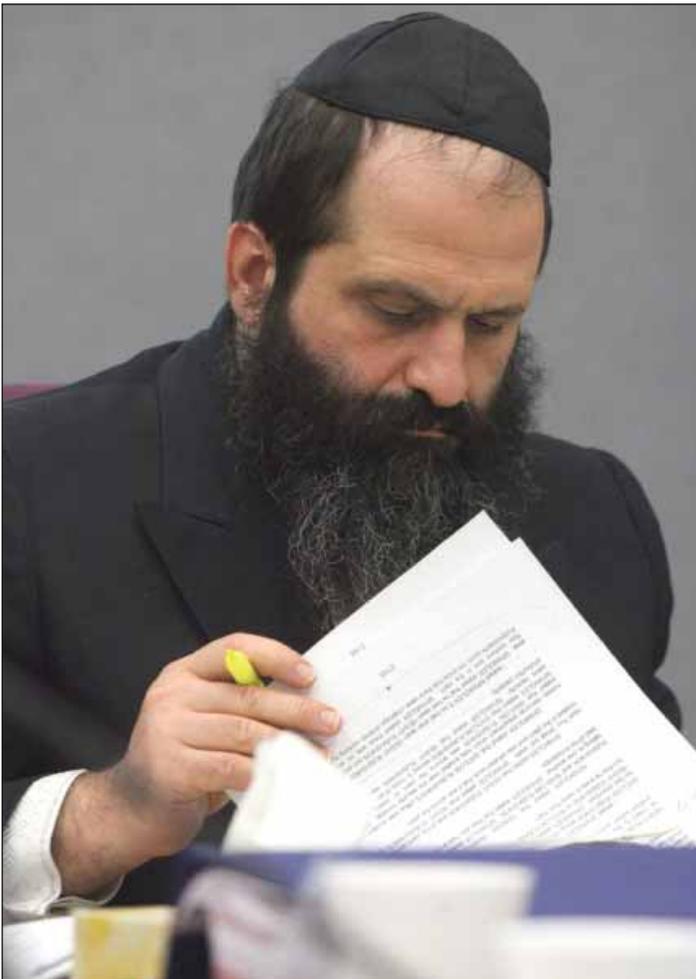
On behalf of the prominent Washington Legal Foundation, Berman authored one of the six *amicus curiae* briefs that called on the Supreme Court to hear the Rubashkin appeal in 2011.

He denounced as a “perversion” a sentence that imprisons for decades a first-time white-collar offender who posed a threat to no one, contributed greatly to society, and was never before convicted of a crime. Even if you credit the worst allegations the government threw at him, Berman told listeners as the teleconference, the sentence is a mockery of justice and throws light on how “out of whack” the Sentencing Guidelines are.

“The Guidelines have run amok,” he said, and the Rubashkin case is “emblematic” of its worst flaws.

Berman expressed his belief that although it is difficult to undo a sentence that has been affirmed on appeal, the 2255 motion, in which the court is asked to vacate the judgment, to re-sentence the defendant or to grant a new trial, is a unique opportunity to right the deep injustices in this case.

He urged listeners and the community at large to support the legal initiative, possibly the final legal avenue for justice for Sholom Mordechai. “It’s an uphill battle, but one worth fighting and I believe it



has a decent chance,” he said. “Your voices, your energy and caring are invaluable.

“I could easily speak for hours about the elements of injustice in this case... the rush to judgment and the severity of judgment that is out of all proportion to what fairness would dictate,” Berman said.

“I’m proud to be working with an excellent team of advocates that will use the best possible strategies to highlight this reality for the court in the most effective way.”

#### SEEKING AN IMPARTIAL JUDGE

In a phone interview with *Yated*, the legal scholar explained that while the 2255 motion must be filed with the trial judge- Judge Linda Reade - part of the defense’s endeavor would be to petition for a review of the case before a different, impartial judge.

“Although Judge Reade has the authority to deny this petition, and getting caught with one’s hand in the cookie jar might well galvanize a knee-jerk denial,” Berman said, “it’s likely that with strong new evidence of judicial partiality, a summary denial of the petition would simply not stand on appeal.”

True, the 8<sup>th</sup> Circuit denied the Rubashkin appeal, but this would be a very different scenario, the legal expert said. “I would surprise me if a flat-out denial of the petition, despite potent new evidence, would prevail.”

Key to success of the 2255 petition, Berman said, is the documentation and evidence that will hopefully be obtained through the FOIA lawsuit.

Experts say that the most common grounds raised in a 2255 motion is evidence that the defendant’s counsel provided ineffective assistance, a violation of the Sixth Amendment. Other possible claims include violations of due process or prosecutorial misconduct.

A claim that was raised on appeal is usually not permitted to be raised in a Sec. 2255 motion, but an exception to this rule - of keen importance in the Rubashkin case - is when new evidence has been uncovered that challenges the legality of the criminal conviction, the sentence, or the propriety of the judicial proceedings that led to these outcomes.

This provision is of special relevance in the Rubashkin case, particularly in light of the ongoing effort to obtain, through a sweeping FOIA lawsuit, classified documents from the FBI and other federal agencies that took part in the 2008 raid of Agriprocessors.

In contrast to a previous limited FOIA motion, the current lawsuit addresses the Washington “parent” agencies instead of the Iowa state regional offices, with 40 paragraphs detailing the fullest possible range

of information.

After more than a year of delays and foot-dragging by the government, all plaintiff motions and government countermotions have finally been filed in a Washington, D.C., court.

#### FOIA JUDGE READY TO MOVE

Last week, the FOIA judge instructed both sides to file a status brief, listing and clarifying the various motions that have been filed, after which she will either issue a summary ruling or grant a hearing for oral arguments.

The ruling will determine whether the federal agencies are forced to turn over significant documents, from which new evidence that may be crucial to Sholom Mordechai’s fate may surface.

The judge’s order to prepare a “status brief” came shortly after the Rubashkin team filed a supplemental brief describing the recent Stephanie Rose scandal.

Rose is a federal judge in Iowa who has come under fire in the media for conducting ex parte communications with prosecutors, trying to intimidate and railroad them into doing her bidding in order to drive up prison sentences for various defendants.

According to a *Des Moines Register* article, she was castigated in a lawsuit for manipulating a trial in which she acted as a prosecutor, calling a witness and eliciting damaging testimony.

The Rubashkin attorneys in the supplemental brief to the FOIA judge quote news reports about the outrage of a federal judge acting as “prosecutor in chief” with regard to ex parte communications with prosecutors and claiming it was just harmless “generic contacts.”

The brief says the Rose scandal shows that “this misconduct was and is the norm in the Northern District of Iowa” and that Rose was likely “emulating” her mentor, Chief Judge Linda Reade.

At the time of the 2008 ICE raid, Rose was an assistant U.S. Attorney in the Iowa’s Northern District, the third highest ranking official in the U.S. Attorney’s office. We now know that ex parte communications were taking place between her office and Judge Reade in the months leading up to the raid and its culmination - the arrest and trial of Sholom Mordechai.

It’s reasonable to assume, based on Rose’s much criticized conduct today, that as a top official in the U.S. Attorney’s office, she was involved in those secret communications with Reade.

Based in part on that collusion, the brief argues, a man was locked away for 27 years. Sholom Mordechai is entitled to see what the hidden record shows and to use whatever disclosures are relevant in his final legal bid for justice.

# *I Turned To My Father*

## Delivered at the Rubashkin Teleconference

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GETZEL RUBASHKIN

My dear brothers and sisters, thank you for joining us tonight.

Just over three and a half years ago, the friends and family of Shalom Rubashkin gathered in a courtroom in South Dakota to hear the verdict in his federal trial. Believe me when I tell you that we were expecting a complete vindication. Instead, we sat numbly for an eternity as the jury ruled “guilty” 86 times.

My sister turned to me and asked, “Do you think they’ll arrest him right away?” I said no. Remember, this was a time when news outlets were gleefully calculating how many hundreds of years a guilty verdict would mean. I could not fathom the depths of cruelty that would deny a husband and father a few days with his family before putting him in a cage for the rest of his life.

Almost before the jury finished reciting their verdict, the prosecutor was on his feet insisting my father be immediately imprisoned. He was taken from that room in handcuffs by his jailers.

As we sat in the family van for the long ride back to Iowa, my head and heart spinning, I struggled with how to react to this catastrophe.

My thoughts turned to my father. I thought of his unshakeable faith. I thought of his sad but defiant smile, and the shouted words of encouragement as he was taken from that courtroom. I turned to my father, and I saw a man who had turned to his Father, to *our* Father.

He recognized that everything that was happening was Hashem’s will. He was not at the mercy of any system or power, but in the Hands of a loving Father. He trusted his Father and he didn’t despair. And that comforted me. *His* strength comforted *me*. If he was unshaken, I was unshaken.

It is not only sympathy or outrage that has made him a household name in Jewish homes across the world. It is the inspiration and encouragement he radiates.

We are scattered across the globe, facing physical threats we have so often faced before, and spiritual threats we have never faced before. Against the backdrop of these dramatic national crises, we each have our own challenges, our own personal crises.

In our moments of confusion, we can turn to my father and learn how a *Yid* should react in moments of crisis by turning to *our* father, to *Hakadosh Boruch Hu*. In this way, we can regain our balance, our clarity, and the internal peace and strength to rise above our crisis.

The *Rayatz*, Rav Yosef Yitzchok of Lubavitch, who was imprisoned and exiled in Communist Russia, stood on the train platform on his way to a far-flung town where he was to be exiled and addressed the crowd of *Chassidim* who had come to see him off.

In the presence of his Soviet captors, he insisted that while our bodies were sent into *golus* to be ruled over by the nations of the world, our *neshamos* remained free. No one can disrupt our connection to Hashem or interfere with our devotion to Him.

My father is truly in a *golus betoch golus*, exile within a deeper exile. Our limited time will not allow me to paint the full picture of the physical hardships and isolation he endures, so let me instead tell you one small story.

My brother Moishy was also visiting my father when I was last there. Moishy is 20 years old and autistic. He has difficulty communicating, but he has a powerful loving connection with my father that he tries to express when he goes for a visit at the prison.

I was sitting next to my father and talking when Moishy blurted out, “Love Tatty kisses!” I jumped up to give him my place, and he sat down next to my father. Beaming, he began listing all the things he had recently done that he thought my father would be proud of: “*Tefillin!* Slept! Washed dishes!” he rattled off, smiling from ear to ear as my father showered him with kisses.

One of the guards called out, “Rubashkin!” and sternly motioned for my father to come over.

When my father returned, he told us why he had been summoned.



His son, Getzel, addressing one of the rallies

He had broken the rules by kissing his son more than once. “The rule,” the guard informed him, “is *one* appropriate kiss.”

Despite the imprisonment of his body and being torn from his loved ones, we see the awesome freedom of my father’s *neshamah*. His stubborn *emunah*, his unshakeable *simcha* and love of Hashem, his uncompromising dedication to Hashem. Behind steel fences and barbed wire, in a seven-foot cell, he is a true *ben chorin*, a free man.

The *Baal HaTanya* tells us that when we rise above our *nisyonos*, our crises, they have served their purpose and they are resolved. We will hear good news and we will all celebrate together. It is up to us to do everything we can to make this joyous occasion happen even sooner.

In my moment of confusion, I turned to my father and drew strength from his example. Let us together learn from his example and together turn to our father, *Hakadosh Boruch Hu*, and make an appeal to the true Supreme Court.

# Rubashkin Files New Appeal: Fresh Evidence Of Prosecutorial Misconduct

GOV'T MANEUVERED TO DRIVE UP JAIL SENTENCE; GAVE MISLEADING TESTIMONY

BY DEBBIE MAIMON

A hard-hitting motion on behalf of Sholom Mordechai Rubashkin, filed this week, brings new evidence that the government violated his right to due process of law by concealing evidence that would have significantly affected his sentence.

The brief argues that the government took actions that rendered Agriprocessors virtually worthless, unable to pay back its lending bank. It accuses the government of hiding its maneuvers from the defense and denying them at the 2010 Rubashkin Sentencing Hearing.

The government's misleading testimony ensured that Sholom Mordechai would be falsely pinned with a massive \$26 million loss amount, the brief contends.

Known as a 2255 Petition, the new motion cites multiple grounds for the draconian 27-year jail sentence to be set aside and for a hearing and Discovery to be conducted to fully develop these arguments before a judge.

An earlier appeal, denied by the 8<sup>th</sup> Circuit in 2012, focused on disclosures of *judicial* misconduct in the Rubashkin case. The findings surfaced after FOIA documents brought to light multiple *ex parte* communications between the trial judge, Judge Linda Reade, and the Iowa U.S. Attorney's Office that culminated in Sholom Mordechai's arrest and prosecution.

Being so immersed in the case compromised the judge's ability to remain neutral, rendering the trial fundamentally unfair, the appeal had argued, and entitled Sholom Rubashkin to a new trial.

The new appeal addresses the issue of *ex parte* communications from another angle: prosecutorial misconduct. By concealing improper *ex parte* interactions from the defense, the government thwarted Sholom Rubashkin's ability to act in his own defense by asking for the judge's recusal.

Even had she denied the request, the issue would have been preserved for appeal, something not possible once it was legally dismissed as no longer "timely." Thus, the concealment of exculpatory information was a violation of due process of law that should vacate the prison sentence.

## SEEKING AGRIPROCESSORS FINANCIAL RUIN

"Mr. Rubashkin's right to due process of law under the Fifth Amendment was violated when the government failed to disclose exculpatory information concerning actions it took to influence and intimidate the Agriprocessor's bankruptcy trustee and prospective buyers....and when the government presented misleading testimony concerning this issue at Sentencing," the brief states.

The prosecutors "forceful intervention quashed interest of prospective buyers, increasing the loss attributable to Mr. Rubashkin by potentially many millions of dollars," the motion argued.

Prosecutors accomplished their goal by imposing a "No-Rubashkin

Edict" on prospective buyers, prohibiting them from employing any Rubashkin family member as a consultant or member of upper management. They did this despite the fact that no one except for Sholom Mordechai had been charged or even implicated in any criminal activity.

Their improper actions caused the bank to lose the collateral it had invested in the plant, the motion said. Those losses, pegged in government papers at \$26 million, were then attributed to a grand fraud scheme and used to drive up Sholom Rubashkin's jail sentence to extraordinary heights.

A powerful rebuttal of the \$26 million figure came from financial accountant Abe Roth who traveled from Brooklyn to the 2010 Iowa Sentencing Hearing, to share the results of weeks of analysis of Agriprocessors's financial data. Roth testified that prosecutors miscalculated the amount of loss by almost \$18 million.

Prosecutors "made everyone believe that number of \$26 million is G-d-given, and it isn't," Roth said. "Where did they get this number from? It's an arbitrary number supplied by the bank. No one has produced the calculations and evidence supporting it."

The 2255 Motion underscores this argument.

Not only did prosecutors conceal evidence of their actions from the defendant, they presented government witnesses who lied on the stand about it, the new motion states.

The witnesses' testimony "downplayed or explicitly denied" the prosecutors' actions in intimidating the trustee and prospective buyers," the brief said. "This misleading testimony influenced the Court's findings concerning the magnitude of the loss attributable to Mr. Rubashkin's convictions, violating Mr. Rubashkin's right to due process of law under the Fifth Amendment."

## REVISITING THE 2010 SENTENCING HEARING: THE COVER UP

The 2255 Petition revisits the above-mentioned Sentencing Hearing at which, in response to defense claims that the government itself had orchestrated the ruin of Agriprocessors, prosecutors called attorney Paula Roby who represented the court-appointed trustee.

Roby denied the existence of any "edict" to prevent a new buyer from hiring anyone linked to Sholom Rubashkin.

"The government was only concerned that Sholom Rubashkin himself would not re-acquire ownership in the plant," Roby stated. "Having Rubashkins in the business was not at all a "deal-breaker."

Under cross-examination by defense counsel Montgomery Brown, government attorney Roby insisted there was no government-backed effort to exclude Rubashkin relatives from employment at Agriprocessors.

This writer was present at the Sentencing Hearing at which these

statements were made under oath. One could sense amazement in the gallery where scores of observers sat listening. Many clearly recalled multiple press reports in the Iowa press quoting government statements that no one from the Rubashkin family would be permitted to serve in the new Agriprocessors management. [See *Sidebar*] And here this was being denied under oath!

Astonishment among spectators grew as Mr. Brown highlighted on a large screen in the courtroom a sworn affidavit from a Brooklyn businessman. Mr. Meyer Eichler affirmed that in his negotiations as an interested purchaser, he had been informed by government authorities that he would be subject to prosecution were he to employ any Rubashkin-related employee in management after buying the plant.

In an interview with *Yated*, Mr. Eichler affirmed that he had been scared off by the warnings from U.S. attorneys. "Despite being very interested in purchasing Agriprocessors, I didn't feel confident we could operate the plant successfully without input from the Rubashkins," Eichler said. "These people are the experts in the kosher slaughter industry. In addition, the "no-Rubashkins" policy would kill the whole appeal to investors."

Shown the affidavit that collapsed her testimony deny a No-Rubashkin Edict, the government witness representing trustee Joe Sarachek squirmed in discomfort. Her testimony was followed by a defense witness who further shredded her credibility.

#### WITNESS EXPOSES GOVERNMENT'S ATTEMPT TO ALTER THE RECORD

Another defense witness, Steve Cohen of Twin City Poultry, testified that in his negotiations to purchase Agriprocessors in January 2009, he had been informed by trustee Joe Sarachek that he had to deal with federal authorities.

He and his lawyers conferenced with U.S. attorney Murphy and Sarachek, who confirmed that there was no prospect of allowing Steve Cohen to buy the plant unless he promised not to include anyone from the Rubashkin family in management. Only then, Cohen testified he was told, would the government drop its forfeiture claims against the company.

Had a buyer purchased the company when it was still a running \$80 million operation, all of Agriprocessors loans would have been repaid. New ownership of the plant would have satisfied the banks and the creditors. It would have been especially hailed by Postville residents whose town and personal lives had been so shattered by the ICE raid.

"When the beleaguered Agriprocessors meatpacking plant first filed for Chapter 11 bankruptcy protection, a small glimmer of hope emerged in Postville," wrote the *Iowa Independent*. "There was an opportunity for another company to take over operations at the plant, for production to continue and for the community not to lose its largest employer."

But it was not to be. Apparently, the survival of Agriprocessors would have defeated the agendas of various parties.

#### THE STRATEGY: CAST AGRIPROCESSORS AS CRIMINAL ENTERPRISE

If a strategy was needed to keep Sholom Rubashkin in the government's crosshairs and to legitimize the harshest possible action against both him and Agriprocessors, casting the meat-packing plant as nothing more than a criminal enterprise and a "shell company" was the perfect vehicle.

As such, the company's owners were not entitled to any of its "ill-gotten gains" and government officials could legally seize all of Agriprocessors assets.

In addition, officials used the strategy to impose forfeiture claims on all Sholom Rubashkin-owned assets, including a chicken farm, a real estate corporation and even life insurance policies.

These assaults brought about the destruction of Agriprocessors and

Sholom Rubashkin's complete financial ruin. They also caused vast losses to the company's lender bank from which Agri had borrowed millions. This too, was used to advance an agenda.

The bank's losses, pegged in government papers at \$26 million, were then laid at Sholom Mordechai's doorstep. Additional charges were used to enhance the sentencing guidelines so that prosecutors felt brazen enough to call for a *life sentence*. This, for a non-violent, first-time offender who jurors had agreed did not personally profit from his alleged offenses.

#### IMPACT OF PROSECUTORIAL MISCONDUCT

The U.S. Attorney's Office's misconduct has placed Mr. Rubashkin in the difficult position of proving how much this misconduct magnified the "loss amount," the 2255 motion filed this week argued.

"Mr. Rubashkin is forced to prove a hypothetical," the brief asserted. "What would the sales price have been absent the [government's] misconduct? How would that have reduced the guidelines requirements? Discovery will allow Mr. Rubashkin to obtain relevant information that would allow this calculation to be made to a level of certainty sufficient to meet guidelines requirements."

The brief attached an expert economist report stating that without the government interference in the bankruptcy sale, Agriprocessors' reasonably expected liquidation value would potentially have been as much as 26 million dollars higher.

In other words, Sholom Rubashkin should realistically have been able to repay his bank loan but thanks to government foul play, could not do so. His alleged offenses would have caused no loss of money to anyone and his sentence would have been vastly lower.

"Accordingly, Mr. Rubashkin should be granted leave to conduct discovery on this issue and a hearing, and ultimately, his sentence should be vacated and a new sentencing hearing granted," the brief concluded.

### "NO-RUBASHKIN" EDICT REPORTED IN THE PRESS

Countering prosecutors' denials that they had employed a No-Rubashkin rule to scare off buyers are numerous press reports of the period, a sample of which follows below.

"The issue of possible ties to the Rubashkins would be crucial to the new company negotiating the purchase of Agriprocessors. Federal prosecutors, who have threatened to seize the business as part of their criminal case, reportedly have agreed to drop that effort if a new owner proves it has no links to the old owners." *WCF Courier*, June, 2009

# Excerpts From A Letter From *Sholom Mordechai Rubashkin* To His Children

*Dearest Kinderlach,*

Let me share with you some of the unexpected *chizuk* I experienced on *yom tov* in a place called Prison, starting from the night of *Hoshano Raboh* and continuing into *Shemini Atzeres* and *Simchas Torah*.

It began with eating in the *sukkah* in the evening, then dancing at a “*simchas beis hoshoeivah*” and beginning the reciting of *Mishneh Torah*... But this snatch of happiness was cut short at 8:30, when I had to return to the barrack. By 9:40 I was locked in as usual in cell number 217. This is the time when the thunderous shouts, rowdiness and uproarious laughter flooding the barrack begin to subside into a cemetery-like quiet, as all occupants of the prison are made to settle into their “coffins,” two to a “coffin,” in six by six foot cells.

The quiet is shattered a while later by the loud barks of the guards shouting for everyone to stand up for the night count. Their heavy boots kick the metal cell doors to jolt awake some tired fellow who fell asleep waiting for the guards to come around for the count.

I manage to mentally block out these distractions to join all of you in *shul*, hearing the delicious sounds of *Yidden* learning and *davening*. And *baruch Hashem* for the understanding and respect from the person sharing cell 217, so that even after midnight, I’m able to continue saying the whole *Mishneh Torah*. There is even some time for learning until *chatzos*... I begin *sefer Tehillim* slowly with *kavonah*, with an extra dose of concentration by the special *yehi ratzon* said the night of *Hoshano Raboh* after each *sefer*.

I beg *Hashem Yisborach* to save me from my enemies and to grant me victory in the current legal challenge, Motion 2255, to be filed right after *yom tov*. May He free me today, to return to you and Mommy *b’sholom!* We all have *bitachon* that He can and will do so.

A few hours later, it’s six a.m. and *modeh ani* is said with great *simcha* because *boruch Hashem*, volunteers are coming to make a *minyán* with us! It’s approximately 8:30 when we meet in the chapel, and upon seeing other *Yidden* there with *bigdai yom tov*, with *hoshanos* in hand, there’s a wonderful rush of *simcha!* We begin dancing in a circle, holding hands... *achdus ain sof*... singing “*Vesomachta bechagecha*.”

A beautiful *davening*, with *Hallel* and *hoshanos*... followed by *leining* and *mussaf*. *Boruch Hashem* my spirit is on a high with this *hachono* for *Shemini Atzeres* and *Simchas Torah*.

## EMERGENCY MEETING

The day is broken up by an emergency meeting with a new lawyer who agreed to take on my case after my attorneys were forced to resign so close to the deadline for filing Motion 2255. Because this near disaster coincides with the fateful day of *Hoshano Raboh* and we know there are no random coincidences in life, the meeting with the new lawyer takes on a special urgency for me. It’s cut short because

all inmates have to return to the barracks for the 4:00 count, followed by another count after supper.

*Boruch Hashem*, we’re able to go to the Chapel at about 7:30. We bring the *Sefer Torah*, candles and some food for the *yom tov seudah* and proceed to the *sukkah*, where we plan to *daven* and have *hakofos*. I recall how last year it began to rain just at this time, which chased the other inmates away, but this year, *baruch Hashem*, the weather is good.

*Kinderlach*, did you ever hear the expression “*azoi vee a yovon in a sukkah*”? It means something is totally out of place. Well, in a place called Prison, they allow people to form their own religious groups. There are a few people who follow a religion that imitates Jewish practices. They watch what we are doing and over the years, copy more and more of what *Yidden* do, asking for a *lulav* and *esrog*, and a “prayer shawl,” etc. Then they say they are the “real” Jews, and are entitled to the few “luxuries” the *Yidden* have here, such as grape juice and *challah* on *Shabbos*.

So on *Sukkos*, they can take their food and eat it in a “tent”-- *traifah* food that is revolting to see and smell, giving one the feeling of what it must have been like on the first day of Creation, when there was “*irbuviah*” of darkness and light. On the night of *Shemini Atzeres* they came in just when we did. After lighting the candles, we started *davening*. Although we did not have a *minyán*, I *davened* aloud in the style of a *chazan*, to dull the pain of not being in *shul* with all of you and to add to my *simchas yom tov* in this dark place.

Suddenly, this other religious group begins chanting prayers addressed to the one they worship. They stood up with one guy draped in a prayer shawl chanted loudly, almost drowning out our *davening*. How can we possibly have *hakofos* in this little *sukkah* with this disturbance, I wondered.

Maybe if it rains, I thought, they’ll leave but the other *Yidden* might also leave, like last year. The best thing to do, I decided, is to follow *kapitel nun hei: Hashleich al Hashem yehovcha vehu yechalkeleka*. Throw your burden on *Hashem* and He’ll take care of it.

## ATOH HORAISOH AND HAKOFOS

We had precious little time for our *simchas Torah* and *hakofos* before the nighttime lock-in, so we began *Atoh Horaisoh*, *posuk* by *posuk*. Those who could read were *mechubod* with the *pesukim* and the others repeated in English. They seemed to identify personally with the rich meaning of the *pesukim* of *Atoh Horaisoh*. After a few *pesukim*, one could see their *neshomos* shining through.

Then we began *hakofos*; the *aron* was opened and the *gabai* gave me the *sefer Torah* to lead the first *hakofoh*. “*onoh Hashem hoshioh noh!*” *onoh Hashem hatzlicheh noh!* .....*aneinu beyoim korainu!*”! The words came crying out.

Our group all joined in, singing loudly with great emotion. Then we danced around the “*bimah*” (which was a table) to the song of “*Ve-somachto bechagecha*” – a familiar tune since it was sung repeatedly over all the previous days of *Sukkos*. Some of the people eventually picked it up, especially the *ay ya ya ya aya!*

The second *hakofoh* starts... We sing “*Atoh bechartonu*,” thinking of how a *Yid* needs to be happy to be a *Yid* even in a place called Prison, because *Hashem* chose the *Yidden* to be his nation forever.

Just looking at the faces shining with unusual happiness, one could see the *yiddishe neshoma* on fire! I was facing the *iYid* holding the *Sefer Torah*, helping him around the “*bimah*”, our hands locked together around the *Torah* as we sang and danced up and down together.

And here comes the high point of the story. Throughout this scene, the “*yevonim*” were just standing there frozen, staring at *Yiddishe* faces aglow in happiness to be dancing with the *Torah*, hearing our voices reveal our genuine *simcha* even in this bleak place. The joy and harmony of these lofty moments were coming from the depths of our hearts... banishing all worries and cares because all that matters is that we are *Yidden* and we are happy to be with our Father, our King!

I suddenly open my eyes to find — they are gone! No one knows why. They just turned and left. The *sukkah* now has only *Yidden* inside, dancing the *hakofos* with the *heilige sefer Torah*. And the singing rises a notch!

The *hakofos* continue with the dancing even more intense, with one eye on the clock as the time gets closer to 8:30. We focus on the meaning of the song, *Utzu aitza v'sufar*... asking *Hashem* to collapse all the plans of our adversaries. And in *hakofoh vov*, *Vechol karnei reshaim agadaiya*, asking *Hashem* to crush the *reshaim* who scheme to destroy us.

I hate to have to rush the *hakofos*, I could dance here all night. But all too soon it's 8:30 and time to return the *sefer Torah* to the chapel.

Then we made *kiddush* and eat *seudas yom tov* until we have to go back to the barrack for “Lock-in.”

We reach the barrack a few minutes early. Not wanting to waste a minute of dancing and *simcha*, I join another *Yid* in his cell to continue dancing with him in honor of *Shemini Atzeres*, as the *mitzvah* of the

day is *simcha*... Finally, it comes to an end as the guard shouts out, “Lockin!”

#### A JOY THAT CAN'T BE DUPLICATED

Locked in cell 217, the *simcha* of the *hakofos* flood my mind and I wonder again what caused the “*yevonim*” to suddenly leave the *sukkah*. They had all the “props” they thought they needed to be the “real Jews” – *talleisim*, *lulav* and *esrog*, a *siddur*, grape juice and a *challah*. Anyone can have these things, anyone can put themselves on the Jewish list and perform Jewish practices with these objects. But there is one thing that only a *Yid* can do.

Only a *Yid* can be *besimcha* because he's a *Yid*! Only a *Yid* can hold a *sefer Torah* and dance with joy because he is one with *Hashem*! Even in a place called Prison he can attain this unique state. This kind of *simcha* can't be copied or imitated. It can only be experienced by a true *Yid*. Faced with this outpouring of *simcha* they could not duplicate or understand, the *yevonim* backed away and bolted for the exit door.

So *Kinderlach*, think about the lesson in this. “*VeYaakov holach ledar-ko*,” we are all *Yaakovs* journeying through life and trying to overcome our *nisyonos*. *Hashem* will help us reach that goal, becoming stronger and greater in the process.

We need to be *besimcha* because that is when we reveal the *yechida* of our *neshomo*, which is always one with *Hashem*. It's the part of us that knows nothing else, wants nothing else and enjoys nothing else.

It's the part of us that says we will be a *Yid* connected to *Hashem* by keeping His *Torah* and *mitzvos*, and in this way, rise above all our challenges and merit our *geulah*.

When *Hashem* sees we only want to be with Him without any limitations, then He does *midah k'neged mida* with us, giving us all his *brochos* and *yeshuos* without limitations, in *gashmiyus* and *ruchniyus*.

*Kinderlach*, today is my birthday and it's also Tatty's and Mommy's wedding anniversary, the day we were united as one. May *Hashem Yisborach* re-unite Mommy and me in our home with all of you today! *Frailach, frailacher, frailacher!*

*I love you,  
Tatti*

# Rubashkins: Buckling Isn't An Option

BY DEBBIE MAIMON

Fueled by new revelations in the Rubashkin case, a Recusal Motion filed last week by Sholom Rubashkin's attorneys asks Chief Judge Linda Reade to disqualify herself from the pending 2255 Motion filed in October.

The latest legal bid rests on new disclosures that Judge Reade violated the defendant's right to due process of law by withholding important information from his attorneys before his sentencing.

To briefly recap, the 2255 Motion alleged this same ethical and legal failure on the part of the government. Withholding information which was the prosecutors' duty to give Sholom Rubashkin - material that might have significantly affected his sentence - turned the conviction and sentencing into a travesty of justice.

The 2255 Motion sought on multiple grounds to have the trial vacated or at the minimum, to have the outrageous 27-year jail term set aside or corrected.

It presented an array of documents and sworn affidavits that uncovered government strategies to block the sale of Agriprocessors while it was still generating up to \$300 million in revenue annually.

The documents show that Iowa U.S. Attorney's Office, led by Assistant U.S. Attorney Richard Murphy and Assistant U.S. Attorney Peter Deegan, schemed to bring the meat-packing plant to ruin. They orchestrated the destruction of Agriprocessors, denying and then concealing their actions from Rubashkin's defense lawyers.

Facts in the record show that Murphy, Deegan and other officials of the USAO (U.S. Attorney's Office) hampered the trustee's efforts to re-sell the plant and to keep it operating so that it could continue to generate revenue to repay the company's debts. At the time of bankruptcy, Agriprocessors was worth over \$80 million.

"Mr. Rubashkin's right to due process of law under the Fifth Amendment was violated when the government failed to disclose exculpatory information concerning actions it took to intimidate the Agriprocessor's bankruptcy trustee and prospective buyers.... and when the government presented misleading testimony concerning this issue at Sentencing," the 2255 Motion stated.

The prosecutors' "forceful intervention quashed interest of prospective buyers, increasing the loss attributable to Mr. Rubashkin by potentially many millions of dollars," the brief said.

## AUDACITY

As it subsequently became clear, the scheme, coupled with contrived allegations aimed at enhancing the prison sentence, gave prosecutors the audacity to ask for a life sentence. Only after harsh criticism poured in from legal luminaries across the country did they back down and amend their recommendation to an outrageous 25 years.

Shrugging off criticism from the country's most acclaimed legal scholars, Judge Reade exceeded the prosecutors recommendation,

adding on two more years to Sholom Rubashkin's virtual life sentence.

Eighty-six legal experts - including former attorneys general, senior officials at the Department of Justice, United States attorneys and federal judges - signed an amicus curiae brief supporting Rubashkin's first appeal in 2012, asserting that the judge should have recused herself.

Over the course of the following two years, nearly 70 congressmen would separately write letters to Attorney General Eric Holder demanding a review of this case and expressing concern over what they condemned as judicial and prosecutorial misconduct.

The government's response to the 2255 filing was to issue a terse categorical denial of all wrongdoing. The matter is now before Chief Judge Linda Reade.

## BASICS OF THE RECUSAL MOTION

The Recusal Motion argues that Judge Reade is obligated to step down from the case after revelations that *additional* ex parte communications and exculpatory evidence was withheld from Sholom Rubashkin's lawyers at the time of sentencing.

Had his attorneys had the benefit of this evidence, the motion states, they would have moved to have Judge Reade recused from the sentencing.

"Recusal is necessary because the case is littered with factual and legal issues so closely connected to the actions, statements, and relationships of the Presiding Judge that an observer might reasonably question her ability to remain impartial," the motion states.

Filed by Iowa attorneys Stephen H. Locher and Matthew C. McDermott, the brief cites two categories of ex parte communications and judicial breaches by Judge Reade that have recently come to light.

The first involves Judge Reade's husband, Michael Figenshaw, an attorney with a prominent Iowa law firm. The second category of disclosures pertains to what Judge Reade claimed were "threats" against her by people she believed to be Rubashkin supporters.

## READE-FIGENSHAW-RUBASHKIN ENTANGLEMENT

Judge Reade's husband, Michael Figenshaw is a senior partner in the Bradshaw Fowler (BF) law firm that represented Sholom Mordechai in a number of bankruptcy proceedings, following the collapse of Agriprocessors after the 2008 immigration raid. These bankruptcy proceedings revolved around a number of Rubashkin owned companies such as Nevel and Cottonballs.

Court papers show the Rubashkin business entities were major clients of the Bradshaw Fowler firm, as ten different BF attorneys, two law clerks and four legal assistants billed time for Rubashkin bankruptcy matters.

The Bradshaw Fowler firm was in possession of significant confi-

dential information from Sholom Rubashkin that was directly relevant to his financial trial. The firm also had privileged client information that pertained to the 2255 Motion.

Judge Reade never disclosed to Rubashkin attorneys her marital relationship with an individual whose firm was in possession of Rubashkin-sensitive information during the weeks leading up to the sentencing.

Had Rubashkin's attorneys known about the Bradshaw Fowler angle at the time of sentencing, and the possibility of privileged information traveling inadvertently or consciously from Figenshaw to Reade - from husband to wife - they would have immediately sought Judge Reade's recusal, the motion states.

#### COUNTRY'S FOREMOST RECUSAL EXPERT WEIGHS IN

In a sworn affidavit filed with Recusal Motion, the country's foremost expert on recusal issues, Richard Flamm, expressed his opinion that the Figenshaw-Rubashkin-Reade entanglement obligated Judge Reade to recuse herself *on her own initiative*.

Flamm said any reasonable person "would believe that Judge Reade was well aware of this [entanglement] and would have expected her to recuse herself from presiding over Mr. Rubashkin's criminal trial.

It is self-evident that such an entanglement is fertile ground for partiality - or the appearance of partiality - to taint the court proceedings.

She was required "to disclose the fact of her marital relationship with a senior BF partner to Mr. Rubashkin's counsel, so that counsel could consider whether to file a motion to disqualify her on this basis," the recusal expert said.

"The fact that that Bradshaw Fowler was *representing* Rubashkin and his companies, not opposing him, does not weaken the appearance of partiality," the Motion stresses.

"Someone in Mr. Rubashkin's position might legitimately be concerned that the judge will 'bend over backwards' to avoid any appearance of partiality toward him, thereby inadvertently favoring the opposing party (in this case, the government)."

While Figenshaw did not personally represent Rubashkin, he certainly knew that his firm was working closely with him. Figenshaw was also undoubtedly aware that his wife was presiding over Rubashkin's criminal trial, daily reports of which were carried by all the leading newspapers.

Despite the compromising situation in which his connection to Sholom Rubashkin placed Judge Reade, she failed to inform the Rubashkin team that she was married to a senior partner in the law firm representing him.

That Figenshaw-Rubashkin relationship declined after BF was replaced as counsel by a government trustee who took over the management of Nevel and other Rubashkin properties.

BF law firm lost most of the Rubashkin account and a fee dispute arose between Bradshaw Fowler and the Rubashkins. As Figenshaw was a senior partner in the firm, he was no doubt impacted by the financial ups and downs of the Rubashkin account and may have held Rubashkin responsible

- another circumstance that might make a defendant wonder about Judge Reade's ability to remain impartial.

Whether factual or speculative, the very possibility of entanglement between Reade's husband and Rubashkin automatically promotes the appearance of partiality and would mandate Judge Reade's recusal, the brief said.

"No judge, no matter how well intentioned, could be expected to address matters in which her husband's law firm was - and still is - providing assistance to Mr. Rubashkin, and rule on other issues of which she has knowledge from extrajudicial sources without legitimate questions being raised about impartiality," the motion says.

#### READE TURNED TO NORTHERN DISTRICT USAO TO INVESTIGATE ALLEGED 'THREATS' AFTER THEY RECUSED

The recusal motion cites a second issue that generated ex parte communications between Judge Reade and the US Attorney's Office of the Northern District that should have been shared with Sholom Mordechai's attorneys. That is the subject of the so-called "threats" - or what Judge Reade perceived as such - that were emailed to her in the months preceding the 2010 sentencing. Reade linked these alleged threats to Rubashkin supporters and turned the emails over to the USAO of the Northern District.

Since they were deeply involved in prosecuting Sholom Rubashkin, objectivity in conducting an inquiry into "threats" that Reade believed came from Rubashkin supporters would be hard to maintain. The USAO of the Northern District therefore recused themselves, referring the matter to the Southern District.

The Northern District should subsequently have played no role in the investigation, yet Judge Reade engaged them in ex parte communications about it. The prosecutors failed to disclose these communications to the defense, the Recusal Motion states, beyond informing them they had recused themselves on the matter.

Obviously, a defendant would want to know if the judge about to sentence him believes that his supporters "threatened" her. A defendant in this situation would legitimately wonder if the judge might retaliate by being unduly harsh. He would want to be armed with as much information as he was legally entitled to in order to protect his right to due process.

"Indeed, there are only two apparent reasons why the Presiding Judge would reach out to the USAO to express concerns about the threat investigation despite that office's recusal," the Recusal Motion states.

"Either she wanted to enlist the support of USAO in trying to convince law enforcement agents to move the investigation along; or she wanted to express frustration to a listener she perceived to be sympathetic. Either scenario raises serious questions about whether the presiding judge was too close with the USAO."

In tracing the rampant improprieties surrounding the prosecution and sentencing of Sholom Rubashkin, the Recusal Motion highlights a brazen pattern of judicial and prosecutorial highhandedness that takes disdain for the law to new levels. In that sense, it is possibly a game changer, capable of bringing long-deferred justice for Sholom Rubashkin a bit closer.

— Pre-Pesach Thoughts —

## A Letter From *Sholom Mordechai Rubashkin* To His Children

Dearest *Kinderlach*, *sheyichyu*,

I image you are busily preparing for *Pesach*, the *Chag Hageuloh*, anticipating the most special time of the year, the *Seder*, when we break out of our old limitations and embrace the newness of freedom.

Do you wonder what kind of preparations a *Yid* can do while sitting in a place called Prison, a place of literal “Mitzrayim,” constriction and spiritual *tumah*, where the coldness and darkness seems impossible to penetrate? Every moment here is a constant reminder to the *Yid* of his personal bitter *golus*: the high steel fences crowned with razor wire, tiny suffocating cells, overcrowded, deafening barracks with their barred windows, and the countless restrictions intended to develop a *golus* mentality.

In the bitter years of Soviet Russia, where Torah learning was a crime, a few *Yidden* gathered in a cold, dark cellar to learn Torah with *mesiras nefesh*, by candlelight. One *Yid* came in after the others and quietly slid into an empty spot, whispering, “Oh! It’s so very dark in here!” His friend whispered back, “Don’t worry. In a short while your eyes will get used to the darkness.”

The leader spoke up. “*Golus* is when we become used to the darkness,” he said. “Our job is to bring in light that will push away the darkness and bring the *geulah*!”

As it was in Soviet Russia, so it is in a place called prison. There are those who whisper, “Get used to the darkness. Be like one who is comatose, dead to the world, and you won’t feel the pain! But the *Yid* is alive. He feels the pain deeply and it makes him cry out, “*Gevald!* Already five *Pesach Sedorim* alone behind the Iron Curtain!” And the darkness whispers back, “*Nu*, so if there were already five *Pesach Sedorim* in darkness, does that not make a 6th *Pesach Seder* in darkness easier to get used to?”

The *Yid* says, “*Chas v’sholom!* Getting used to darkness is *golus*, and we’re celebrating *geulah*, freedom!” Since even a little light will push away a lot of darkness, and the light is our *Torah*, I am preparing for *Hashem Yisborach* to give me a real *seder* in freedom by learning Torah now with you *kinderlach*. As *Chazal* say, “*Ein lechah ben chorin elah mi she’osek baTorah*,” the only truly free person is one who immerses himself in Torah.

May He grant us the happiness of being together this *Pesach* at the *Seder* as *bnei melochim*, celebrating *cheirus*, and may He grant me what I yearn for, to be *mekayem* the *mitzvah* of *vehigadeta levinchah* with my precious family.

*Pesach* teaches us so many things, including *emunah*, *bitochon*, *mesiras nefesh*, *chinuch*, and *zman cheirus*. Let’s begin with the part that is closest to our hearts: *zman cheiruseinu*. Let’s try to grasp the true meaning of *cheirus*.

*Chazal* teach that the closeness of *Purim* to *Pesach* is not by

chance. The two miraculous redemptions are closely connected. Hinting at this connection is the fact that *Homon Horosha* was hanged on the second night of *Pesach*. Additionally, we find strong similarities between *Mordechai Hayehudi* and *Yosef Hatzadik*, who *Chazal* say prepared the *Yidden* for their deliverance from *Mitzrayim* by teaching them the code words, “*Pakod yifkod*,” *Hashem* will surely remember and redeem you.

*Mordechai Hayehudi* and *Yosef Hatzadik* were both *mishneh lamelech* to a powerful king. Both men were given extreme, life-threatening *nisyonos* and both were victorious, remaining strong and unwavering in their devotion to *Hashem*, not only in times of hardship but also in times of great wealth and power.

Just as we were *zoche* to *neis Purim* by following the leadership of *Mordechai Hayehudi*, the fiercely proud *ish Yehudi* who refused to bow to anyone or anything not “*Yehudish*,” we merited to save ourselves from *Paroh* and his wicked intentions by following the ways of *Yosef Hatzadik*.

How did *Yosef* behave? He remained true to himself and his upbringing wherever he was. Even after being separated from his family and being taken captive and enslaved, even in the house of his *Mitzri* master, *Yosef* never compromised his beliefs. He never tried to curry favor with the higher ups. He was loyal to *Hashem Yisborach*. Everyone who knew *Yosef* knew *Hashem ito*, *Hashem* was with him.

*Yosef* also taught others to know the truth of *Hashem*. Whether in prison or standing before *Paroh*, he said, “*Bilodai, Elokim yaaneh es shlom Paroh*.” It’s not me, don’t give me the credit; it’s *Hashem Yisborach*.

On the first *posuk* that describes the beginning of *golus* *Mitzrayim*, “*Vayokom melech chodosh...asher lo yoda es Yosef*,” *Rashi* explains that *Paroh* behaved as if he did not know *Yosef*. In order to deal so treacherously against *Yosef*’s people, *Paroh* needed to pretend to not know *Yosef*, the benevolent ruler who had saved *Mitzrayim*.

He used the same strategy on the *Yidden*. The only way he could turn them into slaves was by engineering that they too would “not know *Yosef*,” and they would forget his teachings and most of all, his powerful inspiring example of how to live as a *Yid* in the most degenerate *sevivah*.

He did that by playing on their desire to be accepted as patriotic citizens of *Mitzrayim*. To prove their loyalty to the *Paroh*, they tried to outdo even the *Mitzrayim*. Such a mindset, when a *Yid* devotes himself to winning approval from a non-Jewish ruler to the point of adopting foreign practices out of fear of displeasing him, is the beginning of enslavement.

King *Paroh* put on a smile on his face and spoke soft words (*peh*

*rach*) to coax the *Yidden* into joining him in his vision of building up Mitzrayim, and into thinking and behaving like Mitzriim. The *Yidden* needed to stop thinking like Yosef, who knew Mitzrayim was not his country and was but a temporary sojourn, and therefore anticipated and yearned for redemption.

The *Gemora* emphasizes that the soft, deceptive approach of “*b’perach*” was a trap, and the *Yidden* fell into it. Perhaps the message for us is that these are the very same methods often used to enslave *Yidden* spiritually throughout history. *Chazal* tell us how to counter this scheme: “In every generation we are obligated to see ourselves as going out of Mitzrayim.” In every age we have to reject the trap of *peh rach*, the seemingly benevolent smiles and intentions of people who seek to make *Yidden* “not know Yosef.”

From *Purim*, we learn to be like Mordechai Hayehudi, who possessed inner strength and determination to remain an *ish Yehudi*.

From *Pesach*, we learn to be as staunch as Yosef Hatzadik even in a place like Mitzrayim. Because these giants succeeded in their *nisyonos*, they gave us the strength to do the same, even in a place called Prison where it seems impossible.

Amazingly, dear *kinderlach*, it is possible with Hashem’s help to find the true meaning of *geulah* even in a place that is shrouded in ultimate darkness and *tumah*. That is because “we know Yosef,” who taught us the *nevuah* that Hashem remembers us and will take us out of *golus*.

May Hashem help us serve Him without limitations and restrictions, and may He take each and every *Yid* out of his or her physical and spiritual Mitzrayim. May he free me from prison to be together with my family this *Pesach*, and may the upcoming *zman cheiruseinu* bring the coming of *Moshiach tzidkeinu*, *amein*.

Love,  
Tatty

# Dramatic FOIA Disclosures Fuel New Rubashkin Brief

BY DEBBIE MAIMON

A powerful Reply Brief filed by Sholom Rubashkin and his attorneys uncovers fresh evidence of government misconduct in the withholding of crucial information from the defense that could have radically altered the outcome of the case.

The dramatic twist came just two weeks ago, as evidence emerged from new FOIA documents released by the FBI to Rubashkin attorneys just a few days before the brief's filing deadline.

Sholom Mordechai has been sitting behind bars for almost five years. His ongoing quest for justice has powered a series of hard-hitting appeals that have cumulatively ripped aside the legal veneer covering a shocking saga of prosecutorial and judicial misconduct. These egregious breaches of the law demonstrate that Sholom Mordechai's conviction and sentence were obtained through the violation of his constitutional rights.

The Reply Brief supports a Recusal Motion seeking to have Judge Reade recuse herself from the case. It accompanies a 2255 Motion seeking to vacate his conviction and sentence on the grounds that he was denied due process of the law and his right to a fair trial.

Both Motions have been opposed by the U.S. Attorney's Office in Iowa's Northern District (USAO) - whose lead prosecutors tried the case against Sholom Mordechai. The Motions trace the USAO's repeated violations of the Federal Code as well as Judge Reade's judicial misconduct in engaging in secret ex parte communications with the USAO in connection with Sholom Mordechai's prosecution and trial.

## SECRET COMMUNICATIONS CONTINUED TO SENTENCING PHASE

The Reply Brief establishes for the first time that those ex parte communications extended beyond the trial to the sentencing phase. It demonstrates, with the help of newly released FOIA documents, that Judge Linda Reade's deep personal entanglement in the Rubashkin case requires her to recuse herself and turn the 2255 Motion over to an objective judge.

The FOIA documents provide new evidence of that multi-leveled entanglement. In particular they shed light on an obscure "threat investigation" conducted by the FBI after Judge Reade complained that threatening letters had been sent to her by supporters of Sholom Rubashkin.

Based on the FBI documents, the Reply Brief, filed by Rubashkin attorneys Stephen Locher and Paul Rosenberg of Des Moines, Iowa, charges the government with continuing to withhold crucial facts surrounding the "threat investigation."

Had these facts been disclosed - particularly the ex parte communications about the investigation that took place between Judge Reade and the USAO - Sholom Mordechai and his attorneys would have vigorously sought Judge Reade's recusal, the Brief states.

The Brief also elaborates on legal problems posed by the recently discovered conflict of interest involving Judge Reade's husband, Michael Figenshaw, a senior partner in the Bradshaw Fowler law firm that represented Agriprocessors in extensive bankruptcy proceedings and continues to provide legal assistance to Sholom Rubashkin.

Figenshaw had access to privileged and sensitive information about Sholom Rubashkin's legal affairs, information that was material to the 2255 Motion. The possibility of that information traveling from Figenshaw to Reade, from husband to wife, destroys all appearance of impartiality, the Recusal Motion stated.

The Motion questions how judicial neutrality could have survived the Figenshaw-Reade-Rubashkin entanglement. It demonstrates that, already compromised by the pre-raid *and* pre-sentencing ex parte communications, Judge Reade's ability to remain objective was severely undermined by her husband's legal and business relationship with Sholom Rubashkin.

## 'THREATENING LETTERS' SCANDAL

Many are aware of how secret pre-raid communications in 2008 between Judge Reade and the prosecutors robbed Sholom Mordechai of a fair trial. Until very recently, however, virtually nothing was known about the *pre-sentencing* ex parte communications that took place shortly before Sholom Mordechai was sentenced - and perhaps earlier. These secret communications culminated in Reade imposing a draconian sentence of 27 years in May 2010.

All that was known at the time about these communications was that in April 2010, one week before the Sentencing Hearing began, Rubashkin's trial counsel received a government email informing them of an ongoing investigation into alleged threats against Linda Reade made by "Rubashkin supporters." Copies of emails that supposedly contained the "threats" were attached to the government's email.

According to sources close to the case, the letters Reade brought to the authorities' attention were critical of the way she handled the Rubashkin trial. One letter talked about there being a G-d of justice who ruled the world and was watching the Rubashkin case.

The government email referencing these letters came from the US Attorney's Office (USAO) of the Northern District. The USAO advised Rubashkin's trial counsel that its office was not involved in the investigation because it concerned a Northern District judge.

When dealing with threats against a judge, prosecutors in the same district as the judge routinely turn the investigation over to another district. That eliminates all suspicion that prosecutors in the judge's district might be excessively harsh with "threat" suspects in order to ingratiate themselves with the judge. It also eliminates suspicions that prosecutors who dislike the judge might be too lenient with the suspects.

## A SLY INSURANCE POLICY

The Northern District thus recused itself from the investigation, turning the matter over to the Southern District. But in their email informing the Rubashkin legal team of this action, they slipped in a “carefully crafted half-disclosure,” the Reply Brief notes, “designed to allow the government to later argue ‘waiver.’”

In other words, the U.S. Attorney’s Office added a piece of information that they could later brandish as evidence that the defendant had a choice to protest some aspect of the prosecution against him but chose not to. He would therefore be barred in the future from using that element in an appeal.

What was that element? Contained in the “half-disclosure” transmitted to Sholom Mordechai’s attorneys was a partial admission by the government that Judge Reade had been in communication with the U.S. Attorney’s Office about the alleged threats “being investigated by the FBI.”

In that admission, the Assistant U.S. Attorney wrote, “*Judge [Reade] expressed concern to the U.S. Marshal’s Service and our office’s management about the progress of these [threat] investigations.*”

This last sentence - the USAO’S “insurance policy” against a Rubashkin appeal - explicitly references ex parte communications between Judge Reade and government prosecutors on the eve of Sholom Mordechai’s sentencing.

But what could be wrong with a judge communicating with prosecutors and law enforcement about the progress of the FBI investigation into so-called hooligans who threatened her?

What’s wrong is that Reade was coming to the wrong address, the Recusal Motion states. It wasn’t the Northern District’s business how the investigation was progressing and Reade knew it. So why was Judge Reade questioning prosecutors in the Northern District about a “threat” investigation being handled by the Southern District?

## READE ‘FRUSTRATED’ OVER INVESTIGATION BEING DROPPED

The answer jumps out from the newly released FOIA documents, quoted in the Reply Brief. According to FBI reports, Reade’s allegations that she was being threatened turned out to be baseless. After meeting with and questioning the author of the letters, the FBI determined that she had in no way threatened the judge and had no intention of traveling to Iowa to cause her physical harm.

Far from being an active investigation as the government’s April 23, 2010 email to the defense implied, the FBI had dismissed the matter as harmless and closed the investigation many weeks earlier!

Those familiar with Judge Reade say the FBI’s shrugging off her allegations likely infuriated her. The government brief acknowledges she was “dissatisfied” and “frustrated” with the outcome of the investigation. Apparently, she then turned to her friends and colleagues in the Northern District, “expressing her concern about the [lack of] progress in the investigation” – apparently hoping they would take a more severe look at Rubashkin supporters who had the audacity to criticize her.

According to the government’s April 2010 email to the defense, prosecutors in the Northern District told Judge Reade “we are recused on the matter” and directed her “to the appropriate FBI office and the U.S. Attorney’s Office in the Southern District.”

What happened then? Inasmuch as the government has refused to turn over any of the emails, notes or records of conversations it had with Judge Reade about the threat investigation, one can only speculate.

“Perhaps Judge Reade felt Sholom Rubashkin was responsible for the alleged threats and felt a temptation to punish him,” the brief notes. Perhaps her cozy relationship with the Iowa prosecutors led her to believe they would break protocol and launch their own investigation to satisfy her.

Their failure to do so “might have contributed to her decision to

impose a longer sentence on [Rubashkin] than the Northern District requested,” the Reply Brief suggests, adding that if the government were to simply turn over the requested documentation as they should have from the start, speculation would be unnecessary.

## A THREATENED JUDGE IS A BIASED ONE

Whatever the actual scenario driving the USAO’s telltale email about the threats, the fact remains that a threat (or perceived threat) to the presiding judge can “create a bias problem,” the Reply Brief states, quoting the 8<sup>th</sup> Circuit in a similar case.

“Even if the judge were one of those remarkable individuals who could ignore the personal implications of such a threat, the public reasonably could doubt his ability to do so,” a 10<sup>th</sup> Circuit Court judge agreed in another case where a judge was threatened.

The apparent consensus is that the strong likelihood of bias in a judge who feels she has been threatened is enough to disqualify her from presiding over the case.

But Judge Reade had no intentions of recusing from the Rubashkin case. Perhaps this is why the threat investigation was kept secret from the defense until April 23 2010, just a few days before sentencing - an intensely pressured time for a defendant and his trial counsel when it would be close to impossible to pursue the matter.

## DOCTORING UP THE FACTS

Although the FBI concluded by early March that there were no actual threats and no one intended to fly down to Iowa to harm Judge Reade, the U.S. Attorney’s Office omitted these conclusions entirely from its pre-sentencing email to the defense.

Instead it falsely presented the matter as an active investigation that was still clouded in secrecy. That discouraged the defense from asking for more information about the threats and Judge Reade’s involvement in the matter.

Waiting till the eleventh hour to inform the defense about it had another key advantage for Reade and the USAO apparently working in tandem with her: It would be too late for Sholom Mordechai to file a recusal motion.

Even now, despite repeated requests for the full range of Reade’s pre-sentencing communications with the USAO about the threat investigation, the government refuses to yield this information.

Sholom Rubashkin and his lawyers were thus forced to file a FOIA request to discover whatever they could. It was only when the FBI documents were finally released that they discovered the USAO’s subterfuge. Only then did they learn how prosecutors had thrown the defense “off the scent” by misrepresenting key facts about the threat investigation - hiding the true time frame in which it took place and the fact that the matter had been thoroughly researched and officially closed.

The government now insists the investigation is a “wholly separate matter unrelated to the Rubashkin case” (contradicting its own April 2010 email to the defense), and there is therefore no need to disclose anything more about it.

As expected, the government also claims that Sholom Rubashkin waived his right to seek Judge Reade’s recusal over the threat investigation, because he did not do so at the time he was informed (in the government’s sly half-disclosure, prior to sentencing) about her involvement.

## DESPERATE MEASURES?

So damaging to Judge Reade’s and the USAO’s credibility are the disclosures in the latest Rubashkin Motions that one can’t help but wonder if a pattern of strange events that nearly prevented the Reply Brief and the 2255 Motion from being filed on time were deliberately orchestrated.

One recalls the bizarre circumstances six months ago in which former Rubashkin attorney James Wyrsh of Missouri was forced to withdraw from the case days before the 2255 Motion he was working on

was to be filed.

Wyrsh and other members of the Rubashkin legal team, including trial counsel Guy Cook, were accused by the USAO of Iowa's Northern District of harassing Rubashkin jury members.

They were charged with contempt of court by Judge Reade and forced to appear before her to answer outlandish charges about their role in the interviewing of Rubashkin jury members as part of the 2255 Motion. Faced with a sudden conflict of interest set up by Judge Reade, attorney Wyrsh was forced off the case - virtually on the eve of the Motion's filing date.

Sholom Rubashkin was suddenly without a lawyer, the window quickly closing on one of his last legal bids for justice and freedom.

Finding another lawyer at the last minute with expertise in 2255 Motions to undertake a case so intensely complex, with a deadline so tight, was almost impossible, sources close to the defense say.

One needn't be a conspiracy theorist to sense something sinister in the legal maneuvering by the USAO and Judge Reade that stripped Sholom Rubashkin of his legal counsel at such a crucial time.

Similarly, though in a far less sensational manner, due to a most unusual delay in the Court's response to a requested extension, the Reply Brief, too, came perilously close to not being filed on time.

Threatening indeed, these documents with their scathing disclosures. As additional FOIA documents become available, we may finally learn the whole sordid truth.

## Study: 1 In 25 Death Cases Likely Innocent

Science and law have led to the exoneration of hundreds of criminal defendants in recent decades, but big questions remain: How many other innocent defendants are locked up? How many are wrongly executed?

About one in 25 people imprisoned under a death sentence is likely innocent, according to a new statistical study appearing in the Proceedings of the National Academy of Sciences. And that means it is all but certain that at least several of the 1,320 defendants executed since 1977 were innocent, the study says.

From 1973 to 2004, 1.6 percent of those sentenced to death in the U.S. — 138 prisoners — were exonerated and released because of innocence.

But the great majority of innocent people who are sentenced to death are never identified and freed, says professor Samuel Gross of the University of Michigan Law School, the study's lead author.

The difficulty in identifying innocent inmates stems from the fact that more than 60 percent of prisoners in death penalty cases ultimately are removed from death row and resentenced to life imprisonment. Once that happens, their cases no longer receive the exhaustive reviews that the legal system provides for those on death row.

Gross and three other researchers, including a biostatistics expert, looked at the issue using a technique often used in medical studies called survival analysis. Yale University biostatistics expert Theodore Holford, who wasn't part of the study, said the work done by Gross "seems to be a reasonable way to look at these data."

Because of various assumptions, it might be best to use the margin of error in the study and say the innocence rate is probably between 2.8 percent and 5.2 percent, said University of South Carolina statistics professor John Grego, who wasn't part of the study.

The study is the first to use solid and appropriate statistical methods to address questions of exoneration or false convictions, an important subject, said Columbia Law School professor Jeffrey Fagan, who also is a professor of epidemiology at the Mailman School of Public Health. The research combines data from three independent sources, a rigorous approach used by few studies on capital punishment, he said.

The research produced an estimate of the percentage of defendants who would be exonerated if they all remained indefinitely on death row, where their cases would be subject to intense scrutiny for innocence.

The study concluded that the number of innocent defendants who have been put to death is "comparatively low. ... Our data and the experience of practitioners in the field both indicate that the criminal justice system goes to far greater lengths to avoid executing innocent defendants than to prevent them from remaining in prison indefinitely."

Death sentences represent less than one-tenth of 1 percent of prison sentences in the U.S., but they account for 12 percent of known exonerations of innocent defendants from 1989 to 2012. One big reason is that far more attention and resources are devoted to reviewing and reconsidering death sentences.

"The high rate of exoneration among death-sentenced defendants appears to be driven by the threat of execution," says the study. "But most death-sentenced defendants are removed from death row and resentenced to life imprisonment, after which the likelihood of exoneration drops sharply." The study estimates that if all defendants sentenced to death remained in that status, "at least 4.1 percent would be exonerated. We conclude that this is a conservative estimate of the proportion of false conviction among death sentences in the United States."

The study notes that there has been no shortage of lawyers and judges who assert confidently that the number of false convictions is negligible, citing Judge Learned Hand and Supreme Court Justice Antonin Scalia.

"Our (criminal) procedure has always been haunted by the ghost of the innocent man convicted. It is an unreal dream," Hand said in 1923. In 2007, Scalia wrote that American criminal convictions have an "error rate of 0.027 percent — or, to put it another way, a success rate of 99.973 percent."

The study said Scalia's numbers "would be comforting, if true," but added: "The rate of error among death sentences is far greater than Justice Scalia's reassuring 0.027 percent," based on the number of death row exonerations that have already occurred. The study said that "most innocent defendants who have been sentenced to death have not been exonerated, and many — including the great majority of those who have been resentenced to life in prison — probably never will be."

AP

# Treating *Nisyonos* Like *Chukim*

FROM THE PEN OF SHOLOM MORDECHAI RUBASHKIN

I would like to share with you a *dvar Torah* on *zos chukas haTorah* that drives home a message each and every one of us will need at some point in our lives. Since this is being written from a very dark place this message has special meaning for me.

The word “*chukah*” defines *mitzvos* that appear to have no rational basis, which we perform only because Hashem commands us to. The *porah adumah* is considered the classic example of this category of *mitzvos* that are given as a “decree,” and for which we know no reason.

Because we are servants of Hashem, we fulfill these *mitzvos* because that is His will, without understanding the “why” behind the command.

And from the *posuk* “*zos chukas haTorah*,” we know something else: “*chukah*” in this context does not *only* define the *mitzvah* of *porah adumah*. Otherwise the *posuk* would say *zos chukas haporah aduma*, as it says earlier, “*zos chukas hapesach*.”

Rather, *zos chukas haTorah* is referring to “*haTorah*” - meaning *kol haTorah kulah*, the entire Torah and all its *mitzvos*.

Because fulfilling all *mitzvos*, even *aidos* and *mishpotim*, for which a logical reason is cited, must ultimately be an expression of “*kabolas ol*,” pure obedience to the *rotzon Hashem*. As we say before carrying out those *mitzvos*, too, which come clothed in reason and *seichel*, “*Asher kideshonu b'mitzvosov v'tzivonu* - because You, Hashem, commanded us.

## *The cruelty and torture of their captivity is unimaginable. How could such injustice and suffering be happening?*

There are difficult times in life that fall into the realm of *chukah*, times that call for us to respond as we do when performing a *chok*: with pure acceptance because that is His will. These are the bitter *nisyonos* that seem to make no sense; which defy human comprehension.

Why is Hashem testing us this way, we wonder. Why are bad things happening to innocent people? Our thoughts immediately fly to the three Jewish boys who were kidnapped; the cruelty and torture of their captivity is unimaginable. How could such injustice and suffering be happening?

The only way for a *Yid* to overcome a *nisayon* of this magnitude is to approach it in the same manner required of a *chok*: going beyond the limitations of *seichel* and surrendering his will to the *ratzon Hashem*. He must know that his *seichel* is a creation, and like any other creation, is finite and limited. Relying on *seichel* is inadequate when it comes to serving Hashem in general, all the more so when trying to overcome a *nisayon*.

When a *Yid* resolves to remain connected to Hashem in the same way he conducts himself when performing a *chok* - as if the *ratzon Hashem* is *chokuk*, engraved on his inner-self, independent of *seichel* and reasoning - he taps into the essence of his *neshomah*. In this way, he draws down the *kochos* that are almost supernatural; which transcend normal limitations.

He becomes a vessel to receive the *koach* from Hashem that he so badly needs to overcome all obstacles and to fulfill his mission and pass the test.

If all *inyonim* of Torah would be presented with a rationale that harmonize with human understanding, a person would never develop the capacity for a unique form of *mesiras nefesh* for a *mitzvah* - subordinating one's *seichel* to the *Borei Olam*. He would merely conduct himself *al pi seichel*, never having to do reach for a higher form of *avodas Hashem* which requires surrendering the intellect and ego.

Relying on one's own intellect can lead someone to become what the Ramban defines as a *menuval birshus haTorah*, a scoundrel with the “permission” of the Torah, *rachmonah litzlan*, someone who legitimizes his undesirable behavior with pious rationalizations.

But when a Jew understands that the essence of Torah and all *mitzvos* go beyond *seichel*, this inspires the *vehogisoh bo* and the *bitul*, the nullification of one's desires and intellect, to Hashem.

When we do learn His Torah and do His *mitzvos* as if they are ALL *chukim*, going higher and beyond the reach of *seichel*, we strengthen our connection with Hashem in an unlimited way, because HE is unlimited. And since there is nothing in the world that can stand against the will of Hashem, the *nisayon*, which at its core is only an illusion created by the *yetzer hora* to trap us, will dissolve into the nothing it really is.

May Hashem grant that I be freed speedily and reunited at home with my beloved family.

And *yehi ratzon* that He grant each and every *Yid* his and her *geulah prati* with our *geulah klali*, now, with *Moshiach Tzidkeinu*.

*Padah beshalom nafshi,  
Sholom Mordechai Halevi Ben Rivkah*

————— Yom Tov Thoughts —————

## A Letter From *Sholom Mordechai Rubashkin* To His Family

Dear Family and *Kinderlach sheyichu*,

The *novi* says, “*Dirshu Hashem behemotzo, kero uhu behyoso korov*,” search for Hashem when He can be found, call out to Him when He is near. This is the gift of *Aseres Yemei Teshuvah*, days of *rotzon* in which there is a magnetic force between Hashem and His people that draws us close to Him if we just make the effort.

As we approach *Yom Kippur*, the highlight of this *eis rotzon*, let me share with you a glimpse of what *Rosh Hashanah* was like for me, and a lesson we can take from it that will affect our *avodas Hashem* on *Yom Kippur* and on *Sukkos*, *Zman Simchoseinu*.

We were unfortunately not *zocheh* to have volunteers come to the prison to *daven* with us as in previous years, and they were deeply missed. *Boruch Hashem*, we did have more than a *minyan* of *Yidden* among the inmates. We gathered at the chapel on *erev Rosh Hashanah* and started with *hatoras nedorim*, and then we *davened Minchah*. We reviewed parts of the *machzor* until *Maariv* began.

We discussed the idea of crowning Hashem as our King and taking upon ourselves to keep His Torah and *mitzvos*, and specifically, to focus on doing one *mitzvah* with an added measure of care and *simcha*. After *Maariv*, we wished each other *leshanh tovah tikoseiv veseicho-seim*, followed by *kiddush* and *seudas yom tov*, with each person eating whatever food he had.

It was disappointing that on both days, we had no choice but to start *davening* without a *minyan*, and it was a struggle to keep the *minyan* together. Without volunteers like those we had on previous years, it was rough going. *Boruch Hashem* we heard *tekias shofar* and even managed to say *Tashlich* at a small fishing area.

Something happened that made me realize there are always opportunities to increase *kedushah* in one’s life, even here in a place called Prison.

One of the *Yidden* had shared his concern with me about the *kashrus* of the food that was brought into the chapel by one of the members of the *minyan*. I realized that the only way to resolve that issue was to replace that food with a kosher meal. The problem is that such an arrangement has to be made well ahead of time. Since there was no way to arrange it last minute, I made a deal with this *Yid* that instead of bringing his meal to the chapel, he would eat mine.

He agreed, very happy to be able to eat kosher, and I made the same deal with him on the second day, so every member of the *minyan* had kosher food for *seudas yom tov*. What a boost that victory gave my *simchas yom tov*!

On the subject of *simcha*, something else happened that made me realize how much Hashem treasures *simcha*, and how it is a powerful component of our *avodah* from *Rosh Hashanah* straight through *Sukkos*.

I shared with you a description of the “lock-in” event here, how

suddenly, without warning, everyone was herded into their cells and kept there for a long time because the authorities discovered something illegal going on in one corner of the prison. Here’s an aspect of that lock-in that drives home a striking difference between how *klipah* imposes its power and how *Hashem Yisborach* commands our obedience.

The morning after the lock-in, while everyone was still locked up in their cells, the guards ordered all prisoners to strip off their clothes, leaving only undergarments. An officer came to each cell, unlocked the door and marched the unclothed prisoner through the barrack to a room where another officer sat and interrogated him.

Afterward, the prisoner was marched back through the barrack to the cell. Being stripped and marched back and forth in front of smartly dressed officers was obviously intended to be demoralizing. The damage it does the human psyche is beyond words.

Consider the difference between humiliating an individual into submission through the exercise of raw power, and the way Hashem treats His subjects.

On *Rosh Hashanah*, we stood before the all-powerful Master of the World to be examined and judged. How did we dress for this awesome event, in undergarments, feeling degraded and humiliated? Just the opposite! Hashem wanted us to appear before him with dignity. He wants to see us beautifully and festively dressed, adorned in *mitzvos* and confident in His mercy. He wants us to conduct ourselves with nobility, to be *b’simcha*, trusting that we are in loving, merciful hands.

Let’s talk more about the importance of *simcha*, as in “*ivdu es Hashem besimcha*.” The month of *Tishrei* is like a ladder on which we climb higher and higher, step by step, concluding with the joyous outpouring of *simcha* on *Simchas Torah*.

We see the importance of *simcha* in the *haftorah* we read at the conclusion of the 7 weeks of *nechomah* and on *Shabbos Mevorchim Chodesh Tishrei*, that begins, “*sos osis baShem, togeil nafshi belokai*,” “I will rejoice intensely with Hashem, my soul will exult with my G-d.”

*Simcha* is one of the most sought after elements of life, yet it’s also the most elusive. Maybe that’s because it’s very easy to confuse genuine *simcha* with frivolity, a fleeting, shallow happiness that quickly evaporates.

*Simcha* and *gilah* are two sides of a coin. The kind of joy that is expressed externally, as in the *yom tov* of *Sukkos*, *Zman Simchoseinu*, is *simcha*. *Gilah*, is when happiness resides within the *penimius* of the heart. The *posuk* uses the term *gilah* when it says “*v’gilu birodoh*,” “rejoice with trembling,” referring to *Rosh Hashanah* and *Yom Kippur*, when the trembling covers over the joy so that it remains undetected from the outside; only the trembling is visible.

When does joy come with trembling? Imagine a *Yid* finds himself

in a dark place of pain and death and tries to escape. In that person's heart, two emotions will reign: trembling and fear that makes him flee the place of darkness and doom, and the joy that erupts with every step that brings him closer to freedom and life.

Prison, with its ugly darkness, cold and stifling to the soul, produces that feeling of trembling in a person's heart. Realizing one is in darkness and quicksand, the *Yid* must gather all his strength to run from that muck and return to the light of his Father in Heaven. Once he makes that leap, the *simcha* emerges from within the *penimius* of his heart as he comes closer to reconnecting with Hashem through His Torah and *mitzvos*. But the trembling from fear remains in the background, an ever present reminder of what might have been his fate.

Our Father and King who hears every *tefillah* and *bakoshah* will surely save each and every one *Yid* from all his enemies and grant all *Yidden* a *gmar chasimah tovah*. And He will bring us all to the joyous time of *Sukkos*, the peak of true *simcha*. Just look at how a *Yid* dances

with the *Sefer Torah* on *Simchas Torah*, and you can see what real *taanug* is.

Returning to the *posuk*, "*Sos osis b'Hashem, togeil nafshi b'elokai,*" the *novi* is teaching *Klal Yisroel* how important it is to do *mitzvos* with happiness, either openly or with *gilah*, within oneself.

The *novi* is saying on behalf of *Klal Yisroel*, "*sos* " I am happy and "*osis,*" I also cause happiness. When a *Yid* rejoices in performing the *mitzvos*, it gives *Hashem nachas* and *simcha*, and also causes a *midah kineged midah*, so that Hashem responds by showering us with all His *brochos*.

*Yehi rotzon* that He grant each and every *Yid* a year of *orah* and *brochah*, of *gilah*, *geulah proti* and *geula kloli*, with *Moshiach Tzidkeinu*, *amein*.

*Gmar chasimah tovah.*

Love,  
Tatty

# A Visit With Sholom Mordechai Rubashkin

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RABBI ELCHONON JACOBOWITZ

*Chassidus* and prison. What happens when the two collide? In meeting with Reb Sholom Mordechai Rubashkin, I hope to learn the answer.

What began as a letter to Reb Sholom Mordechai has evolved over the months into a deep friendship. My class from Detroit shares a weekly *dvar Torah* with him and he reciprocates with one of his own, a weekly outpouring of pure *Yiddishe hartz*. A personal postscript often follows, as waves of mutual *chizuk* penetrate the cement blocks and barbed wire of the prison walls.

And yet, we have never met. This will be our first live encounter. Here I am, poised to enter the prison walls, albeit for a short visit.

How will I find him? Will I know what to say?

I needn't have worried. I enter the visiting room, and there he is in the corner, flanked by his wife and son, with a smile that seems terribly incongruous, yet wholly authentic. We hug and remain in our embrace for some time, the vibes of kinship easily penetrating the drab khaki clothes that seek to make this extraordinary man indistinguishable from his surroundings. Afterwards, I embrace him once more.

"This one," I tell him, "is from *Klal Yisroel*." He smiles, wishes me a hearty "*gut mo'eid*," and within moments, we are deep in animated conversation, the prison walls slowly melting away.

I inquire about his daily schedule. I quickly learn that this man prefers not to talk about himself too much, favoring *divrei Torah*, stories, and humor over anything else. For now, however, he acquiesces, and begins describing his daily schedule. "At 6:30," he explains, "the cell doors open, having been locked the night before at 9:00. And so, I wake up at 5:30, shower, and *daven* while everyone still sleeps."

Why shower?

"I'm a *chassidische Yid*," he explains with a grin, "and we go to *mikvah* before *davening*; barring that option, a shower will have to do for now." This is the secret of his survival: "I'm the same *Yid* I always was and nothing has changed, except what absolutely must."

During the day, he explains, everybody is assigned a job, and he has been fortunate enough to be assigned to the chapel, which means that generally, when it is open, he can be there. With that, the conversation about his daily schedule seamlessly ends, for we have segued into his favorite topic: Torah. "I can learn there," he tells me, "and sometimes even manage to have a *seder* with my *chavrusa*, another *frum Yid* who has unfortunately landed in prison as well."

"So what are you learning?" I ask, as if we are two *yeshiva* friends catching up on the latest happenings in our respective spiritual worlds. "*Menochos*," he answers with a twinkle in his eye. "I just finished *Zevachim*," he adds, "and it was extremely *geshmak*." Before I have a chance to digest what I just heard, he continues, "I also keep up with *daf yomi*, and I'm working hard at *Yevomos*, which I always found difficult."

So his *geshmak* is *Zevachim*, and his troubles, *Yevomos*. Not the typical lineup of highs and lows for prison inmates, I muse, but then again, he

is clearly not a typical man.

"Do you have regular access to email?" I inquire, wondering how he manages to send us a lengthy email each week. "No," he replies, "it's six computers for one-hundred and fifty guys, and I have to squeeze in the emails during low-volume times. I write five *divrei Torah* emails a week, and it's always a challenge getting them all out."

As his wife, Mrs. Leah Rubashkin, later shares with me at a follow-up visit that evening in Monsey, "Sholom Mordechai is the only one in the entire prison without enough time in his day; between preparing the emails and learning his *sedorim*, his schedule is packed."

We get into a conversation about *Sukkos* and Reb Sholom Mordechai tells me that on *yom tov*, the *s'chach* blew off from part of the small *sukkah* permitted to Jewish inmates. "Were we allowed to put it back on? We weren't sure and we had nobody to ask, so we worked around the problem."

The prison walls may be impenetrable, but to Reb Sholom Mordechai, the walls of *Shulchan Aruch* are no less so. "Nu," he prods, "*epis ah vort far simchas beis hashoievah?*" I'm not sure if he means that he plans on conducting a makeshift *simchas beis hashoievah* here in prison, or if he is just desperate to relive those of years past, but I comply, sharing one *vort* which spills into another, and then another. Amidst a geyser of *divrei chizuk* that seems to endlessly flow from somewhere deep inside Reb Sholom Mordechai's heart, he nonchalantly utters something that shocks me. "*Boruch Hashem*, I don't have an issue with remaining *b'simcha*, even stuck here in prison, but for others here, *atzvus* is the main problem, and I do my best to lift them up."

Does he really mean that?

He continues, "All day, I play over the words '*chibah yeseirah*' again and again in my head, and remind myself how much Hashem loves me, and when I do, I am infused with *simcha*."

Suddenly, we are interrupted. Reb Sholom Mordechai has scheduled a picture session for us, and it is now our turn. He is allowed two pictures, and we line up against the wall, as the photographer, another inmate, sets up his camera. We place our arms around each other and smile for the first picture.

Before I know it, Reb Sholom Mordechai is holding my hand and dancing. Softly, of course, but with gusto. "*Ki v'simcha tzetzei'u u'v'sholom tuvo'un he'horim ve'hagvaos yiftzichu lifneichem berinah v'chol atzei hasodeh yimcho'u chof!*"

We sit back down and continue our conversation. I ask about the amount of *seforim* he is allowed to keep, and somehow, the topic of Victor Frankl's *Man's Search for Meaning* comes up. It's a popular book here, he tells me, adding that the Lubavitcher Rebbe sent a message to the author midway, encouraging him to complete it. "He gets so close," laments Reb Sholom Mordechai, "but when he finally gets up to the imperative of finding meaning in life, he fails to describe what that meaning is."

I agree, telling him how the legendary Reb Avraham Abba Freedman of Detroit was so perturbed by this that he actually flew down to Vienna to speak to Frankl and show him the truth of Torah.

Frankl may have missed it, I think to myself, but Rubashkin hasn't, and he is writing the final chapter as we speak.

We arrive at the topic of *Rosh Hashanah*, and Reb Sholom Mordechai tells me a story that touched him deeply. A survivor, he relates, once explained the meaning of the two verses of *Avinu Malkeinu* ending with, "horugim al sheim kodshechah" and, "tevuchim al yechudechah." When the Nazis lined *Yidden* up against the wall and began mowing them down

A sparkle lights up Reb Sholom Mordechai's face. "Sholom Mordechai Rubashkin," he says, delight in his voice. "I did my job here," he adds with a smile, "and now, I think I can leave."

Later, I hear from his son, Yossi, that this man is far from the only individual whose spiritual well-being was strengthened by his father. He tells me the following anecdote.

On *Rosh Hashanah*, Reb Sholom Mordechai barely managed to scrape together a *minyán* and practically had to beg some of the unaffiliated Jews to join. "After *davening*," he told Yossi, "I could not bear the thought that these Jews would go on to indulge in non-kosher food for



in order, all of the *kedoshim* began screaming *Shema Yisroel*. Those on the side from which the Nazis began shooting only managed to say *Hashem Elokeinu*, while those on the other end were able to complete the verse with *Hashem Echad*; hence the two verses, *al sheim kodshechah* and *al yechudechah*.

I respond by telling the story of a father who asked Rav Oshry if he could bribe the Nazi with his golden tooth to spare his son and take another child, and was told that doing so was questionable. Upon hearing this, the father promptly pulled out the tooth and threw it into the woods, lest he be tempted to perform a questionable act. Reb Sholom Mordechai lets a solitary tear fall, not of sadness, but of awe of the greatness of the *Yiddishe* nation.

He then shares with me a whimsical grin and tells me that when he said, "tevuchim al yechudechah," he couldn't help but think that this verse somehow referred to his situation, which began by protecting *tevi-chah*, proper slaughter. But I quickly continue on to the next *Avinu Malkeinu*, "I'maan bo'ei bo'eish u'vamayim al kiddush Shimechah," which, I point out, refers also to one who overcomes obstacles and lives *al Kiddush Hashem*. That, I remind him, is the true prize. He nods in agreement, but if he understands that I am referring to him, he certainly doesn't let on.

A *kippah*-clad inmate enters the visiting room, and I look to Reb Sholom Mordechai for elaboration. I have a hunch that there is a story here.

"That fellow," whispers Reb Sholom Mordechai, "was actually a very rich, completely unaffiliated Jew who has been here in prison for several years, and only recently began observing *mitzvos* and eating kosher."

"So who was *mekareiv* him?" I ask, assuming it was the chaplain.

lunch, so I offered one of them my own kosher meal if he would agree to get rid of the *treif*."

"But what did you eat, *Totty*?" asked Yossi. "Oh, I only eat *matzah* on *Rosh Hashanah* anyway," replied his father dismissively, "so it was no big deal." Recalling that his father had mentioned that fact to him once before, Yossi nearly forgot about this incident. It was only later, when he remembered exactly *why* his father only ate *matzah* on *Rosh Hashanah*, that the extent of his father's *mesirus nefesh* suddenly took on a whole new dimension.

In order to get his meal, Reb Sholom Mordechai would have to enter the mess hall, something he could never bring himself to do on *Rosh Hashanah*, given the atmosphere. It would practically ruin his whole *Rosh Hashanah*. Yet this year, marveled Yossi, he was willing to forego his own *Rosh Hashanah* atmosphere to enter the mess hall and retrieve a lunch meal for the other man, for the purpose of saving another Jew from eating *treif* on *Rosh Hashanah*.

Our time has run out, and the closing moments of this awe-inspiring visit are suddenly upon us. We engulf each other yet again in one final hug, and neither of us can bear to let go, but we must, and so, with tears in our eyes, we do. "Don't worry," I foolishly say, "I'll be back."

"Back?!" he exclaims. "But I won't be here anymore!"

"Of course not," I quickly correct myself, at once mortified by my blunder and amazed by his tangible *emunah*. "We'll be back together, and we will have to figure out whether we bring in the class for a *seudas geulah*, or bring you to Detroit instead!"

He smiles, waves, and just like that, it's over.

— Purim Thoughts —

## A Message From *Sholom Mordechai Rubashkin*

### TRUSTING IN HASHEM'S *YESHUAH* AGAINST ALL ODDS

The pre-*Purim* buzz is everywhere. Children are learning *Megillas Esther*, excitedly planning their *Purim* costumes. The aroma of *hamantashen* and the frenzy of *mishloach monos* preparations fill the air.

In a place called prison, there is no pre-*yom tov* buzz to ignite one's anticipation. Here, surrounded by ice cold walls and high metal fences topped with razor-sharp steel coils, stone-faced guards and the incessant clanging of heavy metal doors, there is no hint of the approach of *Purim*.

But in this place, where one is locked into a cramped cell with a random stranger, forced among people so alien, cut off from family and friends, suffering wrenching emotional pain, here one can understand more deeply the ordeal of Esther Hamalkah, who was also held against her will in a prison of sorts. Her prison was masked as a royal palace. But the palace, with all its luxurious outer trappings of wealth and honor, was saturated with *tumah*. When devoid of any spark of *kedushah*, the most luxurious palace can be as soul-strangling as a prison.

In a place called prison, how can a *Yid* prepare for *Purim*?

The *megillah* teaches us how. The secret is to follow Mordechai's example, when in the midst of the *gezeirah* of annihilation, his faith in *yeshuas Hashem* remained rock solid.

### KIRTZON ISH V'ISH FREEDOM TO CHOOSE

*Chazal* say that every mention of "*melech*" in *Megillas Esther* hints at *Hakodosh Baruch Hu*. We thus understand the hidden meaning in the *posuk*, "*Ki kein yisad hamelech... la'asos kirtzon ish v'ish*," the king commanded that no one at the banquet be forced to drink. Instead, the royal guards were ordered to honor the personal preference of each and every guest.

That *posuk* is hinting at the *hanhogah* of *Hakodosh Baruch Hu* with His nation *Yisroel*, and the high spiritual level the *Yidden* reached in the days of *Purim*. The *melech*, meaning Hashem, invites His nation to the *seudah*, which symbolizes Torah and *mitzvos*, and the royal policy at this *seudah* is "*hashesiya kados, ein oneis*," no one is forced. Each *Yid* has *bechirah*.

At the time of *matan Torah*, when Hashem placed the mountain over the heads of the *Yidden*, it could be argued that they had no choice but to accept the Torah. But generations later, at the time of *Purim*, "*kimu vekiblu haYehudim*," the *Yidden* fulfilled what they already accepted. They proved that despite the appearance of being forced, the nation accepted the Torah because they wanted it with their innermost desire.

This is why the *simcha* of *Purim* is beyond limitations, *ad delo yoda*. Because when we learn Torah and perform the *mitzvos* out

of personal choice and desire, we deem ourselves worthy of being vessels for even greater levels of *kedushah*, a *mishkan* for Hashem.

We also enable ourselves to bond with the upper world of *kedushah* and if we are worthy, we can draw *kedushah* down from the upper world and cause it to permeate the lower world.

### REVACH VEHAZLOH YA'AMOD LAYEHUDIM: HOW COULD MORDECHAI BE SO CERTAIN?

*Purim* is also a time when a *Yid* can strengthen his *bitochon* by following the example of Mordechai Hatzadsik.

*Bitochon*, as defined in *Sha'ar Habitochon* of *Chovos Halevovos*, *Perek Alef*, is tranquility of the soul based on a person's complete certainty that his every need will be provided by the One in whom he trusts, and that every aspect of his destiny is intended for his good.

That inner peace comes from an all-encompassing trust that Hashem will rescue him from an *eis tzoroh*, no matter what that trouble may be. That certainty reaches an ideal level when the person attains true *menuchas hanefesh* and no longer agonizes over his situation.

The question is, from where does this certainty come? Isn't it possible that the reason a person was put into a dire predicament to begin with is due to his improper actions? Why then should the person be certain of salvation? What about *schar vo'onesh*?

Turning to the *megillah*, we encounter this same question in regard to Mordechai's trust in Hashem. When Mordechai tells Esther about the *gezeirah* against the *Yidden* and that she must immediately intercede with the king, Esther answers that she'll be killed if she approaches the king uninvited. Mordechai responds, "*revach vehatzoloh ya'amod mimokom acheir*, salvation will come forth from another quarter, but you, Esther, and your father's family will be destroyed [if you do not go to the king]."

Mordechai had perfect *bitochon* in Hashem and was certain the *Yidden* would be saved. Upon what was his certainty based? After all, the *Gemara* says the reason for the *gezeirah* was either because the people had bowed to an image, or because they had enjoyed the feast of *Achashveirosh*. They brought the terrible decree of annihilation upon themselves through their misdeeds. From where, then, did Mordechai draw his confidence that they would be saved?

The answer is, he derived it from his *midas bitochon*.

### BITACHON IS NOT OPTIONAL

*Bitochon* is not optional in the view of the *Chovos Halevovos*; it's a *mitzvah*.

The *Chovos Halevovos* says that *bitochon* is an *avodah* and *yegiah* which brings out the *chasdei Hashem*. It is part of a *Yid's*

*chiyuv* of *avodas Hashem* to believe that everything comes from *Hakodosh Baruch Hu* and that He is *chanun verachum*.

*Hashleich al Hashem yehovchah*; one must place one's full trust in Him, to the point where one does not rely on anyone else in the world to come to his rescue. That state of mind is similar to the emotions felt by a servant whose fate lies exclusively in the hands of his master, says the *Chovos Halevovos*. If the servant is imprisoned, he knows he has no one in the world to rely on for his redemption except his master.

Similarly, a *Yid* has to know there is no one who can hurt him or help him if it is not willed by Hashem. The fact that there is no natural, rational way his plight can be alleviated is irrelevant because the *Yid* relies totally on *Hakodosh Baruch Hu*, Who is not limited by the natural order. *Bitochon* demands that a person continue to trust in Him even if he knows there is no logical resolution to his problem or he thinks he is not worthy of Hashem's *chesed*.

This does not imply that a person's actions don't affect his fate. We know the world operates on the principle of *schar vo'onesh*. But this principle doesn't contradict the essence of *bitochon*, because it is the person's strenuous efforts to achieve the deepest level of level of trust in Hashem that actually triggers *chasdei Hashem*.

This is the "*kirtzon ish v'ish*" with which Hashem, our King, sets out the *seudah*. He wants us to partake in His *seudah* willingly, even yearningly, not with a feeling of coercion. If we can reach this level where we do His *rotzon* wholeheartedly, making His will our own, and relying exclusively on Him in every twist of fate, he treats us *midah k'neged midah*.

He then has *rachmonus* on us even if we are not worthy. Even if the odds are against us, we are *zocheh* to His *yeshuos*, in a way that we are granted not only good, but revealed good.

This explains why Mordechai Hayehudi had the certainty of "*revach vehatzoloh ya'amod laYehudim*" even before Esther told him, "*Leich kenos kol haYehudim*, go and gather all the *Yidden* and fast for me, for 3 days and nights."

Mordechai had the certainty in Hashem's salvation even before "*balai'lah hahu nodedah shenas hamelech*," the night King Achashveirosh couldn't sleep. That point was the *tokef shel neis*, the catalyst setting in motion the *Purim* miracle. The *posuk* also hints at another kind of sleep, a degree of *hester ponim* being removed from Above, as Hashem prepared to rise up and destroy the enemies of the *Yidden* who were planning their annihilation.

Even before all of these momentous events, during the time when the *gezeirah* against the *Yidden* was still in force, Mordechai was secure in his *bitochon* that *Hakodosh Boruch Hu* would save His people. That certainty spread to the *Yidden* and rekindled their own pure trust and faith.

We, too, rejoice in the certainty that we will witness "*Venahafoch'hu asher yishletu haYehudim heimah besoneihem*," in our own days. We have *bitochon* that we will be *zocheh* to "*laYehudim hoysah orah vesimcha vesoson veyikor*."

May it be Hashem's will that He grant every *Yid* a *freiliechen Chodesh Adar*, more joyous than any other year in the past. May we each be *zocheh* to our personal *geulos* as well as the *geulah kloli* of all of *Klal Yisroel*, with the coming of *Moshiach Tzidkeinu*.

## A Message From *Sholom Mordechai Rubashkin*

### A BRIS MILAH IN FEDERAL PRISON

Something remarkable unfolded here following last year's *Pesach seder* that demonstrated the power of the *pintele Yid*, and how something wonderful can happen in circumstances where it is least likely. These events didn't happen at once but played out over the year; reminding us that the seeds of *yeshua* can grow even in a barren desert.

A *Pesach seder* in a place called Prison is in itself a thing of wonder. How can a person truly celebrate the idea of freedom while in captivity? That itself is proof of the power of the *Yiddishe neshoma*. Picture fifteen *Yidden* in prison garb entering a small bleak, windowless room, greeted by the cold stare of bricks and mortar, bare walls without a human touch. The room contains nothing but a table draped with a white sheet adorned by two candlesticks and some chairs. Here is where we will try to carry out the *mitzvos* of *Seder Night* with nothing but the bare essentials.

In the time between *mincha* and *maariv*, I said a few words about the importance of the upcoming *Seder* and the *korban Pesach*, about how the *Yidden* in *Mitzrayim* showed tremendous *mesiras nefesh* in fulfilling the *mitzvah* of *korban Pesach*.

Noticing the few older *Yidden* from Russia among us, I thought it possible they might never had the chance to have a *bris*. *Hashem Yisborach* gave me the idea to elaborate on the importance of *bris milah* in these few minutes. I spoke about how a *Yid* connects his body and soul with *Hashem Yisborach* through *bris milah*, and that the *korbon Pesach* and *bris milah* are the only two *mitzvos asei* that if not carried out in a person's lifetime, the punishment is *korais*.

The Torah forbade anyone who did not have a *bris milah* from partaking of the *korban Pesach*. According to *Chazal*, the *Yidden* in *Mitzrayim* did not keep the *mitzvah* of *bris milah*. But when they were given the *mitzvah* of *korbon pesach*, they wanted so much to fulfill the *mitzvah* and eat from the *korban Pesach*, they all performed *bris milah*.

One *Shabbos* night, a few weeks later, one of the *Yidden* told me with great excitement that he spoke to the rabbi- chaplain about making a *bris milah* for him, and *baruch Hashem*, the chaplain arranged for him to have a *bris* in a few weeks. He said he made this decision at the *Pesach seder* after hearing about the importance of this *mitzvah*.

For a *Yid* to have a *bris* in his adult years is remarkable enough. But even more amazing, this would be a first in terms of the Federal Prison system - the first time a *Yid* would be allowed to perform a *bris* in this part of the universe. Because of security reasons the prisoner can't be told ahead of time exactly which day the *bris* will be done. So when the great day finally arrived, it was immensely exciting. The fellow performed the *bris* of *Avrohom Ovinu* and

took the name *Avrohom*.

He is not a young man but *baruch Hashem*, everything went well. This *Avrohom* was *zoche* to see almost immediately how *Hashem Yisborach* rewarded him for his *mesiras nefesh*. Just a few months later, he was unexpectedly transferred from this medium security prison straight to a place known as the "camp," a minimum security prison where living conditions are much less severe.

The story doesn't end here, because *mitzvah goreres mitzvah*... There is another *Yid* who was with us at last year's *seder*. He comes almost every day to put on *tefillin*. Around the week of *parshas Vayeyirah*, he also decided to perform the *bris* of *Avrohom Ovinu*. He took the name *Baruch*. This was the second time a *bris milah* was performed in the federal prison system.

*Baruch Hashem*, just about three weeks ago, another *Yid* made a *bris* of *Avrohom Ovinu* while in the "Camp." *Chazak Chazak Venischazaik*. And this all started with *divrei Torah* at last year's *seder* about the holy *mitzvah* of *bris milah*.

Even though we knew nothing about any of this during the *seder*, I remember the *yom tov Pesach* spirit was high and the atmosphere felt *kedushadik* throughout the *seder*. It was intense enough to temporarily block out the sense of subjugation here... even when the *seder* was disrupted by guards ordering us to stand up and be counted. That was a wrenching reminder that the freedom we celebrate needs to become complete with the *geulah shelaimah*.

I recall that *shfoch chamoscha* was really powerful as we approached the door, some holding the candles to greet *Eliyohu Hanovi*... We opened the door, not to the outside world but into the prison compound, and *Eliyohu Hanovi* entered and joined us in the *tefillah*, "*shfoch chamoscha el hagoyim asher lo yedo'ucha* ...." Each *Yid* had the joy of greeting *Eliyohu Hanovi*.

We continued with *Hallel* and *Nirtzah*, singing *Leshonah habah b'Yerushalayim*, and some of us dancing a little before gathering up our *Pesach* belongings and heading back to the barracks to be locked in for the night.

The stark difference between the light and *kedushah* of the *seder* and the darkness of the barracks hits full force... The clash between the light of *Moshe Rabbeinu* and the darkness of *Paroh* and *Mitzrayim* becomes so clear it's painful.

That mixture of light and darkness reminds one of the first day of *maaseh beraishes* when these two forces were intertwined... the uplifting *seder* with its *ruchniyusdike* high, and now the low of forced life in the prison barracks. Amidst the pain there is the joy and gratitude to *Hakodosh Baruch Hu* for choosing us *Yidden* to be his nation and for giving us His Torah and *mitzvos* to be forever connected with Him.

## BITACHON GROWS STRONGER WITH EVERY SIGN OF HASHEM'S LOVE

Now, with *Pesach* around the corner, it comes as a shock to realize that a whole year has passed since then. *Hashem Yisborach* has shown His infinite *chesed* and *rachamim* in giving me and my family the *kochos* to overcome the challenges each season has brought. Surely He will continue to shower on us His infinite mercy and will free me to return to my family, friends and *Klal Yisroel*.

People tend to think that with the passing of time in a difficult situation, a person's *bitachon* weakens. But with a deeper understanding of the power of *bitachon*, one realizes the opposite is true. Let's look into the second *perek* of *Shaar Habitachon* where he explains the seven pre-conditions of absolute trust and how that relates to our relationship with *Hashem*.

The fifth factor speaks about an exclusive relationship between a protector and his beneficiary that brings about tranquility of spirit. The author writes that when a person enjoys a loving relationship with a protector from earliest infancy, defined by a flow of tremendous kindness and support from his benefactor at every single stage of life, that relationship produces tranquility of mind and cements the person's total reliance on his benefactor.

This captures the essence of our relationship with *Hashem Yisborach*! We can see clearly from *Yetzias Mizrayim* that once the *makos* began, the delay of the *geulah* - while Paroh hardened his heart - did not diminish the people's belief in Hashem's salvation. On the contrary, it made that faith stronger.

We of course know from the Torah that it took ten *makos* for Hashem to break Paroh and Mizrayim, but the *Yidden* were not informed of this before it happened. They had no idea what it would take to accomplish the destruction of Paroh's powerful empire. It seems *Hakodosh Baruch Hu* did not even tell *Moshe Rabbeinu* the number of *makos* that would be necessary until the *Yidden* left *Mitzrayim b'yod romoh*.

We see this from the fact that Moshe was angry with Paroh for not keeping his promise to free the *Yidden* after the second

*makah* of *tzfardei'ah*. Similarly, the *Yidden* surely anticipated their freedom would come from the awesome *neis* of this *makah*. Imagine how they must have felt when they realized it was not so, that Paroh still had no intention of freeing them.

Yet, far from giving way to despair, their *bitachon* grew stronger with every sign that the process of salvation was under way. That *bitachon* enabled them to act with great *mesiras nefesh* when Hashem told them to take a lamb and *shecht* and burn it as a *korban Pesach* in front of the *Mitzriyim*.

The *Yidden* were certain in their immediate *geulah* even though they hadn't yet received a precise timetable for when it would happen. They never doubted the next *makah* was going to be the one that would bring their release. They ate the *korban Pesach* wearing shoes, with their walking stick nearby, ready to leave at a moment's notice.

So, too, as the year passed and we see Hashem's boundless *chesed* every single day in so many ways, we become more deeply aware that we are in the exclusive care of our Father in Heaven.

In the words of *Shaar Habitachon*, "...*Yischayev shetonuach nafsho olov, veyishain baavur mah shekodam ho'odfos vetoalos hamasmidos*, it is inevitable that one's soul will find tranquility in trusting his protector after experiencing such ongoing, all-encompassing kindness. That [continuous flow of *chesed*] obligates the person to develop in himself a deep level of trust in Hashem.

Notice the word "*yischayev*," to be obligated. *Bitachon* in Hashem is actually a *chiyuv*, not merely a good idea!

With gratitude first of all to *Hashem* for His unfailing protection and kindness, I offer heartfelt thanks to the many *Yidden* for their *tefillos and maasim tovim* on my behalf and on behalf of my family. May all these efforts bring the result we *daven* for, that I should be released from prison immediately and reunited with my beloved family.

May *Hashem Yisborach* grant all *Yidden* His *brochos* in *bonai, chayai, umezonai*, with revealed good in *gashmiyus* and *ruchniyus, l'matoh mei'asorah tefochim*.

# Returning To My True Calling

***With a hard-hitting legal motion for a new trial still pending, Sholom Mordechai Rubashkin approaches the end of his 5<sup>th</sup> year of incarceration in Otisville federal prison.***

***Six long years... through springtime and fall, though frigid winters and sweltering summers, one Rosh Hashanah after another, Sukkos after Sukkos, Chanukah after Chanukah, Pesach after Pesach... cut off from family, friends and community. Loneliness and isolation can do terrible things to people.***

***How has he fared? In the following letter to a friend, shared with the Yated by his family, here is a glimpse.***

*Dear Gary,*

I was very heartened by your recent letter, your continued concern for me and my family, and your readiness to help in any way you can. You asked me to update you on my situation and in general to describe “a day in the life of Sholom Rubashkin in Otisville....”

Some aspects of my situation are unchanging. The pain of being separated from my family is a deep ache in my heart that never lessens. But I trust that Hashem in His great mercy will reunite us very soon. That is the only way I survive.

There is another avenue that enables me to endure and rise above the ordeal of prison. That is through daily learning, teaching and helping others. These activities have slowly expanded to the point where I am immersed for most of my waking hours in some form of teaching and mentoring. That has become my lifeline. I find that even in a place of darkness one can spread light. Every time another inmate joins one of our classes, be it *Parsha of the Week*, or the *sefer*, *Chovos Halevovos*, (Duties of the Heart),” the truth hits me again.... There is no darkness like the darkness of prison, but even here, one can light a spark of faith and hope that can transform a person’s spirit.

First, in terms of my “formal” teaching schedule... I teach a daily class in *Tanya*, a weekly class on practical lessons from the *Parsha of the Week* (on Shabbos, in the chapel, 12:00-1:30), and a weekly class on *Chovos Halevovos* (Fridays in the chapel, 5:15-6:30). The chapel is the most comfortable place to teach and learn... it’s air-conditioned, quieter and a more spiritual atmosphere, to put it mildly. But our allotment of time there is very limited.

It’s amazing to see how learning the section, *Gate of Trust of Duties of the Heart*, brings a certain tranquility to those studying it, exactly as the *sefer* predicts it will. The participants have told me themselves that it calms their spirit and gives them a taste of *menuchas hanefesh*, inner peace.

Aside from the daily and weekly classes, I’ve been giving classes about each *yom tov* as it approaches. Before *Pesach* this year, I gave classes on how to do *Birkas Kohanim*, the priestly blessing, the actual laws that apply and the words themselves, along with the traditional melody of the blessing. There are 3 *kohanim* in our group. When they went forward to do *Birkas Kohanim* during services, people were amazed to hear them sing it just like in any *shul*.

On a daily basis I do informal kinds of teaching. I help other *Yidden* observe various *mitzvos* such as putting on *tefillin*, making *kiddush* on *Shabbos* and doing acts of kindness. I help in coordinating Jewish services in the chapel, for example by reading the Torah, leading the *minyan*, and giving over the highlights of *Shabbos* or *yom tov*, when ever time allows.

I mentioned earlier the pain of being separated from my family. Some kind of pain diminishes as time goes on. But when it comes to being cut off from your loved ones... the anguish only intensifies. *Boruch Hashem*, I’m blessed with older and younger children, and love each one dearly. Growing up without their father at their side has been very difficult for them. In addition to the many things a father needs to be for his children, in a religious home, is integral to his children’s spiritual education and growth. That education comes alive most beautifully on *Shabbos* and *yomim tovim*. It is so difficult to be separated from my family at times when Jews need to be celebrating together with their loved ones.

To help keep the *Shabbos* atmosphere in my home upbeat, I regularly share with my wife and children inspirational stories and insights by email, corresponding to the different ages of all my children and relating to their daily lives. This involves more than 8 to 9 hours of email correspondence each week. I’m happy to pour the time into these emails as it keeps us all connected. My children know I think about them non-stop, missing them and longing to return to them.

In addition to the daily and weekly letters to my family, I've developed a very productive email correspondence with two elementary school classes.

One of the classes is a group of sixth graders in Detroit, and their *rebbe*, Rabbi Elchonon Jacobovitz. This "pen-pal" relationship began with a very moving letter Rabbi Jacobowitz sent to me that jumpstarted a strong friendship between us. It also evolved into to a very fulfilling correspondence with his students. The students and I exchange *divrei Torah* on the *parsha*, as well as comments, questions and responses to one another's writings. With the Almighty's help, the first year's correspondence is set to be published in a few weeks.

I carry on a similar correspondence, in Yiddish, with a group of fifth graders in Brooklyn and their *rebbe*, Rabbi Leibush Lish. I send them questions on the *parsha* and they send me their answers. Rabbi Lish collected a year's worth of our correspondence, typed it up and printed it in booklet form. He told me how excited the students were to each receive a copy and how it became a center piece around their *Shabbos* table, where the questions and answers were discussed.

I've also developed a learning connection with a group of about

20 adults who come together once a week to study various topics under Rabbi Dovid Hubener. I send him a Torah lesson on the week's *parsha* and he then shares it with his study group, often emailing me some of their comments and questions. They are very heartening for me to read as it gives me the immense satisfaction of being able, even here in this dark, cold place, to teach and inspire others.

In order to teach and discuss such a wide range of topics with so many different people, I also must spend a lot of time learning Torah on my own. I try to study every spare minute I have.

Once, a long time ago, before I moved to Postville and became an executive at Agriprocessors, I was a teacher. That was my true calling. Now, here in prison, I have returned to it. I can't imagine life being fulfilling without it. I dream of continuing these activities in freedom, whether teaching youngsters or adults. I pray for my release each day and trust Hashem will grant my prayer and bring me home today to my family.

Thank you once again, Gary, for your warm letter. With deep appreciation and admiration for your friendship and devotion,

*Sholom Mordechai Rubashkin*

## "LECH LECHA... GO TO YOURSELF..."

*Dear R' Sholom Mordechai*

Allow me to introduce myself. My name is Elchonon Jacobovitz, and I'm a sixth-grade *rebbe* at Yeshivas Darchei Torah in Detroit. Although we have never met or corresponded, I feel like I know you through the *chizuk* I've received from your *emunah* and the *kesher* I've felt when *davening* for you. As I was thinking about your situation, Hashem placed an idea in my head that I'd like to share with you. I was wondering if you would perhaps be willing to receive a short *dvar Torah* each week from me or one of my students, to which you'd respond with a short *dvar Torah* of your own. After sharing a "*machzor*" of the Torah together, we might want to publish a pamphlet of the correspondence, so that people might receive a lift from seeing how *Yidden* can be *mechaye* themselves through Torah even in the bleakest of situations. I know you might be hesitant to undertake such a project and I leave the decision to you. Either way, allow me to share with you the following thought.

In this week's *parsha*, Avrohom Avinu is told by Hashem, *Lech lecha mei'artzecha umeemoladetecha umeebeis ovicha*. Chazal say in *Medrash* that the words *lech lecha* are also used by the *akeida*, where it says, *lech lecha el eretz hamoriah*. The *Medrash* continues that it's unclear which *nisoyon* was greater. The question is obvious. How can one even compare the *nisoyon* of the *akeida*, where Avrohom was told to *shecht* his own son, to the *nisoyon* of leaving his land and his home, which doesn't seem to involve a great level of sacrifice?

The answer given is that the words *lech lecha* mean "go to yourself." What Hashem was telling Avrohom was that even though he had an identity, he really didn't know himself at all. People normally identify themselves with their family, their home and their land. Avrohom was being told not just to leave those places, but to realize that none of those things defined him at all, that he still had to find himself and that would only happen in *Eretz Moriah*.

At the *akeida* he had to *shecht* his son. Here he had to *shecht* himself, in the sense of abandoning all the things he thought defined who he was. He had to strip himself of all the "props" that give a person a sense of identity, and find a new identity from within his *neshomah*.

A person sometimes builds an entire image of himself from the place he lives, the business he owns or the family he leads and then Hashem takes all that away. It takes tremendous inner strength to then rebuild an identity without those things, based only on one's own inner *ruchniyus*. But if one is *matzliach*, it is a *zechus* on the same level as the *akeida*.

With a heartfelt *tefillah* that we will soon merit to dance together with all *Yidden* who are in physical or spiritual captivity, with the coming of *Moshiach*, may it be very soon.

*Elchonon Jacobovitz*

# The Power of a *Yiddishe Neshomah* To Break Through Its Prison

EXCERPTS FROM A LETTER FROM REB SHOLOM MORDECHAI RUBASHKIN  
TO THOSE WORKING ON HIS BEHALF AND HIS CHILDREN

*Tayereh* Reb Pinchos, *Askonim* and Family *Sheyichyu*,  
*Sholom U'vrocho*.

Let me share with you three incidents that happened here on *Rosh Hashanah* that revealed the power of the *Yiddishe neshomah* in an amazing way. The *neshomah* of a *Yid* is caught in its own prison sometimes... but the immense *kedushah* of *Rosh Hashanah* can release it.

The *davening* itself was *hartzig*, partly thanks to wonderful volunteers who came to the prison for *yom tov* to help with a *minyan*, and to infuse *lebedikeit* into the *Yidden* here. We *davened* heartfelt *tefillos* pleading with *Hashem* to help us make Him king over ourselves and the whole world.

After *leining*, the chaplain came into the room and told one of the *Yidden*, "You have legal mail." Legal mail is something very *choshuv* in a place called prison. When a prisoner is told to take his legal mail, his heart beats a little faster and he takes off with *zerizus*. It could be good news, something he is longing to hear from his lawyer or from the court! It could be the discovery of new evidence... the granting of a new trial... or miracle of miracles, an early release! As unlikely as it may be, who knows? Suddenly, anything seems possible when an inmate hears he has "legal mail" waiting for him.

This *Yid* is someone who has been learning with me lately, someone who has come quite a distance in *emunah*. I was wondering what he would do. Amazingly, he told the officer that he can't go to pick up his mail until Wednesday because it's *Rosh Hashanah*. What a *nisoyon* to wait so long for news that might transform your life!

On the holy day of *Rosh Hashanah*, his *neshomah* overcame the feeling of being dependent on human beings for help. Only the *kedushas hayom* and the power of the *Yiddishe neshomah* to connect with *Hakadosh Boruch Hu* could give a prisoner the strength to wait an entire two days for his legal mail. He told me later that he wants to be inscribed in the Book of Life and that gave him strength to wait.

Later, one of the officers who works in the Office Department came into the chapel area for something. By a special stroke of *hashgocha protis*, I happened to know of her Jewish roots. I wished her a happy new year and she smiled and answered, "Happy new year," and continued toward the door. I asked her, "Did you hear the *shofar* today?" But she didn't hear me. I made my way through the inmates in the chapel and called out to this officer, "Would you like to hear the *shofar* today?"

By now she was on the other side of the door with the key in her hand, about to lock the door. She paused and said, "Yes,

sure," came back into the room, locked the door from the inside and came with me into the chapel where the *Yidden* were. I said the two *brochos* with her, *lishmoah kol shofar* and *shehechiyonu* and blew 30 *kolos* for her. She thanked me and seemed genuinely happy to have been able to do the *mitzvah*.

Officers don't mingle with inmates in this place, but something compelled this officer to go outside the normal protocol in order to hear the *shofar*. And even more rare for an officer here to acknowledge her *Yiddishkeit* in public. What else but the longing of *Yiddishe neshomah* to connect with *Hashem* on this holy day could inspire her to do this!

Another incident: One of the *Yidden* here did not make it onto the Kosher Food List for *Rosh Hashanah*. Eating *treif* didn't normally seem to bother him but suddenly the thought of eating that food on this day began to bother him a lot, which he shared with me. I told him not to go to the "Chow Room" to pick up his meal. I gave him my own kosher meal instead. He thought it over and agreed. Not only did he eat kosher on *Rosh Hashanah* but he also joined us for *tekias shofar* and for *musaf*. He was a happy *Yid* that day. It made me happy, too, that even here, in a Place Called Prison it was possible to help a *Yid* eat kosher food. (Not to worry, I managed to get food also.)

## A LOVING SHEPHERD EXAMINING HIS FLOCK

In the *tefillah* of *Unesaneh Tokef*, "Let us proclaim the mighty holiness of this day," the author describes the awesomeness of *Yom Kippur*, how even the angels tremble with fear and dread as they proclaim "The Day of Judgment is here!"

Then, as we know, the *chazan* continues with *kevakoras ro'eh edro*, as a shepherd examines his flock.... This image of a shepherd lovingly scrutinizing each sheep in his flock describes the activity through which many of our greatest leaders in *Tanach* proved their ability to care lovingly for the *Yidden*.

*Chazal* explain that *Moshe Rabbeinu* was careful to give each sheep only the type of grass suited to it, and describes how *Moshe* ran after a lone sheep that wandered away from the flock. This is how *Hashem Yisborach* examines every *Yid* on the awesome *Yom Hadin*. And we in turn should tremble with love to our Father, our King, to do all He wants of us.

The *Baal Shem Tov* says a *Yid* should take a lesson in *avodas Hashem* from everything he sees and hears. I was *zoche*, *boruch Hashem*, to gain a real life lesson about this on the second day of *Rosh Hashanah*, and to understand *Unesaneh Tokef* on a deeper level.

We had just finished the *haftorah* when the chaplain came

in and announced "Total Recall!" That means everyone in the entire prison needs to immediately stop what he's doing and report to barracks for lockdown.

It was lunchtime in the prison but no questions were asked and no reasons given for this disruption. Everyone started leaving. I grabbed my *tallis*, *machzor* and *shofar*, not knowing whether we'd be locked in our tiny cells for a day, a week, a month... I could see all the kitchen workers leaving also so it seemed something serious was going on.

All the inmates were locked in their cells. I put on my *kitel* and *tallis* and learned an *inyan* in *tekiyas shofar*. They announced "Count Time," and the officers began peering into each cell through the small window in the door.

The eerie comparison with *kevakoras roeh edro* occurred to me. This total recall was also to make a thorough count of all the prisoners — the *klipah's* way of having every being pass in front of the prison authority to be counted.

But what a difference in how they are counted by the prison "shepherd." The examiner has no interest in the well-being of the person he is counting. Doesn't care who he is, what his needs are, or why he's there. It's a junior officer doing the work for his superior. He merely counts and reports back the tally.

But think of the difference in how *Hashem Yisborach* counts his flock, as the *Nesaneh Tokef* teaches us. Hashem Himself examines and counts His *sheiflach* to know what each and every one needs and to allot their portion. He doesn't send a *shaliach* for only He can plumb the depth of our souls.

And if you want to know what *Hashem* sees when He counts us, think of the three stories I mentioned from the first day of *Rosh Hashanah*...

*Hashem* sees the true essence of the *Yid's neshomah*, which longs to connect with Him with love and *mesirus nefesh*. The *Yid* who never had a *Yiddische* education, thrown into the darkest man-made places in the world, fulfills the *ratzon Hashem* not to pick up the cherished legal mail until *Hashem* says he can!

The *Yid* who never had a *Yiddische* education and was in the middle of the busiest part of her day, stopped when asked to do a *mitzvah* that would connect her with *Hashem*, stopped, made a *brochah* and did the *mitzvah* with *simchah*, not allowing obstacles to stand in the way.

The *Yid* who is demoralized from all the darkness around him and is about to give up, lights up and becomes re-energized from doing the *mitzvah* of eating *kosher* and listening to the *shofar*!

He examines every *Yid's* inner being and knows who he is deep down and the *koach* of his *neshomah* that longs to express itself. *Hashem Yisborach* himself grants every *Yid* a good sweet year in which all his needs will be fulfilled. And if there are *gezeiros ra'os* hanging over him, *chas v'sholom*, *Hashem Yisborach* Himself gives every *Yid* the *kochos* to nullify them through *teshuvah*, *tefillah utzedakah* that are *mavirin es roah hazezeirah*.

After absorbing this lesson in *avodas Hashem*, I heard the unexpected announcement that the count was over we were able to return to the chapel to do *tekias shofar* and *daven musaf* with a *minyán*! *Unesaneh Tokef* was said with much more *kavonah*. When we came to *kevakoras ro'eh edro*, it came to life so much more powerfully how *Hashem* examines each one of us with love, compassion and devotion, understanding our innermost longings and needs. And how we, in turn must resolve to serve Him with love and devotion.

"*Kevakoras roeh edro*" - As a shepherd examines his flock - with love and devotion to his flock, so we resolve to serve

*Hashem Yisborach* with love and devotion and view *Yidden* as *Hashem* does.

*Yehi ratzon* from *Hashem* that He should grant every *Yid* a *shannah tovah* with a *geulah protti* and *geulah klali* with *Moshiach Tzidkeinu*! *B'elokim botachti, lo irah! Besuros tovos.*

Love,

*Sholom Mordechai Haleivi Ben Rivkah Sheyichye*

209

לבוד ר' שלום מרדכי רובשקין שליט"א

אנו קינדער אין חדר וחרוז חבב האבען שטארק געפילט פאר זיך און מיין דאזענען און  
 סתתן מצוות אז דער אייביגשטער זאל העלפן זיך און זיין מצב אונד זיך ארויסצומען  
 ופרייטן.

א יענער איבעל פון סת"א און חדר וחרוז חבב האט מקבל געווען צו זיך בעטער און בלי  
 ניד פראבירן צו טארן מער מצוות און מעשיות טובים. זא און א רשימה פון די קינדער און  
 אייער קובלת האט מיר גייען טארן בלי ניד זיך און קומענדיגע טעג און פראבירן צו טארן  
 כאטש ביז דער יום טוב.

הילד יחשע וחישייל בי גיט דאזענען און זאגען 15 פרקים ויהלים  
 הילד פוזק פאט בי גיט זאגען פוף פרקים און ויהלים  
 הילד אפרים בי גיט זאגען 80 פוזקים און ויהלים  
 הילד היים צב בי גיט דאזענען און זאגען 15 פרקים ויהלים  
 הילד פוזק טאזענען בי גיט דאזענען און זאגען 50 פרקים ויהלים  
 הילד אהרן חו בי גיט דאזענען און זאגען 16 פרקים ויהלים  
 הילד חאל צב בי גיט זאגען מער ויהלים  
 הילד שמואל בי גיט דאזענען און זאגען פוף פרק בי גיט פוף פרק לא ויהלים  
 הילד אבימחור בי גיט דאזענען און זאגען 20 פרקים ויהלים  
 הילד ראובן בי גיט דאזענען און זאגען 5 פרקים ויהלים א יענער טאג  
 הילד הענין יעקב בי גיט דאזענען און זאגען ויהלים פרק ק"ט  
 הילד דובי בי גיט דאזענען און זאגען מער ויהלים  
 הילד יעקב מששור בי גיט דאזענען און זאגען מער ויהלים  
 הילד דניאל בי שטיין גיט לערנען א טאן מער ויהלים  
 הילד ודו בי גיט לערנען א פאר משה ווען ער קומט א היים  
 הילד דניאל בי גיט דאזענען און זאגען 20 פוזקים א יענער טאג  
 הילד יעקב בי גיט טארן אהרן לרען און זיין שיק צו אבידער  
 הילד היים ריב בי גיט טארן מער כבוד אב האט  
 הילד מיכאל בי טארן א טאן מצוות און געבען צדקה  
 הילד ישראל ויהלים בי גיט זאגען 15 פוזקים ויהלים  
 הילד משה בלומנעל בי גיט זאגען 16 פוזקים ויהלים  
 הילד שמואל קטשין בי גיט דאזענען און זאגען א פרק ויהלים  
 הילד יעקב משה בי גיט דאזענען און זאגען דריי פרקים ויהלים א יענער טאג  
 הילד חוקי בי גיט טארן א טאן מצוות און געבען צדקה  
 הילד ברוך בי גיט דאזענען און זאגען דריי פרקים ויהלים א יענער טאג

אנו זי געבען קלאט ויל זיך וויססטען א כתיבת ותיפיקה טובה און א גוט יאר אונד מיר  
 האלען הערען בשורות טובות וישועות בקרוב און מיר האלען אלע זמם זיין צו זי קומען פון  
 משה צדק בטהרה בימינו פון משה צדק בטהרה בימינו.

כתתה א' חדר תורת אבא ר' יעקב

רבי י פאלאק

A LETTER OF KABBALOS THAT STUDENTS AT CHEDER TORAS ZEV IN LAKEWOOD, NJ, UNDERTOOK AS A ZECHUS FOR REB SHOLOM MORDECHAI RUBASHKIN.

# Rubashkin State Labor Case Expunged

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BY DEBBIE MAIMON

In a remarkable but unreported event in an Iowa courthouse a few weeks ago, a judge expunged from the court record Sholom Rubashkin's entire labor case, including all documents and trial proceedings connected with "The State of Iowa vs. Sholom M. Rubashkin."

The judge was implementing a new state law that grants a former defendant who was found innocent at trial, or for whom all charges were dropped or dismissed, full erasure of his criminal record. Such an act signals recognition that the case was without foundation, should not be used in any way against the former accused and essentially, should never have been brought.

It's the closest thing to an apology one can expect from the government for putting someone through the financial and psychological ordeal of a criminal prosecution.

Sholom Rubashkin was one of the first individuals to see his state case wiped clean thanks to this new law. What an extraordinary sequel to a sensationalized criminal prosecution, in which he was initially slated to stand trial for a staggering 9311 counts of violating child labor laws.

Government officials spent two years investigating and preparing the case, spending vast sums of money, amassing thousands of files and preparing dozens of witnesses. Now even the initial indictment can no longer be found on any public database. The entire saga has been expunged. Who could have envisioned the massive affair would later be erased by a one-page court order?

Had anyone suggested such a scenario during the painful, bleak period when Sholom was surrounded by enemies anticipating his conviction on thousands of labor counts, he would have been laughed at.

## SUREFIRE VICTORY?

As many will recall, a smear campaign waged against AgriProcessors by labor unions, the *Forward* newspaper and various unscrupulous elements had trashed its reputation well before the trial commenced. Sholom Rubashkin's name in many circles had come to be linked with the evils of worker abuse and immigrant exploitation.

Of course, when the 9311 labor violations were abruptly dropped to 83 on the eve of the trial, observers began to suspect something artificial about the massively inflated indictment. But the propaganda had already poisoned public opinion. Victory for the prosecution was thought to be a slam dunk.

One remembers how the government at great expense had flown in witnesses from Guatemala and other countries where, as undocumented workers at AgriProcessors, they had been deported after the raid. Now they were promised rich incentives to return

- including a coveted U-visa for themselves and their families - in exchange for their cooperation with the government.

All they had to do was give testimony against their former employer, describing to a jury how they were hired as minors at the meat-packing plant and were mistreated and exploited.

## LABOR TRIAL DID NOT FOLLOW GOVERNMENT SCRIPT

To the government's chagrin, the trial did not go according to script. Despite extensive prepping by a Spanish translator, the witnesses' narratives were plagued with inconsistencies. Many witnesses fumbled their way through their testimonies, frequently retreating into "I don't know" or "I don't remember" under cross-examination. Their collective testimonies failed to sway the jury.

The actual charges against Sholom were that he knowingly hired underage minors and exposed them to dangerous machinery and working conditions. At trial, the prosecution also aired a host of additional allegations about foul play at AgriProcessors including extortion, withholding employees' wages and not providing workers with safety gear.

The witnesses from Guatemala each testified to having been underage when they were hired at the meat-packing plant. Yet, as cross-examination proceeded, most admitted they had lied about their age to get a job, raising doubts about their overall reliability. A baffled jury pondered the many unknowns. Had the witness truly lied about his age as he claimed? Was he really a minor at the time he was hired? If so, how was Sholom Rubashkin at fault for hiring him?

If these former employees were telling the truth about their ages, why could the government not produce birth certificates, passports or other form of documentation to corroborate their statements?

Or perhaps the witnesses, with their eyes on the promised U-visa, were lying to the jury *now* about having lied *then*, when applying for a job? If so, how could their testimony about anything related to AgriProcessors be trusted?

## ALLEGATIONS COLLAPSE UNDER SCRUTINY

Puncturing the many lies and myths about AgriProcessors that had gained traction posed a challenge for defense attorneys Mark Weinhardt and Montgomery Brown. But their diligent cross-examination and talented 'lawyering,' in a courtroom presided over by the even-handed Judge Nathan Callahan, slowly turned the tide in the courtroom.

Weinhardt and Brown not only shredded the credibility of the government's witnesses, they laid bare the lack of foundation to

claims of unsafe work conditions, physical abuse, lack of safety equipment and exposure to poisonous chemicals at the plant.

One by one, the allegations raised by the government collapsed under scrutiny.

Defense witnesses included plant managers; an immigration attorney; a former Postville city councilman; Agri's former *rav hamachshir*; various individuals who had been given comprehensive tours of the plant, and a professional interpreter who had access to Postville's immigrant community.

Management personnel testified that regulations about not hiring minors were strictly enforced at AgriProcessors. One officer explained that the plant had so many applicants, they turned away dozens each week; the applicant pool was so abundant there was no need for underage workers.

In addition, he said, the risks involved in employing minors made it thoroughly impractical to do so. Their performance would be inferior, causing productivity to suffer. An injured minor would not qualify for insurance. His being discovered could result in the plant losing its insurance. There was nothing to be gained and much to lose in hiring underage workers.

In response to questions about minors and whether he observed workers in safety equipment, Rabbi Moshe Weissmandl, the former *rav hamachshir* at Agriprocessors, said he walked every area of the plant once a month for seven years, and routinely observed workers fully attired in safety equipment. "Never did I see a worker that I could identify as a minor," he said.

Rabbi Weissmandl used the opportunity on the witness stand to explain the origin, in his view, of the widespread prejudice against AgriProcessors and Sholom Rubashkin. He cited the relentless smear campaign of PETA, aided by UFCW union leaders, liberal Jewish activists at the Forward, and Conservative Jews pushing a new kind of "kosher" certification based on arbitrary ethical standards.

"Each group alone was ruthless, with non-stop incitement and harassment... Together they were unstoppable," he said.

Slowly, throughout many hours of testimony, a more truthful picture emerged about the workers and about conditions at AgriProcessors. Defense witnesses established that safety training and safety equipment at the plant were a foremost priority. Over \$100,000 a year was spent on safety equipment, protective safeguards and training, one manager testified.

Another manager, Chaim Abrams, testified that the record of workplace injuries at AgriProcessors fell below the national average at slaughterhouses; after a five-year period, insurance premiums paid by AgriProcessors for its workers so exceeded the amount of accident claims filed, the company received a refund. As all insiders know, this is extremely rare in the slaughterhouse industry, the manager said.

#### LABOR DEPT KEPT AGRIPROCESSORS IN THE DARK ABOUT MINORS

One of the most troubling disclosures that emerged from the defense testimony concerned an April 2008 onsite inspection of the plant by the Labor Department. Mary Funk, an immigration attorney from Des Moines, testified that following that inspection, AgriProcessors was sent a subpoena asking for over 100 personnel files.

Aware that the inspection team had included a Hispanic woman trained as a "facial expert," Funk surmised that underage workers may have been discovered. Funk sent a letter to Sheridan Lucht, one of the labor officials, asking her to specify the names of any

employees she believed to be minors, so that AgriProcessors could fire them.

"She wouldn't give us any names," testified Funk in court. She went on to describe how she repeatedly pressed Lucht at the Labor Department for the names of the suspected minors and was continually rebuffed.

"Why wouldn't Ms. Lucht give the names?" defense attorney Brown asked

"She said the investigation was ongoing."

"So labor [officials] let minors remain there for many weeks until the raid?"

"I don't know what they did. I only know we were not told who these minors were - if in fact they were minors."

"Is it fair to say Ms. Lucht was playing games by withholding this information?"

"All I know is she did not give us the names."

#### WHY DIDN'T LABOR RUSH TO TAKE THE 'MINORS' OUT OF DANGER?

Apparently in no particular hurry even after discovering "minors" in the plant's work force, the Labor Department scheduled a June 2008 onsite inspection of documents at AgriProcessors to complete its investigation. That inspection never took place due to the May ICE raid, at which point all documents and records were seized by ICE officials.

One can't help but ask the obvious question: Is it not bizarre that government officials took no action to stop minors from working long hours around supposedly poisonous chemicals and dangerous machinery?

Shouldn't they have been concerned enough about child-laborers to respond to the attorney's repeated inquiries? After all, would the state of Iowa be prepared to spend close to half a million dollars to prosecute Sholom Rubashkin if they did not consider child-labor laws of paramount importance?

One cannot avoid the implication that if in fact minors had been discovered, these were being used as pawns in a more important cause —and that is why officials stonewalled on the names.

Here was a chance to stage a high-profile case in the name of a humanitarian cause. Here was an opportunity to advance careers by bringing down Sholom Rubashkin, who by this time had been so demonized in the public mind, he would be a very soft target. A cinch to convict.

#### THREE WORDS THAT CAPTURE A UNIVERSE

As is well-known, the jury found Sholom Rubashkin innocent of all charges. The public was astounded by his sweeping acquittal. But for those who followed the trial carefully, there was no mystery.

The phenomenon of Sholom's acquittal boiled down to three words that capture one of the cornerstones of a democracy: *A fair trial*. A trial at which the constitutional right of the accused to defend himself is respected and judge and jury both seek the truth.

Since the case has been expunged and there no longer exists any official record of the trial, memory must replace electronic records in preserving an awe-inspiring narrative of a stunning turnaround... when the unexpected and impossible became reality in Sholom Rubashkin's life.

May the same come true regarding his current Motions to vacate his federal trial and be granted his freedom.

[More to follow next week on these two Motions which have just received a ruling from Judge Reade.]

# Expungement Of Rubashkin Case Electrifies Community

A NOTE FROM THE YATED EDITOR

Last week's cover story about Sholom Rubashkin's state case being expunged from the record electrified the community, triggering an outpouring of congratulatory phone calls and letters. The wave of happiness that engulfed people all over the world at the news testifies to how deeply embedded is the collective concern over Sholom's plight and the abiding quest for justice in the long-running Rubashkin saga.

Many who confused the state case with the federal case still moving forward, rejoiced at the thought that Sholom was about to be released. Unfortunately, that is not (yet) the case. He remains incarcerated in federal prison. In another month he will have spent 2340 days behind bars, a small part of his 27-year sentence.

The status of his legal case depends on the outcome of a powerful motion presently before the Court - one of the last avenues of justice available to him in the American legal system. Many of the letters that poured in following last week's story queried whether the expungement of state case would exert any influence over the federal one.

It goes without saying that a defendant reputed to be a villain does not stand a good chance of eliciting mercy from a judge. The view of Sholom circulated at the time of his trial as a chronic lawbreaker who exploited child labor and mistreated his workers undercut hopes of a more lenient sentence than the shocking 25 years prosecutors recommended for financial offenses. As is well-known, his sentence surpassed even that.

As the story behind the expungement of the state case against Sholom is revisited, awareness grows in many quarters that the fantastic inventions painting him as a heartless corporate boss presiding over a den of crime were never true. That image, a product of malicious slander and fantasy, unraveled at the state trial.

Although prejudice tends to die hard, one hopes the truth will gain increasing traction and mobilize efforts to support Sholom in his ongoing quest for justice, specifically regarding the 2255 Motion now before the Court. Due to special sensitivities and ongoing litigation surrounding the Motion at this juncture, that subject will be explored at a later date.

# Rubashkin Bombshell Motion Unveils ‘Smoking Gun’

BY DEBBIE MAIMON

An explosive motion filed this week by attorneys for Sholom Rubashkin brings to an entirely new level evidence of government misconduct and abuse of power in a by-now notorious case that robbed Sholom of due process.

The Merits Brief, a dynamic fusion of investigative and lawyering genius, contains a bombshell; previously undisclosed evidence confirming facts and scenarios about the Rubashkin case that took place eight years ago, and were later denied under oath by the government.

Filed by attorneys Gary Apfel of Los Angeles and Stephen Locher from Des Moines, Iowa, the document powerfully supports the 2255 petition filed in 2014 that calls for judicial relief for the immense harm the misconduct caused Sholom Rubashkin, now in his seventh year of a 27-year prison sentence. The sentence arose out of his conviction for financial offenses that the Court determined caused an Iowa bank a \$27 million loss.

The 2255 Petition presented cogent arguments for vacating Sholom’s sentence, granting a new trial or at the minimum, a resentencing. The Petition showed how the government knowingly gave misleading and false testimony at sentencing on issues related to loss amount, and withheld exculpatory evidence that would have resulted in a vastly lower Sentencing-Guidelines range.

Citing sworn affidavits from prospective buyers, the 2255 Petition established that systematic government interference blocked the sale of the company and significantly devalued it by unlawfully imposing the threat of forfeiture on would-be buyers.

As the affidavits make clear, the threat of forfeiture was tied to government-imposed restrictions on hiring Rubashkin family members to help run the company – an intimidation tactic that came to be known as the “No Rubashkin” rule.

The documents show that these tactics, implemented by prosecutors in the Iowa U.S. Attorney’s Office, brought the meat-packing plant to ruin. The prosecutors hampered the trustee’s efforts to re-sell the plant and to keep it operating during bankruptcy so that it could generate revenue to repay the company’s debts. At the time of bankruptcy, Agriprocessors was valued by an independent expert at close to \$70 million.

The prohibition against having anything to do with the Rubashkins and the fear of government forfeiture scared off potential buyers at the time the company was being auctioned. From being a flourishing business that brought in \$300 million in annual revenue, the plant’s value plunged during its bankruptcy as one by one, interested bidders dropped out. The plant was finally sold for a fraction of its original value.

The sale price was too low to repay the company’s largest creditor, FBBC. That set the stage for prosecutors to ascribe to Sholom Rubashkin what they charged was a \$27 million loss, ramping up his

sentencing range to a shocking 27 years.

## FALSE AND MISLEADING TESTIMONY

The 2255 Petition argues that by concealing the scope of its intrusion into the bankruptcy and denying the no-Rubashkin agenda, the government robbed Sholom Rubashkin of crucial exculpatory evidence needed for his defense. The government’s denials and its false and misleading testimony prejudiced the Court in its evaluation of an appropriate sentence, the Brief contends.

The denial of the “No Rubashkin” policy came after the government consistently, over an 8-month period, implemented this very policy with all bidders and would-be buyers during Agriprocessors’ bankruptcy and auction period, the Brief attests. Insistence on “No Rubashkins” in the new company extended to SHF Industries which ultimately purchased the plant.

During Sholom Rubashkin’s sentencing hearing in June 2010, the defense called witnesses to testify about the No-Rubashkin policy and how it impacted the fate of Agriprocessors and Sholom himself. The government in turn called key witness Paula Roby who denied there had ever been such a policy. Incredibly, the very same prosecutor who had formulated the policy, the Brief attests, is the one who elicited this denial from her in court.

Incredibly, this prosecutor filed papers in the 2255 case continuing to deny that false testimony was presented at Sholom’s sentencing.

## ‘SMOKING GUN’ DISCLOSURES

The ‘smoking gun’ uncovered by Sholom’s attorneys comes in the form of an attorney’s detailed handwritten notes that recorded a fateful December 2008 as the meeting unfolded. This transcript was obtained by Rubashkin’s legal team during their investigation after filing the 2255 Petition.

The meeting took place after Agriprocessors had declared bankruptcy and a court-appointed bankruptcy trustee, Joe Sarachek, had been appointed to oversee the plant. The notes were taken by Attorney James Reiland, who at the time was an associate with the respected national law firm, Kelley Drye and Warren LLP.

Reiland and his partner, Julian Solotorovsky, were retained to represent the Agriprocessors bankruptcy trustee. They had – and continue to have – no connection to Sholom Rubashkin.

On December 5, 2008, the three men were meeting with two U.S. attorneys in Iowa’s Northern District, Richard Murphy and Peter Deegan, prosecutors in the Rubashkin case. Also present was bankruptcy trustee Joe Sarachek and his counsel, Paula Roby [mentioned above as the government’s key witness], who served as liaison between Sarachek, the bidders at the Agriprocessors auction and the prosecutors.

Reiland took down the statements made by each with attribution. In sworn affidavits, he and Solotorovsky affirm the accuracy of the transcript. Frozen in time, their notes open a window into a breathtaking abuse of government power, fully documented in the Merits Brief and the 2255 Petition.

### THE NO-RUBASHKIN RULE IS ANNOUNCED

At the December 2008 meeting, the notes recount, AUSA Murphy articulated a policy that prohibited any purchaser from involving any Rubashkins in the new company in any capacity, and injected the threat of government forfeiture to give that policy “teeth.”

Murphy fretted that even the threat of forfeiture would not be enough.

According to notes of the meeting, Murphy announced to those present, “No Rubashkins’ is very important to us—non-negotiable. The problem is, we don’t have a seat at the table.”

Paula Roby spoke up. “We’re going to set one up for you. Are there any other non-negotiables?”

“No Rubashkin involvement from any standpoint,” AUSA Rich Murphy reiterated.

According to this government stance, later denied by both Paula Roby on the witness stand, and by AUSA Peter Deegan in court papers, the buyers of the plant would face forfeiture of their assets were they to hire a Rubashkin family member.

Trustee Sarachek was advised to spread this warning among bidders. According to the notes we now have of the meeting, Sarachek protested that forfeiture “would kill off bidders” and “enormously hurt [his] ability to do his job [to maximize the value of Agriprocessors for sale purposes.]”

### ORCHESTRATING THE COMPANY’S DECLINE

Trustee Sarachek in an affidavit filed with the Merits Brief relates that he had no choice but to comply with the No-Rubashkin rule regardless of his reservations, even though it made no sense from any standpoint. Except for Sholom, no member of the Rubashkin family, including the plant’s owner, Aaron Rubashkin, had ever been charged with a crime in the case. On what grounds did the government appropriate the right to bar these law-abiding citizens from a privately owned company?

As he predicted it would, the “No Rubashkin” rule coupled with the government’s improper use of forfeiture led to a severely depressed sales price for the meat-packing plant. From an initial net worth of close to \$70 million with annual revenue of \$300 million, its value dropped to a fraction of that amount. The plant was finally sold for \$8 million.

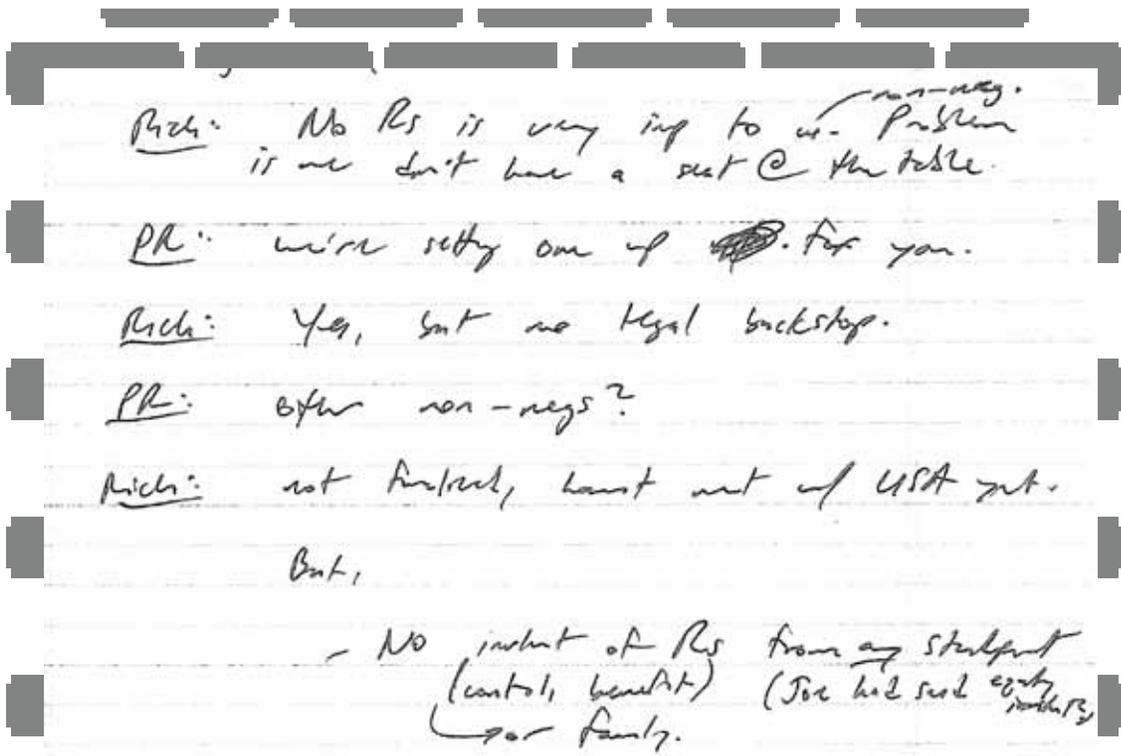
The declarations from trustee Sarachek and prospective bidders

and other evidence demonstrate that the government played the key role in causing the plant’s considerable erosion in value.

Prosecutors not only took no responsibility for this disaster, they falsely ascribed the entire loss amount to fraudulent business practices committed by Sholom Rubashkin.

The insufficient purchase price caused FBBC, which held the senior security interest in most of Agriprocessors’ assets, to suffer a loss that the Court found totaled approximately \$27 million.

This later became the loss amount for sentencing purposes, resulting in a substantial increase of 22 levels under the Sentencing Guidelines that equates roughly to 24 years of additional imprisonment for



The No-Rubashkin rule as promulgated by assistant US attorney Richard Murphy on March 5, 2008. The government later denied it.

Sholom Rubashkin.

Had significant offers for the meat-packing plant not been thwarted, Agriprocessors would have been sold at substantial profit, more than covering the debt from FBBC. That would have eliminated the massive “loss amount” to the bank that drove the sentencing guidelines range so high.

Entrepreneurs who came to bid on the plant understood they could not run the business effectively without input from the former owners. Once the “No Rubashkin” policy was invoked in their meetings with government officials—meetings the U.S. Attorney’s Office insisted upon—these potential buyers withdrew. This swiftly led to the collapse of the plant’s value, attorneys said, and destroyed all possibility of FBBC recovering its loan.

Sholom Rubashkin presented evidence of government interference with the sale of Agriprocessors at his 2010 sentencing hearing. He called witnesses and submitted a sworn affidavit from a prospective buyer attesting that he had been scared off at the bankruptcy auction, after being forced to meet with hostile government officials who reiterated the “No Rubashkin” rule and threats of government forfeiture.

Here is where the cover up officially began.

## GOVERNMENT STAR WITNESS GIVES FALSE TESTIMONY

As mentioned above, the government countered by putting on the stand star witness Paula Roby. AUSA Peter Deegan asked Roby questions designed to refute the existence of a “No Rubashkin” agenda. She fully accommodated him, saying she knew of no such policy and would surely have remembered such an agenda, if it existed.

Having Rubashkins employed by a new owner of the plant “would not be a deal-breaker,” Roby insisted. She denied that prosecutors had strong-armed any of the bidders at the bankruptcy auction and stated that anyone who met with prosecutors about any of their concerns came away “satisfied.”

Observers at the sentencing hearing, including this writer, were witness to what appeared to be government endorsement of Roby’s misleading and false statements.

Those present may recall the coy exchange between the two when Deegan then asked Roby if she had any reason to withhold information about the alleged “No-Rubashkin” policy (to counter any suspicion that she wanted to protect the government.)

Roby gave an amused response as if the two shared an inside joke. “No, sir, I don’t work for you.”

Under cross-examination, Roby continued to insist there was no basis for “unreliable rumors” about a “No Rubashkin” rule. “Trustee Sarachek is ‘trying very, very hard to dispel these rumors in the community,’” she said.

Various bidders refuted her statements, testifying in sworn affidavits filed with the Merits Brief that they had received warnings from Trustee Sarachek regarding the inability to use members of the Rubashkin family in running the new business.

Sarachek himself testified to this in his own affidavit, saying “[prosecutors] made very clear to me and my attorneys shortly after my appointment as trustee the restrictions about hiring Aaron Rubashkin or any Rubashkins in the company.”

Roby also gave false testimony about why a \$40 million offer for Agriprocessors from an investor named Soglowek fell through. “It’s because he did his due diligence and realized the company was not worth the amount he had offered for it,” she told the prosecutor.

## BIDDERS SET THE RECORD STRAIGHT

“That is untrue,” claims Mr. Soglowek in a sworn statement. He describes how he was intimidated by the government’s forfeiture threats and warnings of “very bad consequences” if he employed any Rubashkins.

Affidavits from nine other would-be buyers painted similar scenarios of government interference and intimidation. Excerpts from some of their respective affidavits, attached as exhibits in the Merits Brief, follow below:

Prospective bidder Sid Borenstein said “the position of the U.S. Attorney’s Office had a chilling effect on our interest in purchasing the assets of Agriprocessors. We viewed Aaron Rubashkin as a ‘key man’ without whose involvement we would have no ability to manage this business. Accordingly we did not submit a bid.”

Other bidders described similar reactions.

Abraham Shaulson: “The inability to have an employment or consulting relationship with any member of the Rubashkin family drove the value of the business down substantially.”

Meyer Eichler: “The exclusion of Rubashkin family members pronounced by the US Attorney’s Office prevented the group of investors from making a formal offer for the company.”

Nathan Tzivin: “Mr. Soglowek also told me that the threats and demands of the United States Attorney’s Office is the principal reason [his company] withdrew the offer reflected in the \$40,000,000 term sheet, and didn’t appear to bid at the bankruptcy auction held on March 23rd and 24th, 2009.”

Wagschal, whose company, Kosher Standard, was the highest bid-

der during the bankruptcy auction in March 2009 said he was forced to meet with prosecutors during the auction:

“The U.S. Attorney’s Office representative told me that if my company bought Agriprocessors, the U.S. Attorney’s Office would confiscate the brand names and trademarks. He told me the business would have to ‘start from scratch’ and there could be no remnants of any connections to the Rubashkins. He said the U.S. Attorney’s Office would be ‘watching [me]’ and that it would not be easy to get funding or run the business.”

Wagschal’s partner, Jeff West, said:

“The prosecutor was hostile and threatening. He accused my partner and me of being connected in some way to the Rubashkins... The prosecutor said he would be watching us closely and said or implied that the government might exercise its forfeiture rights after our purchase of the business.”

Another bidder, Meyer Eichler, said:

“[AUSA] Murphy forewarned us in no uncertain terms that if he (or members of his office) were to discover that any member of the Rubashkin family had either an equity interest or a management role in the company after we purchased it, the U.S. Attorney’s Office would not allow this.”

Eichler’s colleague, Sid Borenstein, reiterated the point:

“During the meeting, the U.S. Attorney’s Office representative informed us that ‘under no circumstances’ would the government permit a sale to take place to a buyer that had Aaron Rubashkin as a minority investor, nor would the government permit him to play a management role.”

## FALSE TESTIMONY USED IN JUDGE’S CALCULATION OF LOSS

When the government deprives an individual of his life or liberty on the basis of evidence that it knows to be false, it betrays its fundamental obligation to provide a fair impartial trial, the Merits Brief states.

The Brief quotes a Supreme Court ruling that “government may not knowingly suppress evidence capable of vindicating the defendant, or of impeaching government witnesses.” In other words, the government was obliged to correct statements from Roby it knew to be false.

Roby’s inventions and falsifications were allowed by the government to stand unchallenged.

Faced with conflicting testimony from Roby who denied the no-Rubashkin rule and from the entrepreneurs who all attested to it, and lacking the “smoking gun” transcript of the December 2008 meeting that fully corroborates the testimony of the bidders, Judge Linda Reade made her call.

“The Court credits Roby’s testimony and discredits testimony from defense witnesses,” she wrote in her Sentencing Order. Accordingly, the Court declines to consider this theory [that government maneuvering brought the meat-packing plant to ruin] in arriving at an actual loss calculation.

As is well-known, Reade accepted the prosecutors’ narrative and their calculation of loss, imposing a 27-year jail sentence, two more years than prosecutors had requested.

## SHINING A LIGHT ON THE COVER UP

The Merits Brief presents stunning disclosures that, like a post-mortem elucidating how the victim died, shine a light on government misconduct “backstage” and its later attempt to cover up their conduct with denials and concealment of the truth.

With meticulous documentation supporting its arguments, the Merits Brief is a shattering expose of government malfeasance in the Rubashkin case that cries out for justice.

Burning questions continue to swirl about this case. One recalls how, in response to the gross disparity of the 27-year sentence and the discovery of secret meetings between the government and the judge

in the case, eighty-six legal experts—including former attorneys general, senior officials at the Department of Justice, United States attorneys and federal judges -- signed an amicus curiae brief supporting Rubashkin's first appeal in 2012, asserting that the judge should have recused herself.

Over the course of the following two years, nearly 70 congressmen separately wrote letters to then Attorney General Eric Holder demanding a review of this case and expressing concern over what they condemned as judicial and prosecutorial misconduct.

The government's response to the 2255 filing was to issue a terse categorical denial of all wrongdoing. The Merits Brief shreds these denials and exposes the government's egregious misconduct in violating Sholom Rubashkin's right to due process.

The brief calls for Sholom Rubashkin to be granted a resentencing free from false and misleading testimony. If the government will not concede the "due process violation," the brief says, an evidentiary

and discovering hearing in "light of the overwhelming evidence in Petitioner's favor" is surely called for.

That includes depositions of AUSA Murphy and Deegan to determine the truth about the issues raised in the 2255 and the Merits Brief, and all communications between the government and third parties including Paula Roby, Trustee Sarachek and all bidders regarding forfeiture and the "No Rubashkin" rule.

Justice has certainly failed Sholom Rubashkin until now. But his case, so emblematic of prosecutorial abuse in some quarters, is very much alive. Despite the many delays and setbacks it has faced plodding its way through the slow-moving justice system, it refuses to die.

As additional pieces of the story surrounding his criminal prosecution come to light through the Recusal Motion, the 2255 Petition and the Merits Brief—with who knows what other sordid surprises around the corner—this singular travesty of justice cries out more than ever for relief.

## DRAMATIC DISCLOSURES AT RUBASHKIN SENTENCING HEARING BLOW LID OFF GOVERNMENT CASE

[AS REPORTED IN YATED IN JUNE 2010]

In response to defense claims in court papers that the government had orchestrated the ruin of AgriProcessors, prosecutors at Sholom Rubashkin's Sentencing Hearing last week called attorney Paula Roby who represented the court-appointed Trustee Joe Sarachek.

Roby denied the existence of any "edict" or government rule barring a purchaser of Agriprocessors from hiring anyone linked to Rubashkin and repeated her testimony under cross-examination by defense counsel Brown.

One could see confusion register in the gallery where scores of observers—most of them Iowa residents—sat listening. People clearly recalled numerous press reports quoting officials that no one from the Rubashkin family would be permitted to serve in the new AgriProcessors management. [See Sidebar] This was now being denied under oath.

Mr. Brown then highlighted on a large screen in the courtroom a sworn affidavit from Brooklyn businessman Meyer Eichler. In his affidavit, Eichler affirmed that in his negotiations as an interested purchaser, he had been informed by government authorities that he would be subject to prosecution were he to employ a Rubashkin in management after buying the plant.

In an interview with *Yated*, Mr. Eichler affirmed that he had been scared off by the warnings from U.S. attorneys. "Despite being very interested in purchasing AgriProcessors, I didn't feel confident we could operate the plant successfully without input from the Rubashkins," he said. "These people are the experts in the kosher slaughter industry. In addition, the "no-Rubashkins" policy would kill the whole appeal to investors."

Shown the affidavit that overturned her testimony that no rule against employing Rubashkins was ever formulated by the government, Roby shifted uncomfortably. She left the witness stand, followed by a defense witness whose testimony further punctured her testimony.

Steve Cohen, owner of Twin City Poultry, testified that in his negotiations to purchase AgriProcessors in January 2009, he had been informed by Trustee Sarachek that he had to deal with federal authorities.

He and his lawyers conferred with U.S. attorney Murphy and Sarachek who confirmed that there was no prospect of allowing Steve Cohen to buy the plant unless he promised not to hire as manager or consultant anyone from the Rubashkin family.

Had a buyer purchased the company when it was still a flourishing operation, all of Agriprocessors loans would have been repaid. New ownership of the plant would have satisfied the banks and the creditors. It would have been especially hailed by Postville residents whose town had been so eviscerated by the ICE raid.

"When the beleaguered Agriprocessors meatpacking plant first filed for Chapter 11 bankruptcy protection, a small glimmer of hope emerged in Postville," wrote the *Iowa Independent*. "There was an opportunity for another company to take over operations at the plant, for production to continue and for the community not to lose its largest employer."

But it was not to be. The survival of Agriprocessors would have been cause for celebration for the Postville population, but would not have pleased certain parties who were apparently determined to drive the company to financial ruin.

The "No-Rubashkin" Rule Reported in the Press

"The issue of possible ties to the Rubashkins would be crucial to the new company negotiating the purchase of AgriProcessors. Federal prosecutors, who have threatened to seize the business as part of their criminal case, reportedly have agreed to drop that effort if a new owner proves it has no links to the old owners." *WCF Courier*, June, 2009

A federal bankruptcy judge Monday approved the sale of a troubled Postville meatpacking plant to a Canadian businessman and his partners. The buyer, SHF Industries, filed papers Monday swearing that it had no connection to the previous owners. *Des Moines Register*, July, 2009

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— A Pesach Message From —  
**R' Sholom Mordechai Rubashkin**

# No Piece Left Behind

BY RABBI PINCHOS LIPSCHUTZ

With *Zman Cheiruseinu* a few days away, some thoughts we once discussed around my father's *seder* table - may I be *zocheh b'ezras Hashem* to celebrate *Pesach* there in freedom - feel especially relevant today. They pertain to troubling questions that arise at the very beginning of the *Hagaddah*, as we say *hah lachma anya*.

It would seem that the *geulah* from *Mitzrayim*, carried out with Hashem's *yad hachazakah* and *zeroah netuyah*, should have lasted forever. Hashem is eternal... shouldn't the redemption that He Himself executed have also been eternal? Why are we still in *golus* - still at the mercy of "bechol dor v'dor..." wicked enemies in every generation who seek to annihilate us?

The *rechush gadol* the *Yidden* acquired in fulfillment of Hashem's promise also did not endure. As we know only too well, many *Yidden* have suffered extreme poverty throughout the generations.

Thirdly, we know that the *mitzvah* of *vehigadeta levinchah* applies not only to the wise observant son but to all "four sons," including the *ben rashah*. Where does a *ben rashah* come from? The *reshaim* of the generation that left Egypt did not merit to be redeemed, but died in *makkas choshech*. How does a *ben rasha* come to be at our *seder* table?

These painful realities - the endless *golus*; bitter enemies who seek our destruction; *Yidden* living in poverty; wicked sons of Jewish families - are inconsistent with the joy and pride of free people aflame with gratitude to Hashem that we are required to demonstrate at the *seder*.

That brings us to the most burning question of all: how can one truly experience freedom while still in *golus*?

Perhaps the key to all these inconsistencies lies in the paragraph of "hah lachma anya di achalu avhasana be'ara diMitzrayim..."

## OUTSIDE IN

In "hah lachma anya," the *matzah* our fathers ate after leaving *Mitzrayim* is described as the *matzah* they ate while in *Mitzrayim*. What is the significance of this seemingly unimportant detail? Perhaps it is meant to emphasize to us that the departure from *Mitzrayim* was not complete... that part of the *Yidden* on some level remained there. Just as they continued to eat the same "slave" food - *lechem oni* - they still retained some of the foreign ideas and culture of that society.

That is why there exists a *matzav* of *kol dichfin*, in the words of *hah lachma*; people who are hungry and in need, in both the physical and spiritual sense. And that perhaps is why *hashata hacha ... hashata avdi...* we are still here [in *golus*] and still slaves - not yet totally free. Because in a deeper sense, our fathers did not completely leave *Mitzrayim*.

What then did *yetzias Mitzrayim* with all its *nissim* accomplish?

The spectacular event of *yetzias Mitzrayim* was a massive historical turning point for the *Yidden*. It instilled in them a profound *emunah* in Hashem's mastery of the world and in His special relationship with the *Yidden*. It imbued them with G-dliness that became part of their core.

That *emunah* is the force that will take the *Yidden* from the partial *geulah* of *yetzias Mitzrayim* down the corridors of history to the *geulah sheimah*.

By fulfilling the *mitzvah* of *sipur yetzias Mitzrayim* as if we are personally leaving behind the bondage of *Mitzrayim*, we truly free ourselves from the shackles of that depraved, idol-worshipping society... and its modern counterparts in our own times.

By attaining an elevated level of *emunah* whereby we see the miracles even in natural, mundane events, we will merit to witness the realization of the final words in *hah lachma anya*, *leshanah habaah b'ara deYisroel b'nei chorin*.

On a personal note, trying to picture the limitations of a partial *geulah*, of not being able to leave *Mitzrayim* completely, hits close to home. In some ways it would be like finally being released from a Place called Prison (because *Mitzrayim* was just that - a gigantic prison) but not being allowed to leave completely. What could be more frustrating and painful?

That brings us to a crucial question: How is it possible to succeed in leaving *Mitzrayim* in totality - without leaving behind a piece of ourselves in that impure society? What is the path to attaining complete redemption?

## IN THE ZECHUS OF EMUNAH

*Chazal* tell us; "Bezchus ha'emunah nigalu avoseinu miMitzrayim." Our parents were freed from Egypt in the *zechus* of *emunah*. Let's examine this *emunah* to learn how to strengthen and elevate ourselves.

We know from the standpoint of history that Hashem's plan was to bring ten plagues on *Mitzrayim* before Paroh would be so broken he would consent to release the *Yidden*. But the *Yidden* did not have the benefit of this hindsight. They were not told in advance that *geulah* would only take place after the tenth *makkah*. Only Hashem knew the game plan. We see this from the fact that, during the course of the *makkos*, when Paroh several times reneged on his promise to release the *Yidden*, Moshe Rabbeinu became angry. Had he known the game plan, he would have taken these delays in stride as part of the "script."

Far from weakening when they saw these seeming "setbacks" as Paroh continued to defy Hashem, the *Yidden's bitachon* that they would be redeemed grew stronger with each *makkah*.

The nature of the *emumah* the *Yidden* displayed was a mindset that believed that Hashem is not bound by any limits, that He fully controls the laws of nature that He set in place to govern the world. They understood that nature is merely a “mask” behind which *Hashem* directs mankind’s affairs. They understood that a *Yid* who is a *maamin* and always connected to *Hashem* is likewise not bound by the physical world with its natural laws and built-in limitations.

One of the striking differences between the inner world of a *Yid* and that of a non-believer is that a *Yid* seeks to find the *neis* in nature while nonbelievers come up with all sorts of theories to find “nature” in a miracle.

The *Gemara* asks, “Why does a *Yid* plant his seeds in the ground? Because he is “*maamin bechai ha’olamim vezorayah*,” he plants because he has *emunah* in *Hashem Yisborach* that He will nurture the seeds and cause them to grow and sprout. But why does this require *emunah*? Don’t all seeds planted in the ground grow as a matter of course?

That is the whole point. Even the most basic taken-for-granted aspect of nature - that seeds buried in the ground, instead of dying in an airless, dark environment, will *grow* - is an amazing miracle! A *Yid* grasps this. As he plants, he does so with the awareness of the profound wisdom and kindness with which *Hashem* designed and maintains the world.

A Jew trains himself to see miracles and overflowing loving kindness in the flawless way *tevah* operates... the countless miracles that go into keeping the universe in orbit and sustaining life. And the *Hashgochah* in day to day life that orchestrates all these

blessings and keeps a person healthy, with all his organs and senses functioning.

That truly is the path out of *Mitzrayim* - a place of *meitzor*, extreme constraints and limitations where the *Yidden* couldn’t grow, where they were so hemmed in by a degraded society, it took extraordinary effort to think, to contemplate, to plan ahead, to elevate oneself.

The *Shaar Habitachon* in the *Sefer Chovos Halevovos* explains that a person’s *bitachon* grows stronger when he witnesses the abundance of blessings he’s received from the beginning of his existence, in infancy, childhood, youth, early adulthood, manhood and old age. The more he contemplates this incredible overflow of benevolence, the more he becomes aware of an exclusive relationship with the Source and Provider of all this loving kindness, and the stronger his *bitachon* grows.

*Baruch Hashem*, we see infinite *chesed* throughout my entire *nisayon* in ways that appear natural and ways that are clearly beyond natural. Reflecting on the many striking breakthroughs and *nissim* that led us to this moment, we know the only path that can bring the full *yeshuah* is to *daven* with all our hearts and increase our *maasim tovim*. *Yehi ratzon* that with *Hashem’s* infinite *chesed*, I will be freed before *Pesach* this year and joyously reunited with my dear family, friends and community.

I offer heartfelt thanks to all who have supported me with their *tefillos* and so many other avenues of support throughout this *nisayon*. May you all be blessed and rewarded from *Hashem Yisborach* and with His help, may we all be *zoche* to a *chag kosher vesomayach* and an *emeseh*, complete *yetzias Mitzrayim*.

# Justice Officials; Legal Luminaries Petition Government

BY DEBBIE MAIMON

Federal prosecutors in the Rubashkin case used unlawful tactics, gave false and misleading information to the court, and covered up their actions in order to secure a 27-year prison sentence, more than 100 former U.S. attorneys general, judges and legal experts asserted in a letter to Iowa U.S. Attorney Kevin Techau.

The letter urges Techau - who was not in office when these events played out - to recognize, in the wake of shocking revelations of prosecutorial misconduct, that Sholom Rubashkin was the victim of a setup, and calls on Techau to rectify the injustice done to him.

Sholom is currently in his 7th year of incarceration, awaiting the government's response to a "Merits Brief," filed by his attorneys as part of his 2255 Motion to reopen the case in light of new exculpatory evidence.

Among the list of legal heavyweights protesting the actions of the prosecutors in the case are four former attorneys general: John Ashcroft, Ramsey Clark, Edwin Meese and Michael Mukasey.

Other signers include former U.S. senator and Democratic vice presidential candidate Joe Lieberman, Republican New York City mayor Rudy Giuliani, and Kenneth Starr, a renowned former appeals court judge. Former Federal Bureau of Investigation directors Louis Freeh and William Sessions, among many other prominent names, signed the letter as well.

Quoted in a lengthy article by the *Des Moines Register* and other papers, the letter came as new evidence incriminating the prosecutors emerged in the "Merits Brief," filed by attorneys Gary Apfel of Los Angeles and Stephen Locker of Des Moines, Iowa. The brief asked the court to reopen the case in the wake of revelations that prosecutors knowingly elicited "false and misleading" testimony at Sholom's sentencing hearing, and withheld important exculpatory evidence needed for his defense.

"Recently," the letter to Techau reads, "Mr. Rubashkin filed a Merits Brief in connection with his 2255 Motion which provides overwhelming evidence that the prosecutors in your office wrongfully interfered in the Agriprocessors bankruptcy, intimidating potential buyers through the threat of forfeiture and thereby substantially decreasing the ultimate sale price."

"At Mr. Rubashkin's sentencing hearing," the letter continued, "the prosecutors knowingly elicited false testimony which concealed the significant impact their actions had on the loss incurred by First Bank, and misled the judge into finding Mr. Rubashkin fully responsible for a massive loss which led to a sentence of 27 years in prison."

## ASTOUNDING COURTROOM FARCE

As the letter goes on to detail, the false testimony came from the government's star witness, Mrs. Paula Roby, who served as a liaison between the prosecutors and Agriprocessors' bankruptcy trustee, Joseph Sarachek.

Reade herself cited Roby's assertions that there was no truth to "rumors" that the government had barred all Rubashkins from any future dealings with the meatpacking plant and chased off buyers with threats of forfeiture. She thus held Sholom fully ac-

countable for the massive loss a lending bank had suffered when the plant's sale to new owners yielded too little revenue to recover the \$27 million loan.

The explosive new evidence in the Merits Brief, however, reveals the bank's loss was orchestrated by the prosecutors themselves, and Roby's performance on the stand was part of a setup that scapegoated Sholom Rubashkin.

Her false testimony consisted of repeated denials that prosecutors had employed a "no-Rubashkin" policy regarding the future ownership and/or management of the plant, and had rigorously enforced this policy with all bidders.

The no-Rubashkin rule prohibited any buyer of the plant from having any dealings with Rubashkin family members. Reinforced by threats of government forfeiture that chased off potential buyers, the no-Rubashkin rule severely depressed the company's sale price.

"As the Merits Brief describes in detail," the letter to Techau states, the prosecutors threatened each prospective bidder with forfeiture of the Agriprocessors business if the bidder planned to use Aaron Rubashkin in a management, consulting or ownership capacity."

LEGAL STARS COME OUT  
SWINGING FOR  
SHOLOM MORDECHAI  
BEN RIVKAH

## **“ABUSE OF POWER” AND THE RUBASHKIN CASE**

The concluding paragraph of the NACDL *amicus curiae* in support of the Rubashkin appeal of which Reynolds was a party, cites a 1940 speech given by Justice Robert Jackson when he was U.S. Attorney General, on the subject of the great potential for abuse of power in the Office of the U.S. Attorney.

The NACDL brief said Jackson’s words are uncannily relevant to the Rubashkin prosecution.

“The most dangerous power of the prosecutor is that he will pick people that he thinks he should ‘get...’ Instead of discovering the commission of a crime and then looking for the man who committed it, he will pick the man and then searching the law books... or putting investigators to work, to pin some offense on him,” Jackson noted in his speech.

“It is in this realm — in which the prosecutor singles out a person he dislikes or desires to embarrass...and then looks for an offense - that the greatest danger of abuse of prosecuting power lies. It is here that the real crime becomes that of being unpopular with the governing group, being attached to the wrong political views... or being personally obnoxious to, or in the way of, the prosecutor himself.”

“Jacksons’ words are worth repeating for they apply so well to the [Rubashkin] case,” the NACDL brief stated. “When the elaborate raid on illegal immigrants at Agriprocessors did not bear fruit” [i.e. the lurid crimes that should have justified a military-style raid turned out to be nonexistent], “the prosecutors, rather than look ridiculous, searched and found another crime... And the trial judge, who was part of the planning and pre-arrest activities, imposed a sentence of over a quarter-of-a century,” to show how bad the crimes were.

“All this served to justify the huge resources that the Government had employed, with its massive raid more befitting of a bust of a well-armed drug cartel.”

## **GOVERNMENT CLAIMS OF FORFEITURE WERE WITHOUT FOUNDATION**

The sole owner of the plant, Aaron Rubashkin was never charged with any crime and was not a defendant in the case. The government’s forfeiture claims against his assets had no foundation and were likely unlawful, the Techau letter said.

In any case, no investor felt secure taking over ownership and operations in Agriprocessors without the input and expert advice of the former owners. With all Rubashkins barred from future dealings with the meatpacking plant, the company was no longer marketable. Initially valued at \$70 million at the start of the bankruptcy process, its value plunged until it was finally sold for pennies on the dollar – a mere \$8 million.

The insufficient purchase price caused First Bank, which held the senior security interest in most of Agriprocessors’ assets, to suffer a loss that the Court found totaled approximately \$27 million.

This later became the loss amount for sentencing purposes, resulting in a substantial increase of 22 levels under the Sentencing Guidelines that equates roughly to 24 years of additional imprisonment for Sholom Rubashkin.

“The actions of the prosecutors thereby brought about the loss suffered by the victim bank,” the letter to Techau attests. “Had the company’s assets sold for \$40 million, an offer the bankruptcy trustee declined because he thought an auction would yield an even higher amount - Sholom Rubashkin’s guideline “loss amount” would have been zero,” the letter notes, paraphrasing the 2255 Motion. His sentence would have been at minimum - no more than 3 years.

### **THE MEDIA REPORTED THE NO-RUBASHKIN TERMS**

During Agriprocessors’ bankruptcy and auction period, various investors and bidders at the Agriprocessors’ auction had experienced firsthand the government’s enforcement of the no-Rubashkin rule. Leading Iowa newspapers such as *Des Moines Register* and *WCF Courier* had even referred to it:

“The issue of possible ties to the Rubashkins would be crucial to the new company negotiating the purchase of AgriProcessors,” wrote the *WCF Courier* in June, 2009. Federal prosecutors, who have threatened to seize the business as part of their criminal case, reportedly have agreed to drop that effort if a new owner proves it has no links to the old owners.”

One would-be purchaser, Mr. Meir Eichler, had submitted a sworn affidavit attesting to this policy and the government’s threats of forfeiture. His affidavit was produced in court, highlighted on a large screen as Roby sat in the witness stand, insisting there was no basis for “rumors” about a “no-Rubashkin” rule or government’s threats of forfeiture.

Observers at the Sentencing Hearing may remember, as does this writer, Paula Roby being approached by a dumbfounded spectator as she was leaving the courtroom. “*How could you lie like that? How could you sit there and deny what everyone knows?*” the woman addressed Roby incredulously. Security guards quickly whisked the witness away.

Roby’s fabrications caused immense damage to Sholom’s case. “The court credits Paula Roby’s testimony” and “discredits” the Defendant’s testimony... and therefore “declines to consider this theory [about a no-Rubashkin rule] at arriving at an actual loss calculation,” the judge’s sentencing order read.

### **SEVEN YEARS LATER, EXPLOSIVE NEW EVIDENCE**

As the letter to Techau describes, it took seven years until new evidence was uncovered that exposed Roby’s falsehoods, the prosecutors’ collusion with her, and their harmful actions in blocking

The Honorable Kevin Technau  
US Attorney's Office  
111 7th Ave SE  
Cedar Rapids, IA 52401

Re: United States v. Sholom Rubashkin

Dear Mr. Technau:

We write regarding Sholom Rubashkin's Motion to Vacate, Set Aside or Correct the Judgment or Sentence Pursuant to 28 U.S.C. § 2255.

The mission of the Department of Justice includes ensuring that the constitutional and other protections afforded to an accused are not infringed in the zeal to secure a conviction and sentence. Through recent actions such as the post-conviction dismissal of all charges against former U.S. Senator Ted Stevens after his lawyers revealed prosecutorial misconduct, the Department has demonstrated and vindicated its commitment to the fundamental principle that justice must always be pursued ethically and that it is never too late to remedy any injustice to which federal prosecutors have contributed.

The signatures of this letter — former DOJ officials, FBI officials, federal judges, law professors and State Attorneys General — ask that you now act to address new troubling evidence of prosecutorial misconduct that has emerged in connection with the prosecution and sentencing of Sholom Rubashkin. We recognize that the underlying actions transpired before your tenure as United States Attorney, and we recognize the challenges in addressing these concerns (at many of us have been in your position). However, as the United States Attorney for the Northern District of Iowa, you are uniquely situated and have the ability to decide how the government of America should respond to a persistent injustice to which prosecutors in your office have contributed.

Many of us were signatories to prior letters expressing our deeply-held view that the 27-year sentence imposed upon Mr. Rubashkin was patently unjust and inconsistent with the goals of the criminal justice system.<sup>1</sup> This letter, however, addresses a different (but related) issue: the

<sup>1</sup> Over 80 U.S. Senators and members of the House of Representatives, six former United States Attorneys General, 18 former federal judges and senior Department of Justice officials, dozens of law professors, as well as several of the country's leading experts on legal ethics (including Professors Douglas G. Baird, Geoffrey Hazard and Mary Hartnett) have expressed serious concerns about the Department of Justice's handling of this prosecution. Over 50,000 individuals signed a petition to the White House expressing similar concerns. The prosecution of high-level executives and relationships in the kosher meat industry.

The Honorable Kevin Technau  
Page 4  
April 19, 2016

incarceration was necessary and appropriate regardless of the effect it would have on the bankruptcy sale.<sup>2</sup> Prosecutors refused to relent and instead continued to forbid interested parties from using Aaron Rubashkin in any ownership or management role in any successor entity.

The prosecutors in this case also continuously failed to disclose to the defense information showing the full nature and extent of their conduct in the bankruptcy proceeding. Mr. Rubashkin has produced nine affidavits from various bidders for Agriprocessors stating that prosecutors intimidated them and threatened forfeiture, which either led them not to bid at all or to significantly reduce the price they were willing to pay. These tactics by the prosecutors severely depressed interest in the company in the bankruptcy sale, because, as previously noted, Aaron Rubashkin was seen as crucial to the successful operation of the enterprise given his experience and relationships in the kosher meat industry.

The overall effect of the prosecutors' pre-conditions and threats was to substantially reduce the purchase price for the business and thereby create the loss incurred by First Bank, rather than a sale at \$40 million or more (for a business appraised at \$68 million), which would have resulted in no loss, the business was sold for a paltry \$8.5 million, resulting in a \$27 million loss.

In conclusion, although the aforementioned actions took place prior to your tenure, we believe a prompt and effective remedy for the above-described misconduct is called for. Indeed, we respectfully submit that it is your duty to ensure that the miscarriage of justice that Mr. Rubashkin's extreme prison sentence represents is now remedied, not perpetuated.

More than eighty years ago, the United States Supreme Court stated: "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v. United States*, 295 U.S. 78 (1935). This excerpt has been repeated to many times at to border on cliché, but the thrust of it is so central to your responsibilities as U.S. Attorney and fit so squarely in this case that we cannot help but recite it again.

The Honorable Kevin Technau  
Page 2  
April 19, 2016

shocking new evidence that prosecutors in your office knowingly presented false and misleading testimony at the sentencing hearing regarding their own actions in contributing to the \$27 million loss which served as the foundation for Mr. Rubashkin's sentence, and withheld exculpatory evidence regarding the same actions.<sup>3</sup> This conduct resulted in Mr. Rubashkin receiving an effective life-sentence for nonviolent offenses against a financial institution despite considerable mitigating personal circumstances, including being a 51-year-old, first-time offender, and father of 10 (one of whom is an acutely autistic child who depends heavily on him).

Recently, Mr. Rubashkin filed a Merits Brief in connection with his § 2255 Motion which provides overwhelming evidence that (1) the prosecutors in your office wrongfully interfered in the Agriprocessors bankruptcy, intimidating potential buyers through the threat of forfeiture of the Agriprocessors business and thereby substantially decreasing the ultimate sale price, and (2) at Mr. Rubashkin's sentencing, the prosecutors knowingly elicited false testimony which concealed the significant impact their actions had on the loss incurred by First Bank, thereby misleading the judge into finding Mr. Rubashkin fully responsible for a massive loss which led to a "bottom-of-the-guideline" sentence of 27 years in prison.

As the Merits Brief describes in detail, the prosecutors threatened each prospective bidder with forfeiture of the Agriprocessors business if the bidder planned to use Mr. Rubashkin's father, Aaron Rubashkin, in a management, consulting or ownership capacity at Agriprocessors. Aaron Rubashkin was seen as crucial to the successful operation of the enterprise given his experience and relationships in the kosher meat industry and was never charged with wrongdoing. The effect of this threat was to substantially reduce the potential purchase price that any bidder was willing to pay, and thereby to create the loss incurred by the victim bank. Had the buyers sold for \$40 million — which was the amount of an offer the bankruptcy trustee declined to accept because he thought an auction would yield something even higher — Mr. Rubashkin's guideline loss amount would have been \$0. The resulting properly calculated Sentencing Guidelines range

<sup>2</sup> Concern about the fair administration of justice in a single case is virtually unprecedented and is based largely on existing concerns about remedial actions by remedial prosecutors during the present and real phases of the case.

<sup>3</sup> By way of background, Mr. Rubashkin, the former manager of Agriprocessors, a family-owned kosher meatpacking plant in Plover, (which was 100% owned by his father, Aaron Rubashkin), was found guilty, after a one-month jury trial in late 2008, of committing a number of financial offenses primarily by inflating the value of collateral for the loans taken by the business on a line of credit with a St. Louis bank, First Bank Business Capital ("First Bank"). Mr. Rubashkin's sentencing depended heavily on the amount of financial loss incurred by the victim, First Bank, which, in turn, depended on the purchase price offered and ultimately paid by prospective bidders in bankruptcy for the assets of Agriprocessors.

The Honorable Kevin Technau  
Page 3  
April 19, 2016

would have been 36-37 months, rather than the 324-405 months Guideline range that resulted in the 27-year sentence Mr. Rubashkin is currently serving. Mr. Rubashkin has served more than 80 months as of this writing — meaning he has already been imprisoned more than twice as long as he should have been, even had he been sentenced at the very top of a properly-calculated Guideline range.

At sentencing, the prosecutors in your office presented false testimony from Paula Roby, an attorney representing the Agriprocessors bankruptcy trustee. She testified that prosecutors did not prohibit Aaron Rubashkin from having a role in the business, or otherwise affect any prospective bidders or the bankruptcy sale price with the threat of criminal forfeiture of Agriprocessors. Ms. Roby further testified that any suggestion to the contrary was false and unreliable rumors ("the grapevine can be a very variable thing"). The judge explicitly found Ms. Roby's details credible and, on that basis, relied on her testimony in calculating the loss attributable to Mr. Rubashkin ("The court credits Roby's testimony and discards testimony from Defendant's witnesses. Accordingly, the court declines to consider this theory [the No-Rubashkin Rule] in arriving at an actual loss calculation").

Newly-discovered evidence now reveals that the prosecutors knew that Ms. Roby's testimony was false and misleading and also withheld exculpatory evidence concerning these matters. This newly-discovered evidence includes detailed handwritten notes (authenticating by attorney cables, a former Assistant United States Attorney who was acting as co-counsel for the bankruptcy trustee) from a meeting in December, 2008 between prosecutors in your office and the independent bankruptcy trustee (appointed by the bankruptcy court) and his counsel, in which the prosecutors imposed precisely the restrictions they (supported by Ms. Roby's false testimony) later denied having imposed. During that meeting, prosecutors told the trustee there were to be "no Rubashkins" in any successor entity "from any standpoint" (emphasis in original) and that they would pursue the forfeiture of Agriprocessors against any buyer who violated this restriction. Prosecutors described the restriction of employing Aaron Rubashkin and other members of his family as "non-negotiable." The prosecutors later repeated their forfeiture threat directly to prospective bidders, including during the bankruptcy sale auction.

Equally disturbing — and also previously undisclosed — the victim in this case, First Bank — which was also Agriprocessors' primary secured creditor in the bankruptcy proceeding — told the prosecutors they did not want the prosecutors to pursue forfeiture and that doing so would make it impossible to maximize value in the bankruptcy sale. The independent bankruptcy trustee told the prosecutors the same thing ("fairly attorneys and I met with prosecutors shortly after my appointment as Trustee to express our concerns regarding the potential forfeiture claim. The prosecutors listened to our concerns, but ultimately made clear that they believed the assertion of

the bankruptcy process by wielding the no-Rubashkin rule.

That evidence, discovered by Rubashkin attorneys Gary Apfel and Stephen Locker consists of detailed handwritten notes by attorney James Rieland, who, along with his partner, former U.S. Attorney Julian Solotorovsky, were retained to represent the Agriprocessors bankruptcy trustee, Joseph Sarachek. They had – and continue to have – no connection to Sholom Rubashkin.

On December 5, 2008, the two men were meeting with Richard Murphy and Peter Deegan, lead prosecutors in the Rubashkin case. Also present was bankruptcy trustee Joe Sarachek and his counsel, Paula Roby who served as liaison between Sarachek, the bidders at the Agriprocessors auction and the prosecutors.

Rieland took down the statements made by each with attribution. In sworn affidavits, he and Solotorovsky affirm the accuracy of the transcript. Frozen in time, their notes open a window into a breathtaking abuse of government power, fully documented in the Merits Brief and the 2255 Petition.

During that meeting, prosecutors delivered the “no-Rubashkin rule” to Sarachek. The notes of the meeting record Paula Roby’s supportive comments to Assistant U.S. Attorney Richard Murphy as, along with his colleague Peter Deegan, he underscored the government’s stance on excluding all Rubashkins from future involvement with Agriprocessors as “non-negotiable.”

“No Rubashkins is very important to us,” prosecutors repeatedly stressed.

Amazingly, just a few months later at Sholom’s Sentencing Hearing, Deegan put Paula Roby on the witness stand to elicit her denial that anything of the sort had ever taken place.

Rieland’s transcript, recorded “live” at the time of the meeting, shine a light on this astounding courtroom farce.

The letter to Techau also cites previously undisclosed facts [detailed in the 2255 Motion] that show First Bank, Agriprocessors’ largest creditor, urging the government to drop its forfeiture claims against Agriprocessors as the bank was concerned such tactics would hurt the bankruptcy sale, and would jeopardize the \$27 million loan they hoped to recover.

#### PROSECUTORS IGNORED THESE REQUESTS.

Trustee Joe Sarachek, in his own sworn affidavit, stated that the government’s position on no-Rubashkins and their insistence of their right of forfeiture obstructed his efforts to do the job he had been hired (by the government!) to do; to sell the plant at a price high enough to repay the company’s creditors. His attempts to explain to prosecutors that their policies were at cross purposes with this goal also came to naught.

Nine other witnesses submitted sworn affidavits confirming that as potential purchasers or bidders for the company, they were informed explicitly of the no-Rubashkin restrictions and subjected to government forfeiture threats. These documents were attached to the 2255 Motion petitioning the court for a new trial, or at minimum, a resentencing.

#### OUTCRY FROM A COURAGEOUS FORMER JUSTICE OFFICIAL

One cannot help but wonder what lies behind the government’s unrelenting no-Rubashkin agenda that made it impossible for the trustee to sell Agriprocessors profitably. Were the prosecutors actually seeking the huge loss they brought about? Were they intentionally trying to harm Sholom and his creditors or just being grievously shortsighted and unintelligent?

The Techau letter’s stunning expose from some of the most prominent legal personalities in the country offers no comment on the government’s mindset or motives. However, one of the letter’s signatories – James Reynolds, former U.S. Attorney of Iowa’s Northern District - apparently felt the need to go further.

No stranger to the Rubashkin case, Reynolds has been a signatory on numerous documents, letters to the DoJ and *amicus curiae* briefs expressing deep concern about the government’s handling of the prosecution, as well as Judge Reade’s “appearance of bias” against Sholom Rubashkin.

Along with scores of former DOJ officials and prominent legal figures, Reynolds signed a letter shortly after Sholom’s 2009 federal trial conveying outrage over the life sentence prosecutors were initially seeking.

He was a signatory to both the WLF (Washington Legal Foundation) and NACDL (National Association of Criminal Defense Lawyers) *amicus curiae* briefs that supported Sholom’s appeal to the 8th Circuit for a new trial. The briefs called for Judge Reade’s recusal after FOIA discoveries revealed that the prosecution and judge had engaged in serial ex parte communications.

Last month, in a separate, sharply worded letter to U.S. Attorney Techau obtained by *Yated*, Reynolds castigated the prosecutors for their conduct and called on Techau to right the injustices they perpetrated.

“Words cannot begin to describe my shock as I read page after page [in the Merits Brief] that my beloved former office had behaved in such an improper, and I am sorry to say, even insidious manner,” Reynolds wrote.

He placed responsibility for First Bank’s loss squarely on the prosecutors, saying “it could not be clearer that the Office was directly responsible for the loss, in light of its ill-conceived, irresponsible and perhaps even unlawful policy to exclude any member of the Rubashkin family from having anything to do with the company.”

“As I understood from the mountain of evidence contained in the brief, the Office intentionally depressed the bankruptcy sale of Agriprocessors, Inc, by use of threats of forfeiture, which the Office had no lawful right to do because the assets of that company were not owned by any defendant...” Reynolds went on.

“Had this kind of unfair, underhanded and unnecessary misconduct occurred during my tenure, you can be absolutely certain that the perpetrators would have faced consequences, the very least of which would have been the loss of their job.”

The former U.S. Attorney wrote harshly of the damage the prosecutors’ misconduct unleashed. “This no-Rubashkins policy caused great harm,” he underscored. “Great harm to First Bank. Great harm to public trust. Great harm to Aaron Rubashkin. Great unjust harm to Sholom Rubashkin. And great harm, shame and disrepute to our office.”

Reynolds concluded his letter with a hammer blow.

“Mr. Techau,” he wrote, “I know that none of these things happened on your watch. I fully realize you are not responsible for them. However, you are responsible to right the wrong....If you do not, I respectfully submit that you are surely as culpable as those who committed these acts.”

#### WHAT HAPPENS NEXT?

The Merits Brief calls for Sholom Rubashkin to be granted a re-sentencing free from false and misleading testimony. If the government will not concede the “due process violation,” the brief says, an Evidentiary and Discovery hearing in “light of the overwhelming evidence in Petitioner’s favor” is surely called for.

That includes depositions of Assistant U.S. Attorneys Richard Murphy and Peter Deegan to determine the truth about the issues raised in the 2255 and the Merits Brief. It also includes all communications between the government and third parties including Paula Roby, Trustee Sarachek and all bidders regarding forfeiture and the “No Rubashkin” rule.

The government’s response to the legal arguments in the Merits Brief is expected shortly.

# Rubashkin Support Grows As Government Fights On

LYNCH BY MEDIA

BY DEBBIE MAIMON

New evidence in court papers tracing the egregious misconduct of federal prosecutors who sent Sholom Mordechai Rubashkin to prison for 27 years is impacting public opinion about the case.

In a sign of shifting attitudes, the *Des Moines Register* ran a series of articles and op-eds, as well as a scathing editorial by its editorial board, that harshly criticizes the government's conduct in the case.

The editorial coincided with the filing of the government's response to the defense's Merits Brief, in which prosecutor Peter Deegan denied all wrongdoing, saying that defense attorneys are "trying to rewrite history." The response brief urges Judge Reade to deny Sholom Mordechai's appeal for a new trial, re-sentencing or a hearing for more discovery.

In a striking reversal of its former stance, the *Des Moines Register's* editorial dismissed the government's protests of innocence as "hard to swallow," and cuts to the heart of the allegations against the prosecutors with unsparing questions.

"Did prosecutors ratchet up the losses sustained by Agriprocessors' creditors and later use those losses to increase Rubashkin's sentence?" the editorial board demanded. "Did they also adopt a policy of guilt-by-association in barring any member of the Rubashkin family — including people never accused of wrongdoing — from involvement in Agriprocessor's successor?"

"The evidence indicates they did just that, which helps to explain why so many well-respected former prosecutors and judges are up in arms over their actions."

"The U.S. Attorney's Office must be forced to answer for their actions in USA vs. Rubashkin," the *Des Moines Register* asserted.

## HOLDING PROSECUTORS' FEET TO THE FIRE

The government's 100-page response brief is marked by long-winded excursions into matters of little relevance to the case. It devotes the first 40 pages to laws governing forfeiture, which has nothing to do with defense claims of prosecutorial misconduct.

The defense's core argument is very straightforward: The government is charged with causing First Bank to lose tens of millions of dollars by interfering with the sale of Agriprocessors through its no-Rubashkin edict, and then pinning responsibility for the loss on Sholom Mordechai Rubashkin to lengthen his prison sentence.

The defendant asked the government at his sentencing to turn over all possible evidence that could support this defense, as the law requires. The government denied they had ever imposed "no-Rubashkins" and turned over nothing.

Now, 7 years later, Sholom Mordechai's attorneys found the evidence to prove his claim. The evidence proves the government misled him and misled Judge Reade, and withheld exculpatory

evidence in order to ramp up his prison sentence.

In response to these charges, the prosecutors' focus on semantics, countering in effect, "We didn't mislead you or withhold evidence; you asked to see the 'agreements' we asked bidders to sign; we didn't make them sign any *agreements*. You should have asked about '*disclosures*.' You weren't explicit. Your fault, not ours."

[As part of the government's intimidation tactics, prospective buyers were informed that for years after buying the meat-packing plant they would have to make "disclosures" to the government about any connections they maintained with any member of the Rubashkin family in violation of the no-Rubashkin rule - and risk government forfeiture penalty if they did not do so. The government withheld this information from the defense.]

## RATIONALIZING PERJURY

Faced with evidence that their star witness lied under oath, the prosecutors rationalize her actions in their response brief. They quibble about the words the defense attorney used in questioning her, accusing him of asking "imprecise" questions.

The witness, Paula Roby, was asked about the date of an initial meeting between prosecutors and prospective bidder Eli Soglowek. She claimed she didn't remember.

The timeframe of the meeting was important because the defense claimed government harassment continually chased off potential buyers.

After having her memory jogged under cross-examination ("Did the meeting take place in January or in April?"), Roby remembered "it was *before* Soglowek entered his \$40 million bid" (which took place on January 25, 2009).

Roby's testimony was false. In fact, Soglowek was forced to meet with prosecutors 12 days *after* he made his offer, on February 12. The prosecutors' strong-arm tactics at that meeting caused him to *drop* his offer, according to his sworn affidavit.

Excellent lawyering by the defense produced Roby's "fee petitions" which show the dates for which she had billed the government for her services. The evidence supports defense claims. Roby lied about the meeting, altering the timeframe to make it appear that the buyer was happy with the meeting's outcome and decided to move forward with his offer.

In the face of irrefutable evidence of this false testimony, the government response brief is reduced to countering that the witness did not actually *lie*; she was understandably "confused" by the defense's "imprecise" line of questioning.

"Basically, what the [defense] brief shows is the defense is holding the government's feet to the fire and it's very, very uncomfortable," commented a lawyer who studied the government response.

## UNPRECEDENTED PRO-RUBASHKIN LETTER

Setting the stage for the sharp reversal in the *Des Moines Register's* pro-government stance was a powerful letter to U.S. Attorney Kevin Techau, signed by 107 high level former DOJ officials, FBI directors, U.S. Attorneys, politicians and law professors.

The letter condemned the prosecutors' misconduct and abuse of power in the Rubashkin prosecution, as detailed in the explosive Merits Brief filed by Rubashkin attorneys Gary Apfel of Los Angeles and Stephen Locher of Des Moines, Iowa.

The eye-opening, hard-hitting letter by scores of legal heavyweights to U.S. Attorney Techau, while not holding him responsible for the misconduct as he was not in office at the time, exhorted him to "remedy the injustice" by granting Sholom a new trial or re-sentencing.

A follow-up article, "*New Rubashkin Claims Garner Who's Who List of Supporters*" profiled ten of the most prominent signatories on the pro-Rubashkin letter, including presidential and vice presidential candidates from both parties.

Among the most respected names are also four former U.S. Attorneys General, including Michael Mukasey, who served as attorney general of the United States *at the time the federal immigrant raid on Agriprocessors took place.*

## WITCH HUNT

This article, with its "Who's Who List" of Rubashkin supporters, was followed a few days later by another pro-Rubashkin salvo in the form of a personal letter to U.S. Attorney Techau from James Reynolds, a highly respected former U.S. Attorney in Iowa's Northern District.

Reynolds slammed the prosecutors for their "overzealous, insidious" actions against Sholom Mordechai Rubashkin, calling on U.S. Attorney Techau to rectify the miscarriage of justice, or be "as culpable" as the perpetrators.

"Had this kind of unfair, underhanded and unnecessary misconduct occurred during my tenure, you can be absolutely certain that the perpetrators would have faced consequences, the very least of which would have been the loss of their job," Reynolds declared.

Reynolds and another signatory to the open letter, former U.S. District Court Judge and Deputy Attorney General Charles Renfrew, took their protest to the next level by publishing an op-ed the following week in the *Des Moines Register*, "*Prosecutors, Judges Decry Rubashkin Witch Hunt.*"

"The criminal prosecution of Sholom Rubashkin was so overzealous it bordered on a veritable witch hunt," the legal luminaries wrote. "There is new evidence of false testimony and willful manipulation that exacted the most possible punitive sentence for Rubashkin. That makes this a shocking case of prosecutorial misconduct."

The authors demonstrate their intimate grasp of the case in a few succinct paragraphs.

"Prosecutors deliberately thwarted the prospects [of selling Agriprocessors profitably] by constructing a "No-Rubashkin" rule, which was completely illegal," the editorial declared. "That policy was "highly effective in quashing Sholom Rubashkin's chances for a fair sentence."

"The infamous No-Rubashkin rule caused a massive drop in the company's value which made it impossible to sell it profitably so that it could repay its \$27 loan to First Bank," the authors wrote.

"Prosecutors kept turning away interested parties...manipulating the bids so that the lowest one, for \$8.5 million, was the only one accepted, leaving an outstanding debt of \$27 million, resulting in Rubashkin's cruel and unjust sentence."

## PROSECUTORS NEEDED 'A SEAT AT THE TABLE'

The op-ed cited the explosive evidence in the defense brief in the form of an attorney's handwritten transcript that the key purpose of a government meeting in 2008 was to formulate the no-Rubashkin rule.

Government witness Paula Roby, who had taken part in that meeting, was later called by the prosecution at the Rubashkin Sentencing Hearing to deny the meeting ever happened. She willingly complied. The prosecutor eliciting her denial was none other than one of the Assistant U.S. Attorneys who, at the meeting in question, had laid down the no-Rubashkin rule, court papers attest.

The prosecutors' words uttered at that meeting are by now notorious: "No Rubashkins are very important to us – non-negotiable," U.S. Attorney Richard Murphy said, according to notes taken by the trustee's lawyer, James Rieland.

Asked by Paula Roby, counsel for the bankruptcy trustee, whether there were "any other non-negotiables," Murphy reiterated, "No involvement of Rubashkins from any standpoint (control, benefit)."

"The problem is we don't have a seat at the table," the prosecutor complained, meaning the government lacked the authority it was seeking over the bankruptcy/auction process.

"We're going to set that up for you," Roby assured him, according to the Rieland transcript of the meeting.

## "UNCONSTITUTIONAL, DISCRIMINATORY"

In their response to defense claims, prosecutors contend their statements "were not threats designed to diminish the value" of Agriprocessors, but were warnings intended to alert potential buyers of the risks they'd face by associating with criminals.

Criminals? Only one member – Sholom Mordechai - had been charged with an offense.

As the Reynolds and Renfrew op-ed states, "Agriprocessors' sole owner, Aaron Rubashkin, was never deemed culpable of any crime nor slapped with a single federal count. Yet, he [and his entire family] was effectively barred by Sholom's prosecutors from stepping in and taking over the company or having any role whatsoever. So the possibility of Agriprocessors resurrecting itself and making good on its loan to First Bank was doomed."

A lawyer familiar with the case pointed out that barring a family of law-abiding citizens from ownership or management of a company through a law such as "no-Rubashkins" is "unconstitutional."

"How can you exclude a family of law-abiding citizens from employment without any grounds?" he asked rhetorically. "How is that different from kicking a family out of a neighborhood based on their race or religion? It's discrimination."

"With potential buyers being thwarted and intimidated at every turn, and a false witness being brought into the court to flagrantly lie..., the legal wrongdoing evident in the Rubashkin case constitutes an extraordinary miscarriage of justice," Reynolds and Renfrew concluded in their op-ed. "These facts are sufficient to warrant speedy action."

"As former Department of Justice officials, we call on Mr. Techau and his office to take any and all action to immediately release Sholom Rubashkin."

## INTERVIEW WITH FORMER U.S. DISTRICT COURT JUDGE CHARLES RENFREW

In an exclusive interview, *Yated* discussed the government's response with one of the co-authors of the *Rubashkin Witch Hunt* editorial, Charles Renfrew.

Mr. Renfrew, whose public service included prominent posts as U.S. District Court Judge in California and later as a U.S. Deputy

Attorney General, said he reviewed the government's response brief and was struck by its failure to address key defense arguments.

"Specifically, they ignored evidence of the government's use of perjured testimony in the sentencing process. Underlying their arguments seems to be the attitude, 'Well, we don't like this guy, he did a lot of bad things so we can do whatever we want to him whether the facts support the charges or not,'" the former U.S. Deputy Attorney General said.

"That brings to mind a famous line by former Senator Patrick Moynihan... 'You are entitled to your own opinion but you're not entitled to your own facts.'"

"Facts count," Mr. Renfrew went on. "The facts are that per-

jured testimony was admitted into the sentencing process. But the government's response doesn't address the perjury and how that affected Sholom Rubashkin's sentence. It sidesteps the whole matter as though it's of no concern. That's an outrage."

He noted "the one hundred eighty degree turn" in the position of the *Des Moines Register's* editorial board, commenting that it signals "increasing awareness at the grassroots level that a great miscarriage of justice was done."

"I'm not familiar with any case that has obtained anything close to the support of so many prominent figures in the Department of Justice," remarked the former U.S. Deputy Attorney General. "I have confidence that ultimately this miscarriage of justice will be righted and this man will return to his family."

# Amnesty-Immigration Scandal Highlights ‘Culture Of Lawlessness’

BY DEBBIE MAIMON

A federal judge’s harsh rebuke to the Department of Justice for dishonesty and deceit in the immigration-amnesty case, has important lessons for the country, legal experts say. The case highlights what the *Wall Street Journal* and others call “a culture of lawlessness” and “ethics rot” in the DOJ that are eroding the moral authority of that institution.

In the immigration-amnesty case, DOJ lawyers repeatedly lied to Texas federal Judge Andrew Hanen about crucial facts. After being called out on their conduct, the lawyers admitted they had made false statements and apologized but insisted it was unintentional, the result of having “lost focus” or forgotten the actual facts.

Outraged at the misconduct, Judge Hanen rejected the Department’s excuses, ordering sweeping measures aimed at “sterilizing the ethics rot,” in the government body, in the words of a *WSJ* editorial, “*The Miscarriage of Justice Department.*”

Noting that he did not have the power to disbar them, Hanen ordered all lawyers “employed at the Justice Department in Washington, D.C. who appears, or seeks to appear, in a court (state or federal) in any of the 26 Plaintiff States annually attend a legal ethics course.” The lawyers must attend the course in person, not online or on conference calls.

His 28-page ruling last week calling the lying “intentional, serious and material.” It caused harm to 26 states involved in a lawsuit with the government, the ruling said, and engendered a profound loss of public trust.

“The United States Department of Justice now admitted making statements that clearly did not match the facts. It has admitted that the lawyers who made these statements had knowledge of the truth when they made these misstatements,” the judge wrote. “Such conduct is certainly not worthy of any department whose name includes the word ‘Justice.’”

## CASE CHALLENGES OBAMA’S EXECUTIVE AMNESTY FOR ILLEGALS

The ruling came in connection with a lawsuit brought by 26 states that challenged the constitutionality of Obama’s two executive orders that override the law regarding illegal immigrants. Under the two orders, Obama unilaterally granted 3-year amnesties to millions of illegal immigrants who would otherwise be subject to deportation.

The amnesties are part of the executive action the president took in November 2014 to halt the deportations. Known as DAPA and DACA, the amnesty programs shield most of the 11 million unauthorized immigrants in the country from being removed from the country. In the case of up to 5 million, Obama granted work permits, a 3-year stay of deportation and other benefits.

Texas led 25 other states in the suit, arguing that the president broke

the law and violated the Constitution. In February 2015, just days before DAPA and DACA were scheduled to go into effect, a federal judge agreed that the administration had violated Administrative Procedures Act, and issued an injunction on the executive orders.

The President appealed the injunction but it was subsequently upheld by the Fifth Circuit Court of Appeals. The Supreme Court which is now reviewing the case, with a ruling expected in June.

## THERE IS A CULTURE OF LAWLESSNESS AMONG GOVERNMENT LAWYERS.

### IN CAHOOTS WITH THE DEPARTMENT OF HOMELAND SECURITY

What enraged Hanen was his recent discovery that the DOJ lawyers were aware that the Department of Homeland Security had continued processing Obama’s amnesties in violation of his explicit order to halt the program, but had hid this information from him.

The lawyers in fact had repeatedly promised the court that the amnesty plan would not be implemented until Feb. 2015 — when, in fact, they knew it was being implemented all along, granting amnesty to over 100,000 illegal immigrants. These deceptive promises lulled the plaintiff states into forgoing legal motions such as restraining orders and permanent injunctions on the executive orders.

After discovering the deceit, Hanen forced the attorneys to turn over all their communications with the White House and the Department of Homeland Security regarding the amnesty orders. The lawyers pleaded with the court not to look at the White House-related documents on grounds that it would intrude on the president’s powers, the *Washington Times* reported.

“The Department of Justice and the White House counsel’s office sometimes confer regarding civil litigation that impacts high-priority policy initiatives of the administration,” the attorneys said in a 34-page brief filed a few weeks ago. The attorneys admitted that more than 1,500 Homeland Security employees knew the three-year part of the amnesty was in effect as of November 2014.

The brief repeatedly apologized for misleading the court, while insisting it wasn’t intentional.

## 'I WAS MADE TO LOOK LIKE AN IDIOT'

Hanen rejected the claim that the distortions of truth were unintentional. In his order he lists the specific statements made by DOJ lawyers in court and on conference calls that were outright lies, and then enumerates all the applicable ethics rules that the DOJ lawyers violated.

"Counsel's conduct in this case was not only unethical, but a failure to comply with federal law," he added. "There seems to be a lack of knowledge about or adherence to the duties of professional responsibility in the halls of the Justice Department."

"When I asked you what would happen [with the amnesty orders] and you said nothing, I took it to heart. I was made to look like an idiot," a furious Hanen upbraided Katherine Hartnett, one of the government's lawyers, at a court hearing. "I believed your word that nothing would happen... Like an idiot, I believed that."

## OVERSTEPPING EXECUTIVE AUTHORITY 'SHOULD TROUBLE ALL AMERICANS'

Although he could have done so, Hanen decided not to strike all the government's filings in this lawsuit (thus granting victory by default to the 26 states), even though the government's "egregious conduct merits it" because of the "national importance of the outcome of this litigation."

In other words, the case needs to be heard by the Supreme Court, he said, because the overstepping of executive authority by the Obama Administration is a serious matter that needs to be addressed.

The misconduct [Judge Hanen] unmasked should trouble Americans of all political persuasions, the editors of *Wall Street Journal* wrote. "Prosecutors often abuse their powers in run-of-the-mill cases. But this is a constitutional challenge with major consequences for the separation of powers, and the deceit must have required the participation and coordination of dozens of political appointees and career lawyers.

"That suggests a serious institutional failure, not mere rogue actors. President Obama's overstepping the legal limits of his executive power has apparently "spread a culture of lawlessness among his lawyers too," the editorial said.

The Constitution's Separation of Powers Doctrine prevents the concentration of power in the hands of a single individual. If a president has the power to nullify laws by refusing to enforce them or by supplanting them with his own policies, that obviously drains the doctrine of any meaning.

After Hanen's harsh rebuke became public, Texas U.S. Attorney Ken Paxton who is one of the lead attorneys in the lawsuit by the 26 states, said, "From the start, our lawsuit has been about asserting that one person cannot unilaterally change the law, and part of that is ensuring everyone abides by the rule of law."

The Supreme Court ruling in *United States v. Texas*, expected this month, will not only critically impact immigration law going forward, but will also decide the even more high-stakes question of whether there will be any meaningful limits on executive power.

# Lessons For The Rubashkin Case

For those watching the latest phase of the Rubashkin case play out in Iowa, Judge Hanen's stinging rebuke to the Department of Justice has particular relevance.

Hanen accused the lawyers of making representations in "bad faith" that breached Federal Rule of Civil Procedure 11(b), which makes such conduct punishable.

"The ethics and conduct rules require a lawyer to "(1) tell the truth; (2) do not mislead the Court; and (3) do not allow the Court to be misled," Hanen blistered in his order. "The Government's lawyers failed on all three fronts."

Government lawyers in the Rubashkin case committed the same failures, the defense's Merits Brief, part of the 2255 Motion filed in March, contends. The brief supports its claim with meticulously documented evidence that the government lied to and misled the Court about its unlawful tactics in thwarting the sale of Agriprocessors, while it was still capable of netting a sale price high enough to repay its \$27 million loan.

The government's deceit centered around pivotal testimony by its key witness, Paula Roby, who denied U.S. attorneys had ever implemented a "no-Rubashkin edict" among would-be buyers.

Prosecutors knew this was false as was later proven by the defense when they produced a transcript of the government's "no-Rubashkin" meeting, as well as sworn affidavits from nine would be purchasers and from the bankruptcy trustee himself testifying to the government's threats and intimidation tactics.

In addition to eliciting false testimony from Roby, the government allowed the testimony to remain on record, uncorrected, where it shaped Judge Linda Reade's draconian sentence calculations, as she herself explicitly admits in her ruling.

What does a government lawyer do when his lies have been exposed?

In the immigration amnesty case, the government lawyers apologized and groveled before Judge Hanen, saying it was all a mistake, and begging him not to look at sealed documents that might incriminate the Obama Administration.

In the Rubashkin case, government lawyers have taken refuge in doublethink, a tactic made famous in the 1950s novel, "1984" by George Orwell. Doublethink, or as it later became known, doublespeak, is the act of asserting two mutually exclusive facts, and using confusing and contradictory jargon to insist that both are true.

Prosecutors in court papers continue to deny they had employed a no-Rubashkin rule but, in effect, also say: "Even if Roby lied, but of course she did not lie, you, Sholom Rubashkin, had your chance to call us out on it, cause we had turned over this or that document that contradicted her testimony.

"And even though we didn't give you the really incriminating evidence you asked for because you didn't ask for it, your lawyers should have set the record straight with the judge that Roby was lying. Although of course what she was saying was accurate."

"But your lawyers dropped the ball because they should have asked for documents that we were withholding even when they asked us for them. They should have suspected we were lying and cheating and not have let us get away with this deceit. So too bad. Rubashkin will have to rot in jail because even though we lied, it's you who messed up."

Will a 100-page government brief that makes an art form of doublespeak be allowed to rule the day? Lessons from the scandalous immigration-amnesty case in a Texas courtroom and a judge's moral outrage and decisive response will hopefully point the way.

## WHAT DOES A GOVERNMENT LAWYER DO WHEN HIS LIES HAVE BEEN EXPOSED?

# Government admits Misconduct

BY DEBBIE MAIMON

Although doubletalk and sham arguments riddle the government's response to Sholom Rubashkin's 2255 Petition, prosecutors were forced to make significant admissions that validate the defense's claims, Rubashkin attorneys argued this week in an unparalleled tour de force.

The new brief, filed by attorneys Gary Apfel of Los Angeles and Stephen Locher of Des Moines, Iowa unearths key admissions that are buried throughout the government's 105-page reply to the Merits Brief filed in March, in support of the 2255 Petition.

The government's admissions that relate to Grounds One, Two and Three of the Petition, including an admission about withholding exculpatory information that overturns the money laundering allegations, are more than sufficient to warrant post-conviction relief, the brief asserts.

To briefly recap, the 2255 Petition argued that Sholom Rubashkin's right of due process was violated by prosecutorial misconduct; by the suppression of evidence favorable to the defense, and by eliciting false testimony and allowing it to remain on the record uncorrected during the Sentencing Hearing. This misconduct resulted in a severe miscarriage of justice, the 2255 Petition contended.

The 2255 called for the sentence to be vacated or for Sholom to be granted a new sentencing free of false and misleading testimony.

The Merits Brief backed up the Petition with shocking new evidence that established beyond a doubt the government had imposed a No Rubashkin policy, through which prosecutors had manipulated the Agriprocessors bankruptcy and severely lowered the company's value.

Prosecutors had denied this at Sholom's 2009 Sentencing Hearing through star witness Paula Roby, who testified "there was no government prohibition" on new owners hiring Rubashkins.

The new evidence made it impossible for the government to maintain its denial.

The Merits Brief established, by virtue of a transcript of a private government meeting as well as through the sworn affidavits of nine would-be buyers and the bankruptcy trustee himself, that prosecutors had aggressively insisted on the exclusion of all Rubashkins from any management role in the new company.

To ensure the enforcement of the No Rubashkin policy, prosecutors threatened to exercise forfeiture of the plant if the new owners failed to heed the prohibition.

Realizing that Aaron Rubashkin's expertise was essential to running the plant successfully, multiple bidders offering tens of millions all backed out. The company's eventual sale for pennies on the dollar made it impossible for Sholom to repay creditors, resulting in a lending bank's incurring the loss of its \$27 million

loan. The huge loss amount drove the judge in the case to impose a draconian prison sentence.

Faced with conflicting testimony between government witness Roby and a would-be purchaser who testified to the truth of the No Rubashkin policy, Judge Reade in her Sentencing Order made it clear she "credited" Roby's testimony and disbelieved any notion that the government had orchestrated the bank's loss.

The newfound evidence in the Merits Brief shattered these misconceptions. It established that Sholom was scapegoated for the bank's losses that were in fact, orchestrated by the government.

## REJECTING THE HIGH ROAD

In the face of embarrassing discourses that it had committed misconduct, the government could have agreed to a resentencing or negotiated a settlement with Sholom, ending what over a hundred judges, prosecutors and legal experts have called "a veritable witch hunt... a shocking case of prosecutorial misconduct... a sentence based on fraud and deceit... an egregious miscarriage of justice."

"An entire family is being destroyed by a draconian sentence that was meted out based on the underpinnings of fraud and deceit," wrote former U.S. District Judge Charles Renfrew. "With potential buyers being thwarted and intimidated at every turn, and a false witness being brought into the court to flagrantly lie and counter bidders' testimony, the legal wrongdoing evident in the Rubashkin case constitutes an extraordinary miscarriage of justice."

Far from admitting they did anything amiss, the prosecutors painted themselves into a corner in their Reply, admitting the No-Rubashkin edict on one page while a few pages later, backpedaling on that denial by twisting the meaning of words, such as pretending the defense claim was about a No Rubashkin "agreement" as opposed to a No Rubashkin "policy."

Prosecutors also took refuge in splitting hairs to argue that a word doesn't mean what it's universally understood to mean. For example, they argued that the government's No Rubashkin policy prohibited Rubashkins from being in *control* of the plant but not necessarily part of the plant's *management*.

The defense brief dismantles all of these futile convoluted attempts to dodge the bullet. It also dismantles what it labels the government's "straw men" arguments in which prosecutors substitute an invented easy-to-defeat argument in place of addressing the real one.

## IGNORANCE AND/OR DISTORTION OF THE LAW

Most significantly, the defense brief demolished the government's position that defense claims of "due process violations" re-

sulting from the admission of false testimony were of no avail because “extensive disclosures” had been made by the government.

The defense should have used these disclosures to expose the false testimony instead of holding the government responsible for not exposing it, prosecutors had argued in one of many instances of misrepresenting the law.

In other words, the government argued, “You, Sholom Rubashkin, knew our witness wasn’t telling the truth (although of course what she was saying was correct.) But you had enough evidence in your possession thanks to our disclosures to expose the false information to the judge and you didn’t do so. You dropped the ball and must suffer the consequences.”

The defense lays bare the government’s ignorance and/or egregious distortion of the law regarding the prosecutor’s unqualified obligation to correct testimony it knows to be false.

The brief also identifies the crucial exculpatory documents that the government knowingly withheld. It singles out a letter from First Bank, the “victim” of the \$27 million loss, in which the bank begs the government not to claim forfeiture rights against Agriprocessors in talks with prospective buyers.

*Sholom was  
scapegoated  
for the bank’s  
losses that  
were in fact,  
orchestrated by  
the government.*

Bank officials were afraid such threats would scare off bidders, which in fact they did.

Despite the government’s overheated rhetoric in an inflated 105-page brief, prosecutors were totally silent about the suppression of the bank letter, offering no rebuttal.

“The prosecutors’ priority was clear albeit bizarre,” wrote Mr. Renfrew and Mr. **James Reynolds**, former U.S. attorney for the Northern District of Iowa in a powerful op-ed. “They were more interested in making sure that Aaron Rubashkin, *who was never charged with a crime*, be punished by taking away his business than they were in restoring the forfeited money to the bank lender, the primary victim in the case.”

“The prosecutors did so in the face of pleas from both the victim bank and the independent court-appointed bankruptcy trustee... These pleas fell on deaf ears and the resulting low-ball sale sealed Sholom’s fate.”

Now that the relay of defense and government briefs in the 2255 Petition are complete, the parties await a ruling by Judge Linda Reade. A follow up article will explore the avenues her decision could take and their various consequences, as well as elaborate on key aspects of the Defense Reply brief that were outside the scope of this article.

# The Case That Haunts

BY DEBBIE MAIMON

The Rubashkin case, increasingly recognized as one of the most egregious examples of prosecutorial misconduct in this country, remains a stain on the justice system, haunting people of conscience.

As is well-known, seven years after Sholom began serving a draconian 27-year prison sentence, his defense team uncovered shocking disclosures about government malfeasance in the case, fueling the powerful Merits Brief that accompanied Sholom's 2255 Petition.

An unprecedented letter outlining the new evidence and signed by over 100 former high level Department of Justice officials; U.S. Attorneys; federal judges and legal experts, including three former Attorneys General of the United States, petitioned the U.S. Attorney of Iowa's Northern District, Mr. Kevin Techau, to right a severe miscarriage of justice.

Searing op-eds by renowned judicial names followed in the *Des Moines Register*, with the paper's editorial board publishing its own hard-hitting editorial calling on the government to answer for its unlawful actions.

"Prosecutors who take shortcuts in winning convictions or lengthy sentences are not only violating the rights of the accused, they're also undermining our entire system of justice," the *Register* lashed out. "That's worth remembering when considering the ongoing legal battle over the 27-year prison sentence handed down to Sholom Rubashkin."

## AMID SMOKE AND MIRRORS, KEY ADMISSIONS

In the meantime, the defense team headed by Gary Apfel of Los Angeles who represents Sholom *pro bono*, and Stephen Locher of Des Moines, Iowa, continue the fight for justice in the courts.

The latest defense brief in support of the 2255 Petition shreds government obfuscation and denials, laying bare the truth that Sholom was the victim of a setup.

"The furious tone of the government's Reply Brief should not mask the significant admissions contained within it," the defense brief notes.

"First and most importantly, the government finally admits it did, in fact, impose a No Rubashkin restriction in the Agriprocessors bankruptcy proceeding. The government consistently maintained it would pursue forfeiture if any assets were ultimately controlled by or used for the benefit of the Rubashkins.

"This admission should end the case," the brief asserts, pointing to the government's denial of the No Rubashkin edict during the Sentencing Hearing and the profound impact of that denial on Sholom's prison sentence.

The attorneys go on to unearth additional admissions buried in the government's 105-page brief each of which "are more than suf-

ficient to warrant post-conviction relief."

These admissions support the defense's arguments that the government's interference in Agriprocessors' bankruptcy severely depressed the company's market value. The prosecutors' tactics of intimidating buyers with threats of forfeiture killed all serious offers, forcing the company to be sold for a fraction of its worth, which made it impossible to repay its primary creditor, First Bank.

The defense showcases one example after another in the government Reply Brief where prosecutors throw up smoke and mirrors to blur the truth. They create artificial distinctions between words; invent new meanings for terms such as "good faith purchaser;" distort the law and "put words into the mouth" of the defendant to pretend he argued something he did not.

In pursuing the No Rubashkin policy, prosecutors "literally refused to accept bankruptcy law," and instead "created their own definition of legal terms" in order to carry out their intentions, the brief states.

## BLACKWHITE

In its Reply, the government constructs an alternate reality where false and misleading testimony elicited during the Sentencing Hearing can still be considered true. In this parallel universe, a lie is not a lie; it's all a matter of interpretation. And even if testimony is proven false, a kernel of truth within the falsity rescues it from being a lie, the brief maintains.

One is reminded eerily of George Orwell's famous 1950s novel "*Nineteen Eighty Four*," in which a government regime in the fictional land of Oceania invents Newspeak, a language that robs words of their unequivocal meaning in order to muddle rational thought. "Black" and "white" no longer exist in this society; they morph into *blackwhite*. As with other Newspeak words like *doublethink* and *doublespeak*, *blackwhite* insists that mutually exclusive facts or ideas in one statement can both be true.

This concept is on vivid display in the government's Reply brief where prosecutors caught in an ethical violation – eliciting false testimony from star witness Paula Roby at Sholom's Sentencing Hearing and failing to correct her testimony - try to worm their way out of the mess. They have no choice but to admit that the testimony is false, but falling back on semantic games, insist a few paragraphs later that a part of it is true, so the testimony can't be called false.

A prosecutor's failure to correct false testimony he knows to be false – known in legal circles as a "Napue" violation - can be grounds to vacate a trial or sentence. But affecting ignorance of what any first year law student knows, prosecutors argue they can't be guilty of "Napue" because not *all* of Roby's testimony was untrue.

In addition, they protested, “extensive disclosures” made to the defense could have been used by Rubashkin attorneys to expose Paula Roby’s lies (which of course were not really lies, you recall, because they were the *blackwhite* type). The defendant thus has no one but himself to blame for not catching the governments at its lies.

The government Reply seriously insists that the defense is at fault for the government’s due process violations.

#### A LIE IS A LIE IS A LIE

Lest one begin to think he has somehow awakened in Orwell’s Oceania where prosecutors can knowingly allow their witnesses to lie and exempt themselves from all responsibility to correct the testimony, the Ninth, Fifth and Eighth Circuit Courts of Appeal have issued rulings that could not be more explicit:

“The duty to correct false testimony is *on the prosecutor* and that duty arises when the false evidence appears,” the defense brief quotes the Fifth Circuit.

“The government’s duty to correct perjury by its witnesses is not discharged merely because defense counsel knows, and the jury may figure out, that the testimony is false,” the Ninth Circuit agreed in another citation.

“A trial is not, as the government seems to imply, an English fox hunt in which the government may use false testimony as long as it gives the defense a sporting chance,” the defense team wrote in a striking metaphor for the parody of justice as embodied in the government’s stance.

James Reynolds, former U.S. attorney for the Northern District of Iowa, has called the prosecutors’ actions “insidious.” In a letter to the U.S. Attorney Kevin Techau now in charge of the Rubashkin case, Reynolds raised the issue of exculpatory information the government failed to turn over at the Sentencing Hearing, a “Brady” violation and grounds for vacating a sentence.

“Had this kind of unfair, underhanded and unnecessary misconduct occurred during my tenure,” Reynolds wrote, “you can be absolutely certain that the perpetrators would have faced consequences, the very least of which would have been the loss of their job.”

Among the crucial exculpatory documents the government

knowingly withheld from the defense is the “Palans” letter from First Bank, the “victim” of the \$27 million loss, in which the bank begs the government not to claim forfeiture rights against Agriprocessors in talks with prospective buyers.

Bank officials were afraid such threats would scare off bidders, which in fact they did. They were afraid the bank would lose its \$26 million loan as a result, which is what happened.

One is struck by excerpts from the Sentencing Hearing in which the government, emphasizing the loss amount, urged the Court to impose a lengthy sentence on Sholom at the top of the Guidelines range, placing the blame exclusively on the defendant for the massive financial harm the victim suffered.

“How often has the court seen a fraud which caused a \$26 million loss? It’s a staggering amount of money, Your Honor. And it’s likely the largest fraud loss ever in the Northern District of Iowa,” prosecutor Deegan reminded the judge.

In the light of what we know about how the government orchestrated the loss they attribute to Sholom, it is hard to imagine anything more cynical than the prosecutor’s “crocodile tears” over the bank’s financial loss.

“Did they, [the prosecutors] intentionally or otherwise, ratchet up the losses sustained by Agriprocessors’ creditors and later use those losses to increase Rubashkin’s sentence?” the *Des Moines Register* demanded in an editorial by its board.

“And did they adopt a policy of guilt-by-association in barring any member of the Rubashkin family — including people never accused of wrongdoing — from involvement in Agriprocessor’s successor?”

“The evidence indicates they did just that, which helps to explain why so many well-respected former prosecutors and judges are up in arms over their actions,” the *Register* asserted. “Just as the head of Agriprocessors was forced to answer for his crimes, the U.S. Attorney’s Office should be forced to answer for its actions in USA vs. Rubashkin.

“A trial is not a fox hunt...” yet the government appears to have treated it as such in the Rubashkin case. When justice finally prevails, one can’t help but wonder, will the hunters become the hunted?

# A Shofar In Solitude

A CONVERSATION WITH MRS. LEAH RUBASHKIN

BY C.B. WEINFELD

*Sukkos*. The aroma of rich chicken soup mingled with freshly baked *challah* dipped in honey permeates our humble shacks. As we sit around the table surrounded by paper chains and artwork from the children, the walls swaying slightly in the breeze, we feel the presence of holiness, a different dimension. On *Sukkos*, we leave behind our solid four walls, our illusion of stability, to bask in the glow of the stars winking to us from behind the *schach*, hinting to our relationship with our beloved Father.

No matter where we are spending the *yom tov*, whether in the relative comfort of our own backyards, the cramped *sukkah* of a *dirah* in Yerushalayim with family, or in the *sukkah* of a *Shabbos* room near a hospital, things are clearer as we are closer to the sky.

In upstate New York, in the town of Otisville, there is a *sukkah* belonging to FCI Otisville, a medium correctional facility where Sholom Mordechai Rubashkin is currently serving his eighth year of a 27-year sentence. Our readers are familiar with Reb Sholom Mordechai, whose letters pulsating with *emunah* and *bitachon*, along with his smiling face, devoid of any stress or angst, are frequently featured in the paper. In honor of *Sukkos*, we had a lengthy conversation with his wife, Mrs. Leah Rubashkin, whose heroism and positivity are an inspiration for *Klal Yisroel*. Mrs. Rubashkin brought us up to date on Sholom Mordechai's life in prison, his vibrant connection with his beloved children, including their autistic son, Moishe, and the many initiatives being undertaken as a *zechus* for his speedy release.

Speaking to Leah Rubashkin is a real treat; her *simchas hachaim* and relaxed, upbeat attitude filter through between the lines. As Leah expresses, "I learn this from Sholom Mordechai. Nearly every time I speak with him, he asks me if I'm ready to pick him up tomorrow, if need be, from his *golus*. He lives with such a pure *emunah*, waiting for his redemption every moment."

***I'm sorry for disturbing you during such a busy time of year. Can you spare a few minutes for this interview?***

Sure. I'm in the middle of cooking for *yom tov*. We're expecting quite a crowd *boruch Hashem*. Tomorrow I'm planning to visit Sholom Mordechai in Otisville. It's about an hour away.

***How has your life changed since the last time we spoke?***

It's still busy as ever *boruch Hashem* with lots of *simchos*. We have three married sons and two married daughters; our eldest daughter, Roza, has six beautiful children, and Mushka has two little girls. We have two sons in *yeshiva*, and then Moishe, our special needs son, who is in a wonderful program at Chesed 24/7, where he is thriving. They keep him busy during the day and he comes home every night. The children are so proud of his achievements.

Menucha and Uziel, our two little ones, are in Chabad High School

and Cheder Chabad. Uziel is not so little anymore. He's already twelve years old. He was only four when this whole story began.

***Do the children come with you to visit Sholom Mordechai?***

The ones still at home usually come with me, and the married ones visit whenever they can. They also bring their young children, our *einiklach*, which needs special permission from the prison authorities.

***Are there specific days for visiting? What do you usually do during the visits?***

Visiting hours in the federal prison system are usually on the weekends and on Mondays. We usually go on Mondays and Fridays. We try not to come on Sundays, because my husband loses more points. He has twelve visitor points a month, and when he uses that up, he can't get visitors anymore. The Sunday visitors are worth double points because the guards want to discourage visiting on Sundays, when it's more crowded. Sholom Mordechai does have one rabbi, called a minister of record, who can visit without using points.

Our visits can last several hours, and we mostly *schmooze*. We sit in the common room, under the watchful eye of the guard. There are many rules and regulations about the visits. We are carefully searched each time and can't bring anything in. We can bring money for the vending machine, where Sholom Mordechai can buy a hot kosher meal, much tastier than the prison food.

***What is the schedule in prison? Do the inmates work? Do they have a minyan, a shofar or sukkah?***

The inmates all have jobs for most of the day. Sholom Mordechai works in the chapel, which gives him the ability to put the *seforim* in order and to learn Torah, which is a real *brocha*. Currently there is a *minyan* in Otisville, which has about eighteen Jews (though from the visits, one would think there are many more Jews, as they receive the most visitors).

While the atmosphere leaves much to be desired, there is a regular *Rosh Hashanah davening* with a *shofar*, and a small *sukkah* in the yard on *Sukkos*. Yet there are many rules and regulations, and these privileges are subject to the whims of the guards.

***What does your son Moishe say about the situation? Does he express how much he misses his father?***

Of course. Moishe and his father are very close. They share a special bond that goes back to when we lived in Iowa. Back then, Moishe was younger and there were no programs suitable for his needs. After many months of research, we created our own program, based on the famous Son-Rise program.

*Ed: The Son-Rise Program was originated by Barry Neil Kaufman*

and Samahria Lyte Kaufman in 1974 for their son, Raun, who was diagnosed with autism, and today is a fully functional adult who runs the program. The Son-Rise program is a home-based program for children with autism spectrum disorders and other developmental disabilities. It's been called a parent-directed, relationship-based play therapy.

Parents are trained at the Autism Treatment Center of America (ATCA) in Sheffield, Massachusetts. Staff members teach families how to be aware of their attitudes for bonding and relationship building, creating a distraction-free playroom environment so the child can feel secure and in control. Parents and facilitators join in a child's exclusive and restricted behavior until the child shows social cues for willing engagement. The program's developers claim if the parents learn to accept their child without judgment, the child will learn to interact with others.

Sholom Mordechai and I traveled to Massachusetts more than once to learn how to use the program, and then implemented it at home. It's a very powerful program based on the premise that every child is a gift, and that these children are special souls who need to be dealt with on their level. In a nutshell, the program is the exact opposite of the famous ABA, or behavior programming program. In Son-Rise, you're not putting your own expectations on the child, but entering his world and accepting him for who he is. In many cases, the child then feels safe and secure, and slowly begins to make contact with the outside world.

#### **How did you implement this program in Iowa?**

It was very challenging. Moishe was home with me for most of the day, as there were no schools suitable for his needs. Still, there was something refreshing about life in Iowa, where Moishe was accepted and beloved. People tended to overlook his differences and focused on his pure *neshomah*. Moishe went to shul on *Shabbos*, had lots of friends, and was one of the gang.

When we lived in Iowa, most of Moishe's education took place in our playroom. For many years we hired local women, whose husbands were employed as *shochtim* and *meshgichim* in the plant, to come and work with Moishe. The Son-Rise program ran from 8 a.m. to 6 p.m., and we changed the shifts every few hours. This is actually one of the components of the program, encouraging the child to start fresh with a new person who brings fresh energy to the interactions. During most of this time, the caregivers, whom we personally trained, would enter Moishe's world and do whatever activity he was involved in, while incorporating the goals we set. For example, for many months, Moishe enjoyed staring out of the window for hours each day. The woman working with him would sit there and also look out the window, but she would talk about the things happening outside; the weather, the grass and the cars driving by. If Moishe would line up his toy cars, we would talk about numbers and addition, the number of cars, the amount we took away, etc. He loved everything related to travel, so we'd buy toy planes, talk about flight schedules, how many hours it took to go from one point to another. We taught him basic math and language skills by keying into his interests and making learning fun.

The program was very successful, and Moishe was thriving, but it was quite challenging to find enough people to work with him on a daily basis. For a while my daughter Roza, who was home from seminary, worked with Moishe, and I spent many hours with him, but it wasn't enough. That's where Sholom Mordechai came into the picture. He was very busy, working long hours at the plant, which had over a thousand workers. He often wouldn't come home until late at night. But every day, he took a break around five o'clock. This was "Moishe time." Moishe and his father would go downstairs to the playroom and they'd eat supper together. At that time Moishe was a very picky eater. Today he has a very healthy appetite *boruch Hashem*, but in those days getting him to finish his dinner was a challenge. When he ate with his Totty, it became a fun activity that they both

enjoyed. Sholom Mordechai and Moishe are still exceptionally close. Moishe talks about how he misses his Totty all the time.

#### **How is Moishe doing now?**

Moishe is doing great *boruch Hashem*. The staff at Yedei Chesed are wonderful, and they teach him such amazing things. Though he isn't very verbal, he does speak about the *yomim tovim*, and was able to tell us that on *Shabbos*, a *shofar* is *muktzah*, for example. Although the day-hab program is excellent, if I had the time and ability, I would keep Moishe home and implement the Son-Rise program. That's what I plan to do when Sholom Mordechai comes home.

Right now, Moishe loves going to Chesed 24/7 each day, and looks forward to coming home at night. He is a cherished member of the family. I think that the attitude of the parents makes a huge difference in how the child is perceived. If you model acceptance, that's what the children will internalize.

This is true, by the way, not just with special needs children, but with any *nisayon* in life, be it *parnossah*, health issues, and even our current situation, with my husband in Otisville. The children sense our acceptance of the situation, our knowledge that this is where Hashem wants him to be right now, and that his *yeshuah* can come at any moment.

#### **This sounds wonderful in theory, but how does one do it in practice?**

Let me share a technique that works well for us. One of the really big tools I use when I get anxious about anything is to rely on what happened before. For example, when it comes to *shidduchim*, I think about the *shidduchim* we did in the past, and how Hashem helped us in such wonderful ways. The same applies to *parnossah*; I remind myself of how Hashem helped in the past and will surely help us again.

This concept helps me get through this challenging time as we wait for Sholom Mordechai to come home. I remind myself that Hashem's *yeshuah* can come at any moment. There are so many inmates who had long sentences and were suddenly released because the laws changed or the judge reviewed their case, etc. He can do anything. We just have to trust in His kindness.

#### **What a powerful insight! Thanks for sharing. In general, are you busy with the legal aspect on a steady basis?**

I'm always busy. Just now, as we speak, I'm coming back from Williamsburg, where I was asked to speak to the girls in Pupa school about the situation and how we deal with it. I travel a lot to speak to schools and women's groups, and to meet with lawyers and *askonim* in different areas. We are trying numerous endeavors from a legal and spiritual standpoint. It certainly helps to keep me busy and distracted. My kids take care of whatever free time I have left!

Two years ago we filed motion 2255 in court, recently adding a merits brief with additional evidence. This motion has a lot of backing from powerful individuals in the legal and justice system. I was just at a meeting the other day, and someone commented, "I can't believe how many influential people you have who are championing your cause." Many former attorney generals and judges on our side. But most importantly, the *Ribono Shel Olam* is on our side.

Sholom Mordechai is constantly giving me *chizuk*, on the phone and through emails. His *emunah* and positive attitude is a real inspiration.

#### **What gives your husband the chizuk to keep smiling, day after day, in such a depressing place?**

Sholom Mordechai has the ability to stay above his surroundings, to focus on his mission in life regardless of what's going on around him. He also makes a conscious decision to notice the blessings in his life, the small acts of kindness that happen a hundred times a day. That's his hobby, his calling.

One notable example is the chaplain, Rabbi Reichter, a *malach* who works in the prison system and tries to help the inmates with their religious needs. By “coincidence,” he was hired for the job the same day Sholom Mordechai arrived in Otisville.

My husband keeps in touch by phone and email. The phone calls are limited to 300 minutes a month, or just ten minutes a day, which are so precious. We can’t call him, but he can call us, although the calls can be interrupted or disconnected at any time, without warning. The ten minutes a day, which we pay for, are a real tease; there’s so much to say, but I’m tense the entire time, because I know our minutes are soon going to be up. Sometimes I forget something important I wanted to say and then remember a minute too late. Because of the limited phone calls, Sholom Mordechai can rarely call our married children or his extended family. He saves the phone time for myself and the children.

However, he does send emails, corresponding with two *yeshivos*, Darkei Torah in Detroit with Rabbi Elchonoh Jacobowitz’s class, and Stolin in Boro Park with Rabbi Leibish Lish’s class. He also writes about five separate *divrei Torah* each week. His email list is limited to 25 people, so those who aren’t approved have to send me the emails, and I send them to him.

#### ***Does anything frustrate him?***

If anything does get him upset, it’s the inability to keep certain *mitzvos*, such as *kiddush levonah*, because he can’t go out to the yard at night. Sometimes he wants to go to the chapel to *daven*, but there’s a lockdown and he can’t leave his room. Technically, if your rights are denied, you can complain to the chaplain, but the chaplain is not always available to help.

Recently, my husband had a medical procedure and was placed into solitary confinement as a precaution. As unpleasant as prison is, solitary confinement is well more unpleasant. The guard in charge of solitary confinement checked Sholom Mordechai’s belongings and didn’t let him bring his *shofar*, which he uses to blow during the month of *Elul*. My husband didn’t argue with him; there was no point. A few

minutes later the shift ended, and a new guard came, allowing him to take his *shofar* along! The small *chasodim* that he experiences on a steady basis give us tremendous *chizuk*.

My husband tries not to let on if something upsets him, because then they know they can get him. He is always calm and serene, going about his business with a smile. This earned him the respect of the other inmates. They know he won’t bother them, and they don’t bother him.

#### ***Is there anything tangible we can do to help, besides davening for Sholom Mordechai ben Rivka?***

Yes. There are numerous initiatives being undertaken all around the world. Recently we had two *Sifrei Torah* written for Sholom Mordechai, one of them commissioned by children around the world, and the other by a private donor who wanted to do it in his *zechus*.

Recently, I was made aware of a beautiful initiative that is traveling across the globe. It started with a group of women in Tzefas, where my sister-in-law lives. They decided to light candles early on *erev Shabbos*, and count the extra minutes of *kedushah*, presenting it to me on *motzoei Shabbos*. Soon women from Beitar, Yerushalayim, Europe, Canada, and the U.S. were doing the same. Each community joining this project has a coordinator who collects the amount of minutes that *Shabbos* was ushered in early in the area. The results are then tallied and presented to me on Sunday.

The idea is simple, yet profound. Our sages teach us that *Shabbos* is just a taste of *olam haba*, of the ultimate *geulah*. We are yearning for *geulah*, on a general level and in particular for Sholom Mordechai. What better way to show him *chizuk* than to join the early *Shabbos* club and give some extra hours of *kedushah* as a special gift? Needless to say, this should only be done if it can be accomplished with *yishuv hada’as*, without undue stress and aggravation.

*Thank you, Mrs. Rubashkin, for inspiring us with your powerful insights. May this be a year of geulah for Sholom Mordechai and for all of Klal Yisroel.*

— A Purim Message From —  
**R' Sholom Mordechai Rubashkin**

# The All-Embracing “Yes!”

The *Gemara* (*Shabbos* 88a) states that the verse at the end of *Megillas Esther*, “*Kimu vekiblu aleihem v'al zareihem*,” refers to *Klal Yisroel's* re-acceptance of the Torah in the days of Mordechai and Esther. Following the miraculous *yeshuas Hashem*, as we know, the nation made a new *kabbolas haTorah*.

Let's revisit the first *kabbolas haTorah* at *Har Sinai* to take a deeper look into what *kimu vekiblu* really involved.

Before Hashem commanded the *Aseres Hadibros*, the *posuk* says, “*Vayedaber Elokim es kol hadevorim laimor*.” The word *laimor* usually refers to the words of Hashem that are to be repeated to the *Yidden*, but this can't be the meaning here, because the entire nation, as well as the souls of all Jews of future generations, were present at *Har Sinai* and all heard the *Aseres Hadibros* from Hashem, Himself.

What, then, does *laimor* mean in this *posuk*? The *Gemara* teaches that *laimor* means that Hashem wanted the *Yidden* to respond verbally to the *Aseres Hadibros* to voice their acceptance of each and every *dibbur*. There is a difference of opinion as to how the *Yidden* did this. Rav Yishmoel holds that when Hashem commanded them to perform a *mitzvas ase*, the *Yidden* responded, “Yes!” When Hashem forbade a specific action (*lo saaseh*), the *Yidden* responded, “No!” [we will not commit this *aveirah*].

In explaining his view that the *Yidden* answered no to each *lo saaseh*, Rav Yishmoel teaches that the higher a person's spiritual level, the more he understands that a *Yid's* actions, whether good or bad, deeply impact every aspect of the *briah*. By answering yes to a *mitzvas ase*, the *Yidden* demonstrated their appreciation of the *mitzvah's* immense benefit to world. Responding no to a *lo saaseh* displayed their understanding of the negative power that lies within actions that are forbidden.

On the other hand, Rebbi Akiva is of the opinion that the *Yidden* answered yes to *both* types of commandments, *mitzvos ase* and *mitzvos lo saaseh*. That is because their deep desire to follow the *ratzon Hashem* burst forth as an all-embracing “Yes!” to each and every *dibra*, the positive as well as the negative ones. In that one resounding word, they were telling Hashem that they would heed His will regarding *anything* He would ask of them.

In Rebbi Akiva's view, responding yes to a *lo saaseh* denotes another aspect of *avodas Hashem*: the ability to focus not on the negativity of the forbidden action, but rather the *kedusha* and the force of good that flow from obeying Hashem's will. The yes of the *Yidden* to the *mitzvos lo saaseh* encompassed this understanding.

This powerful lesson can also be applied to how we view a *ni-*

*sayon*. One can be preoccupied with the *lo*, the negative elements, the great hardship and pain. And even if a person overcomes the challenge, he may dwell on what a bitter, exhausting battle he had to go through.

On the other hand, a *Yid* can see the *neis* in the *nisayon*, its power to elevate the person. Every *nisayon* carries the potential to bring a person to a higher level of *avodas Hashem*. His trust in Hashem to bring him through the *nisayon* opens his eyes to His presence in everything around him, drawing him closer to the *Borei Olam*.

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Esther asked, “*Kisvuni ledoros*.” She wanted the *Purim* story to be recorded for all future generations to teach us that wicked plots to wipe out the Jewish people were not unique to her time; they reoccur in every generation. Esther wanted *Yidden* in future *doros* to learn from the steps she and *Klal Yisroel* took to overcome the terrible *gezeirah*.

Esther made her *hishtadlus* on several levels, both *al pi teva* and beyond *teva*. She instructed Mordechai to gather all the Jews, to fast for three days, and to gather 22,000 *Yiddisher kinderlach* to cry out to Hashem. She declared that she and her servants would also fast. She knew that only with the *tefillos* and *teshuvah* of the entire nation triggering Hashem's *rachamim* could she hope to be *matzliach* in overturning the *gezeirah*.

By calling on the *Yidden* to exert themselves to the utmost in bringing a *yeshuah*, Esther demonstrated that her *hishtadlus* on behalf of *Klal Yisroel* was free of *kochi v'otzem yodi*, pride in her own abilities or a sense of superiority.

In our own lives, we, too, must try to follow this formula in the face of a *nisayon*. Before undertaking our personal *hishtadlus*, we say a *kappitel Tehillim* begging Hashem to save us, truly believing that *im Hashem lo yishmor ir, shov shokad shomer*, no salvation can possibly come without Him. And amidst the pain of the *nisayon*, we try to see its potential for bringing more *kedusha* and closeness to Hashem into our lives.

We try to emulate our forefathers in their all-embracing “Yes!” to every one of Hashem's commandments. Only then can a person hope that his own efforts to overcome life's trials, whether the *sinas chinom* of his enemies or any other difficult *nisoyon*, will be crowned with success.

*Purim* has so much to teach us. *Teshu'osom hoyisah lonetzach vesikvosom bechol dor vador*. May we be *zoche* to learn from the events of *Purim* and to be *zoche* to *yeshuas Hashem* and the *geulah shleimah* for each individual as well as the *klal*, with *Moshiach tzidkeinu bimeheirah beyomeinu. Amein*.

# New Brief Petitions 8<sup>th</sup> Circuit Court Of Appeals

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BY DEBBIE MAIMON

A new hard-hitting petition by Sholom Rubashkin has brought his case back into the limelight. In this filing, Sholom Rubashkin asks the 8th Circuit Court of Appeals to grant him the right to appeal Judge Reade's rejection of his 2255 Petition. The Petition requested a new trial or sentencing due to the government's violation of his constitutional rights during legal proceedings that led to his 2010 conviction and draconian 27-year sentence.

The 2255 Petition and the Merits Brief that followed it requested at the very minimum an evidentiary hearing at which both sides could request documentation and take discovery in light of new evidence uncovered in the case.

Not surprisingly, as Judge Reade herself imposed the 27-year sentence, her ruling rejected the 2255 Petition. She also denied Sholom's right to appeal, even before his attorneys had a chance to review her ruling or ask for permission to appeal. (In contrast to most legal proceedings, the ruling on a 2255 Petition cannot be automatically appealed.)

Judge Reade's 140-page ruling dismissed the defense's reams of evidence of prosecutorial misconduct as "mudslinging." After Sholom's counsel requested a "certificate of appealability" – without which a 2255 Petition cannot be appealed – prosecutors urged Judge Reade to deny the certificate, quoting her own mudslinging comment.

In response, Sholom's counsel submitted a new brief, outlining 6 ways the government had violated ethical and legal norms in his case and petitioning the 8th Circuit Court of Appeals for the right to appeal Reade's ruling. The brief cited the government's withholding from Sholom exculpatory evidence required by law, and its failing to correct the court record regarding witness testimony the government knew to be false. These violations are powerful grounds to vacate a trial.

The brief rejected the pejorative term "mudslinging," noting that "it is impossible to make *Brady* and *Napue* arguments without accusing the government and/or its witnesses of misconduct." How else can the accused prove that *Brady* (withholding exculpatory evidence) and *Napue* (failing to correct false testimony) were violated here?

Far from crossing the bounds of appropriate advocacy by exposing government wrongdoing, the brief said, the defense's mandate is to do just that; "to ensure a first-time offender is not sentenced to 27 years' imprisonment on the basis of overreaching, falsehoods, or non-disclosure. Simply put, it is perfectly appropriate – and, in fact, ethically *required* – to accuse the government of wrongdoing when the facts point in that direction."

## REVISITING THE GAME-CHANGER

A brief detour, to provide background to the current defense motion: As many will recall, seven years after Sholom began serving his 27-year prison sentence, his defense team uncovered shocking revelations about government malfeasance in his case. These discoveries fueled the powerful Merits Brief that accompanied Sholom's 2255 Petition that proved his constitutional rights had been violated.

The Merits Brief's core argument was straightforward. It charged the government with causing First Bank to lose tens of millions of dollars by interfering with the sale of Agriprocessors through its no-Rubashkin law, and then pinning responsibility for the loss on Sholom Rubashkin in order to lengthen his prison sentence.

Charges of government interference with the bankruptcy did not originate with the Merits Brief. They had been aired at Sholom's 2010 Sentencing Hearing, backed up by a sworn affidavit from a would-be buyer testifying to a government ultimatum forbidding the hiring of Rubashkins under threat of forfeiture. Prosecutors had countered by eliciting testimony from government witness Paula Roby who denied the existence of a no-Rubashkin policy. She also insisted that the government's forfeiture threats – which legal scholars have called unprecedented and illegal—had no negative impact on the bidding process during the bankruptcy period.

Roby's testimony was crucial to Judge Linda Reade's sentencing calculations. Reade wrote in her Sentencing Order that she "credited" Roby's testimony and rejected the defense "theory" of how the bank's loss was caused by government interference. Accepting the prosecutors' allegations that Sholom alone was to blame for it, she imposed on him the notoriously disproportionate virtual life sentence.

Seven years later, the discovery of new evidence produced an explosive game-changer in the case. Tireless investigative efforts by defense attorneys Gary Apfel from LA (working pro bono) and Stephen Locker from Iowa uncovered this bombshell in the form of handwritten notes by a reputable attorney, James Rieland, who had attended a pivotal meeting with government prosecutors back in 2008.

Rieland, who had been present as counsel for the Agriprocessors bankruptcy trustee, and was unconnected to any of the Rubashkins, had documented the instructions given to the trustee at this meeting by Assistant U.S. Attorney Rich Murphy and fellow prosecutor Peter Deegan.

Rieland's record reconstructed the scenario in which the no-Rubashkin policy had been imposed. "No-Rubashkins is very important to us—non-negotiable," Murphy had announced, adding

there could be “no involvement of Rubashkins from any standpoint (control or benefit), in the successor entity to Agriprocessors.”

The new evidence thus shone a light on government schemes—later denied by the prosecutors—that led to the massive bank loss for which Sholom was wrongly blamed.

The Merits Brief exposed the manner in which the barring of all Rubashkins, particularly Aaron Rubashkin, had enabled the prosecutors to engineer a depressed sale price for Agriprocessors, forcing it to be sold for a fraction of its worth. The \$8.5 million sale price was vastly insufficient to repay Agriprocessors key creditor, First Bank.

### BRAZEN CHARADE

Rieland’s notes further reveal that government witness Paula Roby, who would later deny under oath at the Sentencing Hearing that a “no-Rubashkin” policy had been issued, actively participated at this very meeting where prosecutors laid out the policy. She had indeed lied under oath, and the government not only knew it but had elicited the false testimony, the Merits Brief contended. This brazen charade included an even more astonishing feature: the false testimony was solicited by none other than Assistant U.S. Attorney Deegan, one of the key government actors at the “no-Rubashkin” meeting.

By hiding from the court their manipulation of the bankruptcy process through the no-Rubashkin edict, and allowing Roby’s testimony to mislead the judge about who was responsible for the plant’s financial ruin and the bank’s massive loss, prosecutors committed clear “*Napue*” violations that are grounds for a new trial, the brief attests.

Prosecutors also withheld exculpatory evidence that would have enabled Sholom’s lawyers to lay bare the truth about the devastating impact of the government’s forfeiture position, attorneys charged. This evidence consisted of, among other things, a letter from First Bank to the U.S. Attorney’s Office in 2008 complaining that the government’s forfeiture position was stifling the bidding process, and a similar message from bankruptcy trustee Joe Sarachek protesting the negative effect the government’s forfeiture threats were having on the bankruptcy sale.

These letters which contradict the government’s claim that their use of forfeiture had no impact on the bidding process should have been turned over to Sholom’s counsel as the law demands, the defense charged. Failure to do so constitutes a “*Brady*” violation, another ground for vacating a trial.

### GLARING INCONSISTENCIES

What of Judge Linda Reade and her role in this travesty? In her 2010 Sentencing Order, Judge Reade had dismissed defense testimony about a government imposed no-Rubashkin condition in the bankruptcy process, citing Paula Roby’s counter claim. “Paula Roby testified that there was no such condition attached to the sale of Agriprocessors. The court credits Roby’s testimony and discredits testimony from Defendant’s witnesses,” Judge Reade wrote.

With the unmasking of Paula Roby’s false testimony in the Merits Brief, a lynchpin of Judge Reade’s Sentencing Order was seriously undermined. The judge was now at a crossroads. She could have used the new evidence to reassess the facts and revisit the entire question of who was responsible for First Bank’s loss.

She did not do so. Instead, in her January 2017 ruling denying the 2255 Petition, Reade sought to shore up her original ruling by revising her position on how she arrived at it.

First she backtracked on her earlier statements. “The court did not discredit or credit any specific testimony of any witness,” the judge wrote.

“...Rather than focus on the extent of the government’s restriction on the Rubashkins’ involvement, the court focused on whether the [government’s] forfeiture position could have impacted the sales price of Agriprocessors’ assets. The Court credited Paula Roby’s opinion about [that impact].” Offering a new rationale for her ruling, Reade sidestepped the weighty evidence that star witness Roby had apparently committed perjury.

Can a judge simply change the key argument supporting her sentencing calculation, offering a new basis because the first one no longer works?

“Simply put, a district court may not deny 2255 relief by changing the basis for its original decision,” the brief argues.

### ARGUMENTS FOR JUDGE READE’S RECUSAL

The attorneys contend that the judge should have recused herself from this case from the outset, and maintain her refusal to do so is in itself grounds for vacating the sentence. “The concern... is that a judge who becomes part of the ‘prosecution team’ will not thereafter be able to remain impartial, no matter how pure his or her intentions.”

“The District Court’s 2255 ruling demonstrates the point,” the brief concludes, pointing to Judge Reade’s determination to prevent Sholom’s virtual life sentence from being dismantled regardless of strong evidence of government misconduct.

“The Court characterized arguments made in good faith as ‘mudslinging;’ changed or disregarded its prior interpretation of the crucial testimony from Roby; and otherwise endeavored to protect the 27-year sentence imposed on Rubashkin from collateral attack, even to the point of denying a certificate of appealability,” the defense brief pointed out. “Rubashkin should be given the opportunity in full briefing to address whether the district judge became sufficiently close to the government during the investigation of his case to require recusal.”

A powerful defense brief seeking Judge Reade’s recusal that was filed earlier is outside the scope of this article; it will be discussed in a future column.

### CASE REFUSES TO DIE

Despite all attempts to squelch it, the Rubashkin case refuses to die. As Sholom and his defense team fight on, the corruption at the heart of the saga – and newfound evidence of that corruption—has heightened outrage in the Jewish community and appalled legal scholars.

The case is increasingly recognized by experts as one of the most egregious examples of prosecutorial and judicial misconduct in the country. Each new volley of court motions in the case unveils more of that misconduct and the unrelenting attempts by prosecutors and the presiding judge to deny or whitewash it.

The case that haunts all people of conscience is now in the hands of the 8th Circuit Court of Appeals which will rule on whether Sholom Rubashkin should be granted the right to appeal Judge Reade’s rejection of his 2255 Petition.

## OUTCRY IN LEGAL CIRCLES AND THE MEDIA

The shocking disclosures in the Merits Brief and the government's inadequate Reply sparked an outcry in the legal community and in many media organs.

An unprecedented letter outlining the new evidence and signed by over 100 former high level Department of Justice officials, U.S. Attorneys, federal judges and legal experts, including three former Attorneys General of the United States, petitioned the U.S. Attorney of Iowa's Northern District, Mr. Kevin Techau, to right a severe miscarriage of justice.

Searing op-eds by renowned judicial names followed in the *Des Moines Register*, with the paper's editorial board publishing its own hard-hitting editorial calling on the government to answer for its unlawful actions.

"Prosecutors who take shortcuts in winning convictions or lengthy sentences are not only violating the rights of the accused, they're also undermining our entire system of justice," the *Register* lashed out in a striking reversal of its earlier position. "That's worth remembering when considering the ongoing legal battle over the 27-year prison sentence handed down to Sholom Rubashkin."

"Did prosecutors ratchet up the losses sustained by Agriprocessors' creditors and later use those losses to increase Rubashkin's sentence?" the editorial board demanded. "Did they also adopt a policy of guilt-by-association [*No-Rubashkin policy*] in barring any member of the Rubashkin family — including people never accused of wrongdoing — from involvement in Agriprocessors' successor?"

"The evidence indicates they did just that, which helps to explain why so many well-respected former prosecutors and judges are up in arms over their actions."

"The U.S. Attorney's Office must be forced to answer for their actions in *USA vs. Rubashkin*," the *Register* asserted.

In another pro-Rubashkin piece, written in the form of a personal letter to U.S. Attorney Techau, James Reynolds, a highly respected former U.S. Attorney in Iowa's Northern District slammed the prosecutors for their "overzealous, insidious" actions against Sholom Rubashkin. Reynolds called on Techau to rectify the miscarriage of justice, or be "as culpable" as the perpetrators.

"Had this kind of unfair, underhanded and unnecessary misconduct occurred during my tenure, you can be absolutely certain that the perpetrators would have faced consequences, the very least of which would have been the loss of their job," Reynolds declared.

Reynolds and another signatory to the open letter, former Federal District Court Judge and Deputy Attorney General Charles Renfrew, took their protest to the next level by publishing an editorial the following week in the *Des Moines Register*; "*Prosecutors, Judges Decry Rubashkin Witch Hunt*."

"The criminal prosecution of Sholom Rubashkin was so overzealous it bordered on a veritable witch hunt," the legal luminaries wrote. "There is new evidence of false testimony and willful manipulation that exacted the most possible punitive sentence for Rubashkin. That makes this a shocking case of prosecutorial misconduct."

The authors demonstrated their intimate grasp of the case in a few succinct paragraphs.

"Prosecutors deliberately thwarted the prospects [of selling Agriprocessors profitably] by constructing a "No-Rubashkin" rule which was completely illegal," the editorial declared. "That policy was 'highly effective in quashing Sholom Rubashkin's chances for a fair sentence.'"

"The infamous No-Rubashkin rule caused a massive drop in the company's value which made it impossible to sell it profitably so that it could repay its \$27 million loan to First Bank," the authors wrote. "Prosecutors kept turning away interested parties...manipulating the bids so that the lowest one, for \$8.5 million, was the only one accepted, leaving an outstanding debt of \$27 million, resulting in Rubashkin's cruel and unjust sentence."

The above outcries took place a year ago. Despite the mounting disgrace the case has brought to the government, the individuals implicated in shocking prosecutorial misconduct and lawlessness remain at their posts in good standing.

# Motion To Recuse Exposes Conflicts Of Interest

BY DEBBIE MAIMON

Sholom Mordechai Rubashkin has been sitting behind bars for eight and a half years. His ongoing quest for justice, supported by over a 107 legal experts, has powered a series of hard-hitting appeals that have ripped aside the legal veneer covering a shocking saga of prosecutorial and judicial misconduct.

Court filings by attorneys Stephen Locher and Paul Rosenberg of Des Moines, and Gary Apfel of Los Angeles (working pro bono) reconstruct, step-by-step, the strategies by which Sholom's conviction and sentence were obtained through the violation of his constitutional rights.

With the case back in the limelight due to its new defense filings with the 8th Circuit Court of Appeals, the compelling Motion to Recuse and Judge Reade's denial of the motion have received new attention.

Through FOIA documents released by the government, the Motion to Recuse uncovered conflicts of interest on Judge Reade's part that so impugned her ability to remain impartial, she was required to recuse herself on her own initiative, judicial experts say.

These disclosures – distinct from earlier FOIA revelations about ex parte communications that prompted the first appeal – expose hidden conflicts of interests that legal scholars have said would impair any judge's ability to maintain neutrality.

## SECRET COMMUNICATIONS CONTINUED TO SENTENCING PHASE

The FOIA documents provide new evidence that ex parte communications and Judge Reade's entanglement with the Rubashkin case continued up to the eve of his sentencing.

In particular, they shed light on an obscure "threat investigation" conducted by the FBI after Judge Reade complained that threatening letters had been sent to her by supporters of Sholom Rubashkin.

Based on the FOIA documents, defense attorneys charged the government with continuing to withhold crucial facts surrounding the threat investigation, specifically the correspondence between Judge Reade and the USAO regarding the alleged threats.

Attorneys argue that the "threatening" letters might well have biased Judge Reade against Sholom. Had he been given the full picture as opposed to the doctored one described below, he would have sought the judge's recusal.

## JUDGE READE'S HUSBAND ENTANGLED WITH RUBASHKIN

The Brief also elaborates on legal problems posed by a conflict of interest involving Judge Reade's husband, Michael Figenshaw, a senior partner in the Bradshaw Fowler law firm that represented Agriprocessors in extensive bankruptcy proceedings.

Figenshaw had access to privileged information about Sholom

Rubashkin's legal affairs that was material to the 2255 Motion. The recusal motion questions how judicial neutrality could have survived the Figenshaw-Reade-Rubashkin entanglement, as the strong possibility of confidential information leaking from Figenshaw to Reade (from husband to wife) destroys all appearance of impartiality.

Already compromised by the pre-raid *and* pre-sentencing *ex parte* communications, Judge Reade's ability to remain objective was even further undermined by her husband's legal and business relationship with Sholom Rubashkin.

In addition, the Motion states, Figenshaw, a senior partner in the firm, "had a financial interest ... that could be substantially affected by the outcome of the bankruptcy proceedings." When a fee dispute erupted between Bradshaw and Rubashkin-owned entities, and monies the law firm had billed for were not forthcoming, the Figenshaw-Rubashkin-Reade entanglement grew even more complicated.

The fee dispute raised the possibility that Figenshaw (and by extension, his wife, Judge Linda Reade) may have been hurt financially by the dispute, profoundly heightening Reade's conflict of interest in the Rubashkin case.

*Connect the dots:* Judge Reade is presiding over the case of a man whose actions, directly or indirectly, might be hurting her husband's wallet.

Furthermore, the Motion to Recuse argues that Reade is unqualified to rule on the 2255 Motion inasmuch as she or her husband may be called as witnesses in an evidentiary hearing about government misconduct.

[The Motion to Recuse was filed together with the 2255 Motion, a brilliant document that reconstructs, piece by piece, government's schemes to harm Sholom Rubashkin by thwarting the sale of AgriProcessors during its bankruptcy period, followed by an attempt to whitewash its actions in court through false testimony.]

She could also be called to testify regarding her own conflict of interest, attorneys note. "No judge, no matter how well intentioned, could be expected to evaluate her own actions... without legitimate questions being raised about impartiality," the Motion stresses.

Precisely because she is a potential witness in the case, the Motion to Recuse says, Judge Reade must recuse herself from the case and turn over the 2255 Motion to a judge who has no prior entanglement and therefore engenders no suspicion of an appearance of bias.

## INVENTING FACTS ON RECORD

Strikingly, Judge Reade continuously presents as judicial support for her rejecting the Motion to Recuse pages of assertions that

are not based on facts on record and carry no legal weight. They were not excerpted from trial proceedings, deposition, evidentiary hearings or discovery. They do not even have the status of hearsay in which a witness testifies under oath that he overheard or was told a particular piece of information.

For example, she writes emphatically about what her husband knew or didn't know regarding the Rubashkin case as if these assertions have the status of testimony given under oath, when they are nothing more than her own unsupported declarations.

She writes, "The undersigned's spouse [ *husband Michael Figginshaw*] ...did not obtain any information concerning these proceedings because he had no involvement whatsoever in [Sholom Rubashkin's] criminal case or bankruptcy proceedings, and he has no interest whatsoever that could be substantially affected by the outcome of this case..."

She then goes on to attest that her husband "as of December 2010 was no longer a partner of Bradshaw." Although he continues to work for the law firm, it is only in a "limited" way, with a fixed salary not contingent on fees paid to the firm by various clients.

Judge Reade's statements about the "limited" extent of her husband's involvement with Bradshaw, and the scope of his inside knowledge of the Rubashkin case are offered as facts on record. Yet a quick review of the case reveals that her husband never gave a deposition or testimony under oath in connection with any aspect of the Rubashkin case.

The implication is that the judge apparently feels her utterances do not require any form of legal authentication. The mere fact that she uttered them is sufficient to establish them as legal facts. In actuality, however, these assertions carry as much legal weight as say, the statements of any spectator in the gallery who was not deposed or questioned and cross-examined on the witness stand.

#### "NO REASONABLE PERSON WOULD HARBOR DOUBT?"

Judge Reade oversteps judicial bounds in another way; by evaluating and approving her own contested actions as if she were someone other than herself.

In other words, Judge Reade plays the part of witness for Judge Reade. She offers repeated assertions about what the "undersigned" (*i.e. Judge Reade*) did or did not do, and what "the undersigned" thought and intended regarding the entire saga of the raid on Agriprocessors and the criminal prosecution that followed.

To justify breaches of judicial ethics, she is forced to create an alternate reality in which unpleasant facts – such as the country's top legal experts demanding that she recuse from the case – are not allowed to intrude. For example, on page 71 of her Ruling to Deny, she writes that "*a reasonable person...would not conclude that the undersigned's impartiality might reasonably be questioned.*"

Almost compulsively, on page 72, she repeats the "reasonable person" argument: "*A reasonable person, being fully advised of all of the facts, would not harbor any doubt regarding the under-*

*signed's impartiality.*"

Is she truly oblivious to the fact that 107 legal luminaries — including former attorneys general, senior officials at the Department of Justice, United States attorneys and federal judges — signed a friend of the court brief stating their expert opinion that she should have recused herself?

In addition, from 2010 to 2013, nearly 70 congressmen wrote letters to then Attorney General Eric Holder about the breaches of judicial ethics in the Rubashkin case related to Reade's excessive involvement with the prosecution. They demanded that his office review the case.

Do all these prominent legal personalities not qualify as "reasonable people"?

In view of the wave of legal opinion advocating her recusal from the case, Judge Reade's insistence that "no reasonable person would harbor doubt" about her impartiality is almost comical.

Perhaps the most disturbing aspect of Judge Reade's brief rejecting the Motion to Recuse is her barely concealed outrage at Sholom Rubashkin for daring to try to undo his 27-year jail sentence. The judge's brief suggests a mindset fixated on ensuring this is not allowed to happen at any cost.

"[Rubashkin's] arguments boil down to a desire to invalidate all of [my] prior actions," she writes. *All her prior actions*. Like a Freudian slip, this telltale comment suggests the author's "prior actions" encompass much more than is known. She is deeply invested in the outrageous 27-year sentence. Under no circumstances can it be allowed to be "invalidated."

"(Rubashkin's) mudslinging is wholly inappropriate," Judge Reade wrote, dismissing the reams of evidence of shocking prosecutorial misconduct as nothing but "accusations, especially unjust ones, [meant] to damage the reputation of an opponent."

The prosecutors enshrined this mudslinging comment in their own brief, citing it in a block quote at the very beginning of their brief opposing defense motions seeking the right to appeal.

What irony. When unscrupulous people schemed to vilify and frame a man for a multi-million dollar rap and incarcerate him for life, neither judge nor prosecutors worried about mudslinging.

When star government witness Paula Roby told a client (quoted in the defense *Application for Certificate of Appealability*, p.14), "Rubashkin (*whom Roby had never met*) is the sleaziest [expletive] to ever walk the earth ..." and she was "going to make sure he was put away for a long time," mudslinging did not bother the judge.

Mudslinging was fine as long as the mud flew in only one direction.

"Mudslinging" became a problem only when defense investigations began to uncover gross prosecutorial misconduct and judicial impropriety. Although the final chapter of this sordid saga has yet to play out, one thing seems probable as efforts to learn the truth continue: the deeper one digs, the muddier things are going to get.

## THE ‘THREATENING LETTERS’

Many are aware of how secret pre-raid communications in 2008 between Judge Reade and the prosecutors robbed Sholom of a fair trial. Until recently, virtually nothing was known, however, about *ex parte* communications on a completely different subject that unfolded just prior to the Sentencing Hearing in April 2010. With the release of FOIA documents detailing some of these communications, new questions arose about Judge Reade’s improper entanglement in Sholom’s criminal prosecution.

Did these secret communications affect the draconian 27-year sentence Judge Reade imposed, and if so, how?

All the defense originally knew about these *ex parte* communications was that one week before the Sentencing Hearing began, Rubashkin’s counsel received a government email informing them of an ongoing investigation into alleged threats against Judge Linda Reade made “possibly by Rubashkin supporters.” Copies of emails that contained the “threats” were attached to the government’s email.

According to sources close to the case, the letters Reade brought to the authorities’ attention were critical of the way she handled the Rubashkin trial. One letter talked about “a G-d of justice” who ruled the world and “was watching the Rubashkin case.”

The government email referencing these letters came from the US Attorney’s Office (USAO) of the Northern District. The USAO advised Sholom’s attorneys that its office was not involved in the investigation because it concerned a Northern District judge (Judge Reade).

[When dealing with threats against a judge, prosecutors in the same district as the judge routinely turn the investigation over to another district. That eliminates suspicion that prosecutors in the judge’s district might deal overly harshly with “threat” suspects.]

### CLEVER “INSURANCE POLICY”

The Northern District thus recused itself from the investigation, turning the matter over to the Southern District. But in their email informing the Rubashkin legal team of this action, they slipped in a “carefully crafted half-disclosure,” the Reply Brief notes, “designed to allow the government to later argue ‘waiver.’”

In other words, the U.S. Attorney’s Office added a piece of information that they could later brandish as evidence that the defendant was satisfied he had full disclosure from the government. As he made no protest at the time, he would therefore be barred in the future from using any aspect of the threat investigation in an appeal.

Contained in the “half-disclosure” transmitted to Sholom’s attorneys was a partial admission by the government that Judge Reade had been in communication with the Attorney’s Office about the alleged threats “being investigated by the FBI.”

“Judge [Reade] expressed concern to the U.S. Marshal’s Service and our office’s management about the progress of these [threat] investigations,” prosecutors told defense attorneys.

This loaded sentence (the USAO’S “insurance policy” against a Rubashkin appeal) explicitly references *ex parte* communications between Judge Reade and government prosecutors on the eve of Sholom’s sentencing – without spelling out what these communications were.

On the surface, nothing seems amiss. Is there something wrong with a judge asking prosecutors about the progress of the FBI investigation into so-called hooligans who had “threatened” her?

What’s wrong is that Reade was coming to the wrong address, according to the Recusal Motion. It wasn’t the Northern District’s business how the investigation was progressing and Reade knew it. So why was she questioning the Northern District about a “threat” investigation being handled by the Southern District?

### READE ‘FRUSTRATED’ OVER FBI DROPPING INVESTIGATION

The answer jumps out from the newly released FOIA documents. According to FBI reports, Reade’s allegations that she was being threatened turned out to be baseless. After meeting with and questioning the author of the letters, the FBI determined that the writer had in no way threatened the judge and had no intention of traveling to Iowa to cause her physical harm. Authorities consequently closed the investigation.

Far from being an active investigation as the government’s April 2010 email to the defense implied, the FBI had dismissed the matter as harmless many weeks earlier, the defense brief notes. Apparently to discourage Sholom’s trial counsel from probing for the full story, the U.S. Attorney’s Office used language to convey the investigation was still ongoing and too much disclosure might compromise it. The strategy worked.

Judge Reade was apparently disgruntled by the FBI’s brushing off her allegations. The government brief comments that Judge Reade was “dissatisfied” and “frustrated” with the outcome of the investigation. Apparently, she then turned to her friends and colleagues in the Northern District, “expressing her concern about the [lack of] progress in the investigation” – apparently hoping they would take a harsher look at Rubashkin supporters who in their letters had the audacity to reproach her.

Instead, prosecutors in the Northern District told Judge Reade “we are recused on the matter” and directed her “to the appropriate FBI office and the U.S. Attorney’s Office in the Southern District.”

What happened then? Inasmuch as the government has refused to turn over any of the emails or notes of conversations the prosecutors had with Judge Reade about the matter, the record is blank.

“Perhaps Judge Reade felt Sholom Rubashkin was responsible for the alleged threats and felt a temptation to punish him,” the defense brief suggests. Perhaps her cozy relationship with the Iowa prosecutors led her to believe they would break protocol and launch their own investigation to satisfy her. Their failure to do so “might have contributed to her decision to impose a longer sentence on [Rubashkin] than the Northern District requested,” the defense brief suggests.

Regardless of the exact scenario, had Sholom’s trial counsel been informed of the full scope of communications regarding the “threatening” letters and the investigation as required by law, the defense would have been concerned enough about possible judicial bias to seek the judge’s recusal, the Motion to Recuse states.

# Shalom Mordechai Returns Home

December 20, 2017



# SURREAL



BY R' YITZCHOK HISIGER

It's a day and a moment that I will forever remember. We had dreamed, we had prayed, we had hoped. We had talked, we had read, we had pondered. We had written and we had reported. Shalom Mordechai had become part of our lives in some way, shape or form.

While Shalom Mordechai's belief in his salvation seemed ever-present, we, in an honest moment, will admit that we had moments of questioning and doubt. There were good tidings and then there were apparent setbacks. Our emotions seemed to be on a proverbial roller coaster for about a decade.

The reaction we witnessed to the phenomenal news this past week was a reflection of just how personal Shalom Mordechai's plight was to *Klal Yisroel* across the globe.

Here at the *Yated*, we didn't just report on Shalom Mordechai. We seemed to be living his saga week in and week out.

I recall like yesterday when Rabbi Lipschutz became the first member of the Jewish media or of any Jewish group to publicly recognize and bring attention to the miscarriage of justice perpetrated in this case. He had the courage of his conviction to wholly devote his newspaper - and, in truth, his life - to the cause of Shalom Mordechai.

I can vividly remember the early days, standing next to Rabbi Lipschutz while we put the finishing touches to the paper, wondering what type of backlash would greet that week's article in the *Yated* in support of Rubashkin. At that time, almost no one understood what had really happened. Most people simply believed rumors and innuendos they had heard. They read the *New York Times*, the *Des Moines Register*, or *The Forward*, and they digested the information they were being fed about Shalom Mordechai, his company, the town of Postville, and whatever else was consistent with the storyline.

It was thanks to Rabbi Lipschutz's persistence to reveal the truth and to shed light on this case that ultimately brought other people, and later Jewish organizations, on board. But the beginning of the campaign was a lonely battle, led by the *Yated* and its gallant and valiant publisher. At the time, we didn't know that Rabbi Lipschutz would ultimately dedicate a decade of his life to this campaign, putting his personal reputation and the reputation of his newspaper on the line as he spearheaded this effort.

The *Yated* and the Rubashkin story thus became inextricably connected.

I remember Rabbi Lipschutz returning from his trip to Postville. He was tormented by the fact that what was being reported and what he saw with his own eyes could not have been more divergent. He witnessed the charity and generosity of Shalom Mordechai, while the newspapers were consumed with slandering him.

It was an unpopular stance to take, but Rabbi Lipschutz put pen to paper and wrote what was on his mind and in his heart. He couldn't stand by silently as a good man was being maligned.

The campaign gained traction. Events in support of Rubashkin were arranged in communities across North America, draw-

ing tens of thousands of Jews, who heard from legal experts and others.

I recall the first Rubashkin event in Lakewood, which was conceived and arranged in a matter of hours. I first presented the idea mid-afternoon on a Monday. Within hours, word was out. I ran to Bais Faiga Hall to set up chairs, while some good people offered to print signs and hang them up. I was afraid that the large wedding hall would be empty that night and I'd have egg on my face. I felt even worse because I had asked Rabbi Lipschutz to travel in from Monsey to address the gathering. The event ended up drawing over a thousand people, becoming the first of many such massive gatherings that, in total, drew tens of thousands. It was then that we realized that the campaign had become very personal to the members of our nation.

So many memories flood my mind. I remember an interview I conducted with Rabbi Genack of the OU in 2008 just as the seriousness of this matter was gaining attention. I still have a copy of a letter I wrote in 2009 offering to post a portion of Shalom Mordechai's bail as a demonstration of belief that he was not to be viewed as a flight risk.

It was in November 2009 that a jury found him guilty of dozens of charges in a case that was comprised of a concoction of lies and misrepresentations.

I can remember it now. It was a Thursday night. I should have been taking care of various *Shabbos* preparations, but instead I sat in my study, unable to move, having just heard the jury's verdict.

At the time, I wanted to tell the world of the evidence and testimony that the judge did not allow the defense to present to the jury. A jury listened for four weeks to flawed and empty testimony and decided that Shalom Mordechai was guilty of 86 of 91 charges.

*It could drive one batty to contemplate how the very judge who ordered the unprecedented raid on Agriprocessors back in May 2008 was the judge presiding over the case against Shalom Mordechai. This is just one of a million questions we had over the past decade.*

*Perhaps there's little use in rehashing the details of such farcical justice. More important in all this is the example set by Shalom Mordechai, who, between the walls of Otisville, lived with Hashem every second.*

*Even earlier, throughout his trial, he was more worried about spreading the word of Hashem than the fact that he was being judged for his very life.*

*This consummate ovoid Hashem, during the days of his trial, was busy making copies of a sefer at the local Staples store in Sioux Falls. While awaiting the verdict, what was he doing? Giving a shiur to some bochurim who had come to give him chizuk.*

*When I spoke to Reb Shalom Mordechai then, he said modestly, "Mir darf hubben bitachon."*

*To him, it was so simple. You believe in the Ribono Shel Olam.*

*What the Master of the World does is good and with a reason. A Yid believes that there's a plan. Even when you are the victim of a flawed judicial system and a biased judge, you maintain your trust in the Ribono Shel Olam.*

*That was Shalom Mordechai.*

*That is Shalom Mordechai.*

*Reb Shalom Mordechai is a "Tehillim Yid." He has been completing Tehillim daily for years.*

*He's a Yid who lives with Hakadosh Boruch Hu every day.*

Last Wednesday night, hours after Shalom Mordechai was released, I couldn't sleep. The excitement was too intense. Images of Shalom Mordechai filled my mind, as I tried to imagine where he was, smiling, thanking Hashem for his *yeshuah*. I thought of his parents, his wife, and his children.

Unable to sleep, I began to peruse some of the dozens of articles I have in my archives about the Rubashkin saga. As I read through them, I experienced the pain and torture of his ordeal all over again. I found an article I had written as early as 2009, stating, "The company that had provided meat to the greater Jewish community for years - and at no cost to countless *kehillos* and *mosdos* - and should have received support was left hanging for the unions and others to jump in and tear down. These efforts were buttressed by articles filled with distortions and falsifications about the Rubashkins printed in *The Forward* and on countless websites and blogs. To this day, shockingly, so many, in print and online, have been almost totally silent, failing to point out what has been nothing less than a travesty of justice, even before the verdict of the Sioux Falls jury was handed down."

It's hard to believe.

The Rubashkin story somehow made us all into legal experts. We were inundated with details of laws we had never heard of. We learned how prosecutors said that Shalom Mordechai's company allegedly violated a 2002 order by the U.S. secretary of agriculture to pay cattle providers within 24 hours of a sale, a charge that stemmed from a 1921 law, the U.S. Packers and Stockyards Act. That requires "prompt payment" to protect livestock producer - a law that was studied by scholars who said they had *never, ever*, seen it invoked in a criminal case. We threw around legal jargon like we knew what we were talking about. It wasn't out of arrogance or conceit. We were simply trying to make sense of the senseless. We were scratching our heads, trying to understand the incomprehensible.

Amidst all the darkness and gloom, even before last week, there were streaks of light and inspiration. There was, first and foremost, the unbending - and almost supernatural - spiritual strength of Reb Shalom Mordechai.

At the same time, there was an absolutely remarkable outpouring of support from *Yidden* across the country. From the privacy of their homes, Jews wrote out checks or donated by credit card to take part in an effort to help a Jew caught in a witch-hunt.

I remember looking through some of the checks that came in for the Pidyon Shvuyim Fund established for Shalom Mordechai. I saw true *achdus* on the ground level, with *Yidden* of all kinds responding to the *Yated's* appeal and sending in checks ranging from \$2 to \$10,000. Many of these checks were accompanied by thoughtful notes, heartfelt *brachos*, and offers to help out in any way. I saw checks from Jews down south and donations by Lakewood *yungeleit* who barely have enough to sustain their own families. There were addresses from out West and donations from prominent *rabbonim* and *askanim*. The diversity of the donors was touching. Kids sold lemonade to raise a few dollars, while readers sent in their jewelry - actual jewels and trinkets - to be pawned so that the money could be contributed to the Rubashkin fund.

I saw how people cared. Rather than the cynicism and antipathy that some would have us believe prevail, I saw care, compassion and sensitivity. I saw the greatness of our people that you and I know exists in mammoth proportions, but that a small minority try to convince others is overstated.

My heart swelled with pride, because I knew that the *Ribono Shel Olam* could only be *shepping nachas* from the unbelievable exhibition of thought and concern being shown. It was heart-warming to observe the extent to which people took to heart the plight of a Jew they never met and knew very little about before.

I've heard amazing stories of demonstrations of *nesias ohl* in relation to this saga. There's a person who hadn't eaten chocolate since the day Reb Shalom Mordechai was imprisoned. There's another who hadn't put sugar in her tea for years as an expression of *nesias ohl*.

I spoke to a high school *menaheles* who told me that this past week, she got a phone call from a former *talmidah* who is now in *shannah bais* of seminary in Eretz Yisroel. The girl related that she remembered that years earlier, the principal told the students of the school that she doesn't put her head down on her pillow to go to sleep until she *davens* for Reb Shalom Mordechai and other *Yidden* who are incarcerated, and she implored the students to each take on some *kabbolah* to show, in some way, that they feel their fellow *Yidden's* pain. "Perhaps sleep on one pillow instead of two, or do something else to show how much you care," the *menaheles* said then. Having heard of Reb Shalom Mordechai's release, the student was calling from Eretz Yisroel to let her *menaheles* know that she had never forgotten that plea to be *nosei b'ohl*.

Thinking back, my mind seems drawn to Shalom Mordechai's weekly phone call to Rabbi Lipschutz, who was kind enough to let us listen in and sometimes participate. The call on Tuesday actually began as a *seder* in *Shaar Habitachon* in *Chovos Halevavos*. At the time, the *Yated* was printed in a massive but decrepit print house in Long Island City, NY, where we would *shlep* each week to make the final preparations for that week's edition.

Tuesday is a hectic day at the *Yated*. After a week of writing, editing, conferring and deliberating, there is urgency in the air. The faces of editors and graphic artists are marked with a sense of mission. There's a lot to do and so little time to do it. Everyone works feverishly, paying careful attention to detail. No one's distracted. Focus is paramount.

But then the phone would ring and everything would stop.

The cell phone would be put on speaker and a beep would be heard. A moment later, we were treated to a hearty laugh as the caller greeted Rabbi Lipschutz.

Amidst the grime and filth of the printing press environment was an oasis of holiness created by the study of two *chavrusos*. It was a sight to behold. I'll never forget it.

The sound on the other end of the line was heavenly. Shalom Mordechai exuded such positivity and happiness despite everything that had been thrown at him.

When the *Yated's* Tuesday operation moved to Monsey, the weekly phone call continued, not with the learning of *Chovos Halevavos*, but with the sharing of *vertlach* and *divrei Torah*.

Shalom Mordechai's limited phone call minutes from prison were precious, so no time was wasted. But even if nothing of substance had been shared, I would have still been enriched by Shalom Mordechai's gregariousness, optimism and sanguinity under such horrible circumstances.

How he spoke the way he did from prison I don't know. Reb Shalom Mordechai is a fount of *divrei Torah*. This week's *parsha*. Last week's *parsha*. The *Ohr Hachaim Hakadosh* says this. But his commentary on last week's *parsha* seems to indicate

otherwise. And on and on. That this man maintained his strength and fortitude in a place designed to strip a person of those very qualities is mind-boggling. It was his unbreakable connection to Torah that was his lifeline. His comrades behind bars weren't his fellow jail mates, but *Rashi*, the *Rambam* and the *Ohr HaChaim*.

I think back to the dozens of times Rabbi Lipschutz would tell Shalom Mordechai, "Soon, you're going to get out, and then we're going to go on our world tour together, spreading the word of Hashem." And Shalom Mordechai would respond with a hearty "*Amein*."

They believed it.

They *really* believed it, even when the odds were stacked against Shalom Mordechai's release.

And here we are, so many years after this all started.

It's dreamlike. It's surreal. *Mei'afeilah l'orah*. So quickly.

Shalom Mordechai was released during the week of the *parsha* that discusses the *aggalos*, wagons. The *posuk* states, "*And [Yaakov] saw the wagons that Yosef had sent to carry him, and the spirit of their father Yaakov was revived.*" The *Sheim MiShmuel* explains that the word *aggalah* is similar to *igul*, meaning circle. The wheels of a wagon are circular, allowing it turn. Every turn of a wheel, the *Sheim MiShmuel* explains, is really part of an upward motion, for the part of the wheel that is turning downward is, in short order, going to turn upward. This, he says, is a lesson for everything that occurs in a person's life. Every seeming downturn is, by Hashem's orchestration, only a preparatory step for a subsequent turn upwards. The *yeridah* is thus simply the beginning of the *aliyah*.

Proper belief in Hashem mandates such an outlook.

At the same time, on the wheel of life, our upward trajectory can, so quickly, change direction. This awareness keeps one humble and modest, knowing that his success could be fleeting.

Shalom Mordechai personifies this healthy balance. He's demonstrated time and time again that his belief in Hashem's

*Hashgacha* is unwavering.

This week, I was in touch with Shalom Mordechai's family in preparation for this edition of the *Yated*. When I spoke to his son, Meir Simcha, I apologized for taking his and his family's time. "I want to respect your family's privacy, especially now," I told him.

Meir Simcha laughed. And he allayed my fears. "A *kesher* has been created between us and *Klal Yisroel*," he responded. "And now we want to make sure that it is a *kesher shel kayama* (an everlasting connection)!" He then offered any help he and his family could provide.

I've been inspired by the kindness, the gentility, the humility and the overall down-to-earth nature of the Rubashkin family over the past decade.

In 2010, Leah Rubashkin and her children were in Boro Park to visit their grandparents. As they strolled down the street, they came upon signs announcing the Boro Park Rubashkin rally. Shalom Mordechai's son Uziel, now a teenager, was then just six years old. Uziel was ecstatic to see pictures of his father on the signs. He couldn't contain his excitement. He pointed at the signs, jumping up and down. "Look, Mommy!" he yelled. "It's Totty! It's Totty!" He ran toward the signs and began to kiss them. "Look, Mommy, I'm kissing Totty! I'm kissing Totty! I can *kush* Totty!"

Uziel's Totty had been taken away. Uziel and his siblings hadn't been able to feel their father's embrace. They weren't able to do more than visit their father behind bars. But Uziel could *kush* his Totty from afar.

There's another Father whose children have been separated from him. They want to hug Him and kiss Him, but they don't always know how. And their transgressions and mistakes have sent them further and further away from their Father.

Inspired by this miraculous return of a father to his children, we pray, from the depths of our hearts, to be reunited with our own Father, for once and for all, in His Land, with the ultimate *yeshuah*, may it be in our days.



# HE HEARD THE CALL

BASHEVKIN  
MUSINGS  
for the Soul

A saga that began way back  
A small town quite obscure  
The agents burst in with deep rage  
Smashing every door

The newspapers were filled with lies  
Libels and deceptions  
To garner hate against our laws  
And create misconceptions

Charges brought against a *Yid*  
That should not stand in court  
But all their machinations  
Destroyed any support

Financial charges levied hard  
The unions and the banks  
And judges seemed colluding with  
The prosecutor's ranks

A verdict set, beyond belief  
Unheard, unprecedented  
And all the world just looked away  
A family tormented

A lifetime sentence for a Jew  
A simple first offense  
Hundreds of great legal minds  
Just said, "This makes no sense!"

And politicians at first shrugged  
"It's sad," "Oh what a shame"  
Pointing fingers, with sound-bites  
Thinking who to blame

A family, ten *kinderlach*  
A wife, alone, bereft  
The orders from a vicious judge  
The hatred from the left

From court to court, appealing  
No one seemed to hear  
And any plea to Obama  
Would never reach his ear

And somewhere up in Heaven  
Hashem said, "You must wait  
I have a plan, I have a goal  
I even have the date

"Don't rely on people  
And those you think could care  
Just have faith, continue on  
*Emunah* and a prayer"

And from the multitudes of men  
A great hero arose  
A Yated Neeman shouted loud  
Release Shalom from the throes!

Letters, rallies, fundraising  
Millions for legal aid  
Torah Jewry *davened* hard  
Please end this sad charade

Who knew? Who cared?  
Who even thought  
A small historic bump  
What difference would or could it  
make  
A President Donald Trump?

Don't put your faith in Hillary  
And surely not Obama  
Hashem has plans  
You won't believe  
It's just with added drama

And suddenly, The Donald  
Elected as the Prez  
A politician who does keep  
The promises he says

"A *chutzpah!*" cries the media  
This man, he hates our news  
He shuns the Washington elite  
And all liberal Jews!

But he's a man who listens  
A president who cared  
A messenger was sent to help  
For when they spoke, he heard

The candles' light was flickering  
They now burst through the door  
Your sentence is commuted  
Your jail time is no more

His talis, tefillin clutched in hand  
His seforim on *Emunah*  
Now was the time, Hashem had  
planned  
And not a second sooner

And once again in unity  
The tears were of delight  
Thanking the Almighty  
And dancing through the night

The power of our *tefillos*  
The power of our prayer  
The power of a maverick  
Who showed no human fear

Pure faith in the Almighty  
Reb Shalom taught us all  
He shall always listen  
But we first must make the call

# FROM DARKNESS

# TO LIGHT

*Me'afeilah L'orah*

BY DEBBIE MAIMON



They came by the thousands, dancing and singing in the streets with a jubilation that swept Jewish communities across the world. *Shalom Mordechai Rubashkin is free.* People wept unabashedly as they relayed the news, many shedding tears of joy for a man they had never met but had come to know as a symbol of steadfast hope and faith throughout his long quest for justice.

Those who had followed the case recalled his 2010 state trial following an indictment on over 9,000 counts of child labor. Allegations of worker abuse at the meatpacking plant, safety violations, exposing children to dangerous chemicals and machinery and other charges had all been aired at this trial. A hostile media predicted a slam dunk victory for the government. Yet trial testimony proved the charges were baseless, and the jury handed Shalom Mordechai a sweeping acquittal.

He had been in federal prison at the time, serving a 27-year sentence, and celebrated the dramatic vindication alone in his cell. Now, friends and supporters congratulating him on his release from prison could finally shake his hand for that earlier victory as well, a miracle in its own right.

Through his letters to family members shared with the *Yated*, and in articles Shalom Mordechai wrote from prison for this paper over the years, people had glimpsed his life behind bars. It was a very partial view because he didn't want to sadden others, he wanted them to share his confidence in his imminent release, in the *yeshua* he passionately believed was around the corner.

So only those closest to him knew how he fought every waking moment to resist the darkness and degradation in one of the coldest regions of humanity.

His letters were aglow with faith in and reliance on Hashem, with poignant Torah insights and loving, encouraging words. "*Dearest Kinderlach, he wrote Erev Yom Kippur, ...Hashem is everywhere and we can serve Him in whatever matzav we find ourselves in, with simcha and geshmak. Even in this dark place devoid of kedusha, a person can connect with Hashem Yisborach and feel His love.*"

.....

Visitors to the prison walked away uplifted by his contagious warmth and serene trust that Hashem would free him *keheref ayin*, "even in time for *Shabbos*," his trademark farewell. Those who read his letters were moved by an example of someone standing firm through life's trials. People *davened* for him and for his family, gave *tzedakah* in his *zechus*, and begged Hashem for his release.

But the weeks turned into months and months stretched into

years as court setbacks and defeats piled up. *Sukkos* came and went. *Chanukah*. *Purim*. *Pesach*. *Shavuos*. Summer settled in with suffocating humidity in an institution housing thousands of inmates in very tight quarters. *Tisha B'av... Elul... Tishrei...* The days shortened, the weather turned cold. Winter descended. And then it was *Chanukah*.

"Hope springs eternal in the human heart," somebody once wrote. For many of those watching the case, hope alternated with a cold fear in the pit of the stomach.

So many efforts had been poured into obtaining a new trial. The defense briefs arguing against a wildly inflated sentence had been recognized by prominent legal experts as "cogent, masterful." Over a hundred leading judicial and legal luminaries had written to the president, singling out the Rubashkin case as an outrageous abuse of justice and pleading for clemency on his behalf. 30 congressmen from across the aisle had voiced concerns over the troubling evidence of prosecutorial and judicial conduct.

Yet Shalom Mordechai continued to languish behind bars.

## An End, And A Beginning

The seasons dragged by. Then, in early December came another disappointment, one more in a string of legal dead ends. This was a denial of his motion to the 8<sup>th</sup> Circuit Court of Appeals, asking the full court to grant him a hearing to prove that his arguments in a 2255 Petition had sufficient merit to justify an appeal.

"We didn't tell him about the denial right away," commented his Los Angeles-based attorney Gary (Yosef Chaim) Apfel in an interview with the *Yated*. "On a legal level, it was just about the end of the line. The only remaining option was an appeal to the United States Supreme Court. The Court had declined to hear the case a number of years earlier. We had no illusions about our chances."

Mr. Apfel, a partner in the law firm of Pepper Hamilton LLP, had become co-counsel to Shalom Mordechai three and a half years earlier after an encounter with Rabbi Zvi Boyarsky of the Florida-based Aleph Institute. The organization assists families in financial crisis, while providing support to their loved ones in prisons or mental institutions.

Boyarsky had invested hundreds of hours into reaching out to congressmen and to high-ranking individuals in the legal community, soliciting help in Shalom Mordechai's defense.

"Gary came to my house with a donation for someone about to be evicted from his home," recalled Rabbi Boyarsky in an interview with *Yated*. "We got to talking and the subject of Shalom Morde-

chai Rubashkin came up. Gary knew about the case. He was very sympathetic to his plight and asked if he could be of help in any way. Shortly afterwards, he met the family and went to the prison to meet Shalom Mordechai. The two just clicked and Gary threw himself into the case pro bono. He brought on board former FBI director Louis Freeh, whose support was very important.”

Soon, Apfel was working with Iowa attorney Stephen Locher, a brilliant legal mind and magnificent writer. The LA attorney together with Locher mapped out strategy for the next stage in the struggle for justice. Shalom Mordechai was always an important part of the strategy sessions.

“We’d speak by phone

The Rubashkin family asked to include their most heartfelt appreciation to President Trump for his compassion and kindness in commuting Shalom Mordechai’s sentence. “There are not enough superlatives in the language to describe our gratitude for the president’s compassion, kindness and courage in taking this action,” Mrs. Leah Rubashkin said. “We are forever grateful.”



once a week and I'd fly in to visit him in Otisville every five or six weeks to get his input in whatever we were working on," Apfel said. "Shalom was crucial every step of the way. He had the final word."

Locher had joined the defense team after Shalom's first appeal was denied. In a talk with *Yated*, he recalled being impressed by the support the case had garnered. "Former DOJ officials had spoken out against Shalom's excessive sentence well before I became involved in the case," he related. "The ACLU of Iowa had gotten involved."

The ACLU and the Washington-based NACDL (National Associations of Criminal Justice Lawyers), in addition to some of the nation's most prominent legal and judicial experts, had written *amicus curiae* to the 8<sup>th</sup> Circuit, accompanying the first post-conviction appeal argued by attorney Nathan Lewin.

The thrust of their arguments was that Shalom Mordechai's trial had been invalidated by the appearance of bias on the part of Judge Linda Reade. They called for a new trial, transferring the case to a different judge or, at minimum, granting Shalom Mordechai a new sentencing. Although the appeal failed, its compelling arguments, supported by outstanding legal authorities, lay critical groundwork for the later 2255 Petition.

"What really impressed me coming into the case," remarked Locher, "was the diversity of support Shalom had."

## Bi-Partisan and Bi-Religious Support

A host of distinguished former DOJ officials and a bipartisan cross-section of lawmakers and law experts had written separate and joint letters from 2010 to 2012 to then US. Attorney General Eric Holder, petitioning him to review the case.

Holder ignored the many petitions from congressmen, but their collective voices, together with tireless activism by other supporters, succeeded in raising the profile of the case.

Rabbi Pinchos Lipschutz, publisher and editor of the *Yated*, almost singlehandedly turned the tide of public opinion about the case by daring to come to Shalom Mordechai's defense when so many had repudiated him. This author recalls an email from Rabbi Lipschutz in 2008 in which he called for support of a fellow Jew who he saw as the victim of a modern-day blood libel. "Anything you can write in his defense will be very greatly appreciated, as he is being unjustly trashed," he wrote.

At that time, Rabbi Lipschutz was criticized, even jeered at, for taking the side of a man who was being almost universally vilified. Yet, he had full clarity that he knew the truth and persisted. Over the next eight and a half years, the *Yated* ran scores of articles that condensed for readers the various defense motions, keeping them informed of game-changing developments at every step of Shalom Mordechai's quest for justice. The relentless coverage chipped away at the misinformation surrounding the case, bringing unknown facts to light that slowly allowed the truth to filter through.

"He was a source of unwavering support for Shalom from beginning to end," noted Apfel.

The case reached a turning point when the defense team uncovered powerful post-conviction evidence that prosecutors had solicited perjured testimony and deliberately misled the judge. Their hard-hitting briefs ripped aside the veneer of legality with which government wrongdoing had been cloaked.

"With every legal dead end, we couldn't help but feel disheartened," related Apfel. "But it soon became clear that while our briefs were met with indifference in Iowa, they were unlocking doors in Washington. In some places, they had an explosive effect."

Harvard law professor Alan Dershowitz expended effort in ad-



vocating for a commutation of Shalom Mordechai's sentence during the Obama administration. He continued his efforts with the White House after President Trump took office, raising the issue with White House counsel and with the president.

Speaking to the press after the president's commutation of the sentence, Dershowitz noted that the issue that he felt resonated with many who supported clemency for Shalom Mordechai was the subversion of justice that resulted in incarcerating a man for 27 years for losses he was not responsible for.

"The prosecutorial misconduct in the case [was blatant], he said. "...The way prosecutors manipulated the sale price of the business, bringing it down in order to ramp up the losses. That, in turn, drove up the prison sentence."

Dershowitz noted that the support for Shalom Mordechai had been not only bi-partisan but bi-religious. We had many Christians, many non-Jews, involved in this effort," he said. "I have never seen a more bi-partisan, diverse group of people seeking justice than in this case."

He credited the contributions of Larry Thompson and Louis Freeh, former U.S. Deputy Attorney General and former FBI director, respectively, who championed the cause of Shalom Mordechai's release.

## A Promise Kept

"These two men made a promise to each other that they would not rest until Shalom was free," Apfel told this writer.

The two traveled to Cedar Rapids, Iowa, in 2016 to meet with U.S. Attorney Kevin Techau and urge him to commute the sentence to time served. Joining them were former Assistant U.S. Attorney General Philip Heymann and former Deputy U.S. Attorney Charles Renfrew. Present also was Shalom Mordechai's counsel, who described the dramatic meeting to the *Yated*.

"Charles Renfrew was so concerned about the case, he told me, 'If I had to, I would walk from San Francisco to get this rectified,'" recalled Apfel. "This from a man in his high eighties."

The meeting began quietly, with each member of the delegation putting forth compelling reasons to release Rubashkin. Renfrew focused on the way the 27-year sentence had been built on false testimony solicited by prosecutors at Shalom Mordechai's sentencing hearing.

"Your prosecutors wanted to punish Aaron Rubashkin. But since they couldn't, they did the next best thing: destroy his company and pin the losses on his son," Renfrew said bluntly, as recounted by Apfel. "If you don't rectify that, you're contributing to the shame and disgrace this case has brought not only to the U.S. Attorney's Office of Iowa but to the entire Department of Justice."

Philip Heymann, a man in his eighties who felt too frail to make the trip but had agreed to be flown in on a private plane, suddenly broke in. “Perjury!” he shouted, beside himself. “The prosecutors listened while this woman [Paula Roby] perjured herself. They tolerated perjury if not actively solicited it!”

Techau blanched but remained quiet. The meeting ended in a stalemate.

Although the Iowa meeting did not bear fruit as hoped, advocacy efforts in Washington continued behind the scenes. “Shalom Mordechai was convinced that the *yeshuah* would come when all legal options were exhausted. Only then would we fully appreciate the *Yad Hashem*.”

And so it was that on the last day of *Chanukah*, a guard went to Shalom Mordechai’s cell and told him, “Pack up and leave. Get going.”

“What’s the problem?” he asked, not daring to hope. Maybe they were going to transfer him somewhere. That would not be unusual.

“You’ll find out. Just get going.”

He had just washed for *hamotzie* in his cell for a humble *seudas Zos Chanukah*. He grabbed his *tallis* and *tefillin* with a small *Chovos Halevavos* inside and went to the prison office. After a few minutes, the warden appeared. “Congratulations,” he said, holding

out his hand. “President Trump has commuted your sentence. You are free to go, as soon as someone comes to pick you up.”

“My father was shocked,” a family member related. ‘It’s a *Chanukah* miracle!’ he blurted to the warden. “After a few seconds of deepest heartfelt thanks to the *Ribono Shel Olam*, he came back to earth. ‘Can I go back to the cell?’ he asked. ‘I have to say a prayer (*bentch*).’”

“No, you can’t go back there,” the warden said. ‘You stay here.’

“So he sat down and *bentched* until my mother came to pick him up. And what a *bentching* that was.”

.....

In an op-ed in the *Wall Street Journal* in November 2016, co-authored by former Iowa U.S. Attorney James Reynolds and former Deputy U.S. Attorney General Charles Renfrew, the distinguished legal authorities urged then-President Obama to pardon Shalom Mordechai. The article castigated prosecutors for “illegally overstepping their bounds, soliciting false testimony and misleading [the court].”

“Every day Rubashkin spends in prison is a day that he should be spending as a free man, with his family,” they wrote.

Now, finally, with great joy and gratitude to the one Above, he is doing just that.



# If Only for a Moment

BY RABBI YECHIEL SPERO

I wish I could have bottled it up.

The thrill. The excitement. The unbridled joy. The pure *ahavas Yisroel*.

Yes, for a few precious moments, we all tasted the experience when Shalom Mordechai Rubashkin, whom Rav Yeruchem Olshin referred to as the “*korban of Klal Yisroel*,” was set free.

It was so perfect, so unscripted.

The spontaneous celebration was vintage *Klal Yisroel*. For an all-too-short period of time, fences came down, walls were breached, barriers broken. We saw past each other’s affiliations and *minhagim*, hats, and garb, and peked into each other’s *neshamos*.

Most of those I spoke to admitted that they shed tears upon hearing the news. Even the most hard-lined, unemotional individuals said they felt an indescribable emotion.

There was something...well...*Moshiach*-like about it.

Yes. I said it.

I have never sniffed the *geulah* before. Sure, I know what is supposed to happen, what we are supposed to feel. Others have orchestrated events to capture that sentiment. And those events were meaningful. But this...this was different.

If this is how we felt when one *Yid* experienced his personal *geulah*, what will our emotions be when we hear that long-awaited blast of the *shofar*? There will, no doubt, be some disbelief. And then, we will spill out into the streets and nothing else will matter.

*Zos Chanukah* has a way of making that happen. *Nissim* become commonplace and the dark turns into light in the blink of an eye.

The stories have begun to spread. Of the *agunah* who approached Shalom Mordechai, who knows better than anyone else what it means to be imprisoned, and begged for his help in freeing her from her torment and solitude. Of the classes of children who corresponded with Shalom Mordechai and the epic responses they received, connecting their *neshamos*, melting away all bars of division.

He asked for none of it: not for the fanfare as he was released, not for the publication of all the stories about him. A *nechba el hakeilim*, Shalom Mordechai would prefer some privacy, I’m sure.

But how could *Klal Yisroel* be denied? It wasn’t just his *simcha*. It was all of ours. Somehow, we felt, vicariously, that we had been redeemed from our imprisonment. After all, we are all *assirim*; who’s not? Some are *assirei guf*, and find themselves behind bars of iron. Others are *assirei nefesh*, entrapped by the *yeitzer hara*. Some have emotional incarceration. Others feel locked in because of their financial difficulties. And of course, there are many in social solitude, seeking spouses, children, and ever elusive happiness. But the Al-mighty showed us that everything can change in a moment.

Shalom Mordechai never doubted he’d be set free. As one of the premier *baalei bitachon* of our generation, he told fellow inmates that *Zos Chanukah* he would be going home. One

cynic mocked him as always, as the minutes ticked away. That day, there was a lockdown, and everyone was sent to their cells for an hour. When they emerged, Shalom Mordechai was gone. Free.

The miracle of *Chanukah* continues to endure. Light over darkness. Certainty trumping doubt.

I was privileged to visit Otisville twice. Yes, privileged. Both times it was over *Chanukah*. I went with Baruch Levine; we planned to inspire those who are separated from their families, yet we gleaned more inspiration than we gave. It should be said that sometimes people make mistakes. We all do. But loneliness is very painful and all *Yidden* need *chizuk*.

But somehow, Shalom Mordechai turned the tables. He kept to the words we read in the first *perek* of *Shaar Ahavas Hashem* of his beloved *Chovos Halevavos*: “*Kemo shene’emar al echad min hachassidim shehayah kam balaylah ve’omer, ‘Elokai, hiravtani v’eirom azavtani, uvemachashakei halaylah hoshavtani v’uzcha v’godlecha horeisani; im tisirfeini b’eish, lo osif ki im ahavah v’simcha boch* - As it is said on one of the pious individuals, who would arise in the night and say, ‘My G-d, You have left me starving and unclothed. And in the darkness of the night You kept me, and You showed me Your strength and Your greatness; even if You burn me with fire, I will only increase my love for You and my joy in You.’”

Despite all he went through, Shalom Mordechai fought off all notions of *atzvus* and emerged glowing and triumphant, his *bitachon* intact.

He has taught us so many lessons. He elevated *Klal Yisroel* and taught us to care about each other and even about those in other “camps.” One woman living in Lakewood hasn’t slept with a pillow for years because she wanted to feel a bit of his *tzaar*. Shalom Mordechai helped us see beyond ourselves. Remarkably, his essence has facilitated the oneness and *achdus* of *Klal Yisroel* — where Lubavitch, Satmar, Skver, Munkatch, the *yeshiva* world, and everyone else put aside any ideological differences and united to celebrate the *geulah* of one *Yid*.

Shalom Mordechai’s incredible family taught us life-defining lessons of *emunah*. When the judge informed Mrs. Rubashkin that she could come and pick up her husband, she drove out immediately to Otisville to pick him up. When asked why she didn’t go to pick up a change of clothing for her husband, she looked at her questioners quizzically. She always carried around his clothing. To her, Shalom Mordechai’s freedom was always imminent.

Sounds familiar? Of course! The *Chofetz Chaim* had a suitcase at his door, fully packed. He knew the *geulah* was imminent. He knew *Moshiach* was coming any day.

Yes, Shalom Mordechai gave us an inkling of *Moshiach tzeiten*, *Moshiach*’s times.

A whiff of the *geulah*, how sweet it will be.

Intoxicating, unmitigated joy.

Non-judgmental togetherness.

Hope.

Love.

*Yidden* poured out into the streets, not because they were told to, but because they wanted to be *mishtateif* in another *Yid's simcha*. It wasn't burdensome or a *shlep*. We weren't tired. We were invigorated, ecstatic, and thirsty for more.

It was surreal.

As one friend remarked, it felt like we were living the *Megillah*, with Trump serving as Achashveirosh, the wicked judge as Haman, and Shalom Mordechai as Mordechai *HaYehudi*; like we were pawns in Hashem's world, and world leaders were puppets carrying out His wishes.

A number of years ago, in middle of June, I was invited to a very special gathering, a *hachnosas Sefer Torah* in Otisville in Shalom Mordechai's honor. Unfortunately, though, because one of the Otisville inmates carried on a correspondence with me, I was labeled a friend and no friends were allowed to attend. So I had to hear of the proceedings secondhand:

The *sofer* was not permitted to enter wearing a jacket for fear that he was concealing a weapon. Instead, he wore a *kittel*. The event was scheduled to take place from 1:30 and 3:30. The *sofer* completed the *Sefer*, the music began, and the dancing started. Baruch Levine and Yaakov Shwekey sang as the inmates danced with the guests with extreme *simcha*, forgetting their loneliness and pain, if only for a few hours.

Shalom Mordechai could not control his excitement and performed cartwheels and danced tirelessly, including everyone else in his joy. Suddenly, at 3:15, the music stopped. But there were still 15 minutes to go. What had happened?

Well, it was Shalom Mordechai. He was the one who stopped the music. Since it was rare that he had an opportunity to *daven* with a *minyán*, he wanted to spend the last 15 minutes *davening Minchah*.

It was stunning.

The *sofer* removed his *kittel* and handed it to Shalom Mordechai, who donned the white linen robe and served as the *chazzan*. It was a *Minchah* in June, but it felt like *Ne'ilah*.

Yes, the gates were closing. The tears poured forth. A sense of desperation permeated the air.

But in his heart of hearts, Shalom Mordechai knew. He knew what none of us could fathom. It would not be long before he'd be free.

At 3:29, Shalom Mordechai finished *Minchah*. For one more minute, the joy filled the room. And then, the guards came to whisk him away once more. The others returned to their cells, to a world of despair, darkness, and loneliness.

But for the *talmid* of Rabbeinu Bachya ibn Pekuda (the author of the *Chovos Halevavos*), there would be no darkness, only light.

He knew that *Zos Chanukah* was coming.

He knew the lights would continue to burn.

He knew the end was near.

And this past Wednesday night, we sensed it, too.

If only for a moment.

Rav Olshin, who visited Shalom Mordechai twice in Otisville, revealed a stunning thought from the Vilna Gaon. The phrase from *Shemoneh Esrei*, "*mishon umivtoch latzaddikim* — mainstay and assurance of the righteous," is telling us that Hashem sends a *mishon*, something we can lean on, to help us in the long, dark, and bitter *golus*. For when we don't see the final *geulah*, when the *havtochah* is not yet complete, we sometimes need something to lean on.

This was the release of Shalom Mordechai.

Thank you, Shalom Mordechai, for acting as the *mishon*.

You are very beloved.

And on behalf of *Klal Yisroel*, *mazel tov!*

## Dershowitz: Good Day for Justice"

### EXCERPTS OF AN INTERVIEW WITH PROFESSOR ALAN DERSHOWITZ ON ILTV ISRAEL DAILY

#### *Can you give us a quick overview of the case?*

The real problem was on sentencing, when the government manipulated the sale of Rubashkin's company to reduce its value, thereby increasing the amount of time he could be sentenced. So he got sentenced to an excessively unjust sentence. For years now, we have been trying to get that sentence commuted to time served. I tried to do it with President Obama, but he wouldn't do it.

Fortunately, I had the occasion to speak to President Trump personally, and I raised the case with him, and I presented it to him as a businessman, and he understood how the government manipulated the price of the company to increase the sentence. He said that he would like to do something about it and he would have his people look into it. And now, months later, he finally did the right thing, the just thing, he did it on the last day of *Chanukah*, and Rubashkin is now home with his family.

There's been dancing in the streets of Brooklyn, of Lakewood, you name it. It's a very good day for justice.

#### *Q. Now that Trump has made this decision, what does this mean for future cases that are similar?*

Well, there are no cases that are similar. This was a unique case. It doesn't mean that the president is going to have a policy of commuting sentences.

We had nearly 100 former prosecutors, Republicans and Democrats, pointing out the injustice in this case. We had Senators and Congress-people from both sides of the aisle pointing out the injustice, so this is not like many other cases. I hope the president has an open mind on all cases that come before him for pardon and commutation.

This was not a pardon. This was a commutation. He already served eight years. Now he's home with his family.

# SHINING BRIGHTER



## *Holeich B'ruchniyus.* How the Rubashkin Family Emerged Shining Brighter than Before

BY SIMMY HORWITZ

It was hard to reach the Rubashkin family this week. The Jewish world's most sought-after family in the aftermath of last week's exhilarating news that Reb Shalom Mordechai Rubashkin was released from jail after eight and a half long years, the Rubashkins realize that they are going to be "public property" for the foreseeable future. And they're okay with it. In the view of Reb Shalom Mordechai's wife and children, each of the thousands upon thousands of people who *davened* for their husband and father deserves now to shake his hand and celebrate alongside him – even if they'll have to wait a little longer for some private time.

On the night that I first try to reach the family, all phones are going to voicemail, and the mailboxes are full (no surprise there). When one daughter does pick up briefly, I hear a lot of noise in the background, as if she is at a *simcha*, and she agrees kindly to speak in the morning. It's only later that I find out that she was at a *simcha* - a *seudas hoda'ah*, along with the rest of her family, held by one of her father's supporters who had been closely involved in the case for the past several months. So overcome was this man by the news they had all been waiting for, he felt compelled to host the entire family to celebrate in their common joy.

Nothing about the Rubashkin story reads like a regular prisoner tale. From the respect and awe that Reb Shalom Mordechai is given by those who know him, to the *achdus* his experience has brought to *Klal Yisrael*, to the seamless way that Reb Shalom Mordechai has integrated back into his family and into his community, within moments of being released, each detail of this decade-long journey is enough to make heads shake in awe.

How is it that the Rubashkins were able to emerge from this ordeal so unscathed – and even shining? How is Reb Shalom Mordechai able to fit himself right back into family life and pick up where he left off, as if he was simply away on a short business trip?

The Rubashkins offer many answers and explanations, all lined with *bitachon* and wrapped in *emunah*. As they have been saying all along, it all comes down to "*alef, bais, gimmel*": "*Emunah* and *bitachon* bring *geulah*."

### It's Too Big to Go It Alone

The tactic of turning closer to Hashem began well before the sentencing, according to Mrs. Leah Rubashkin, Reb Shalom Mordechai's inspiring wife.

"When they first raided the facility and my husband started

getting these papers, 'United States of America versus Shalom Rubashkin,' he really understood from the beginning that the only way to get out of this is by becoming even closer to *Hakadosh Boruch Hu*," Leah describes. "I compare it to when you have a sick child. If your kid wakes you up in the middle of the night with an earache, you give him Tylenol and take him to the doctor in the morning. You get the prescription, give the antibiotics and, *boruch Hashem*, he gets better – you weren't worried much about it. But when someone's child has *yener machla*, *Rachmana litzlan*, you go to the best doctors, get 40 women to bake *challah*, bring in all the *zechusim* and *hishtadlus* that you can. It's so big, you feel you have to do more. For *Hakadosh Boruch Hu*, it's all the same – He can cure *yener machla* like He can cure an ear infection, but somehow, you realize that you have to connect closer to Hashem and He will pull me out of this."

At the time, Reb Shalom Mordechai immediately took on a new learning daily *seder* - although he had several already on different *inyanim* – that would focus solely on *bitachon*.

"Although we learn these concepts as children," Leah notes, "to learn them again with a mature mind, as an adult, brings a whole different perspective to the ideas. You can go deeper and deeper."

While Leah is quick to credit her husband with implementing more *bitachon* into the household, 26-year-old son Yossi, number six in the family of ten, remembers his mother's involvement, as well.

"I was 16 when the raid happened. I don't think I really fathomed what could possibly come out of the situation, but I remember my parents learning *Shaar Habitachon* together," Yossi recalls. Despite the awareness of the situation, Yossi didn't feel a particular tension or stress in the home. "The *Shabbos* before it all started, I overheard some whispering in the house. A few days later, I think it was a Tuesday, I was in *yeshiva* when I looked up and saw the helicopters in the sky. I called my mother and said, 'Ma, it's happening.'"

And happen it did, but there was no crisis mentality. From a child's perspective, the attitude was, "Let's keep moving forward. Let's keep this going."

Son Meir, 31 years old and the fourth in the family, vividly recalls this attitude: It's what led him and his wife of a few weeks to spend months together packaging raw chicken in his father's meat factory.

"The time between the raid and the actual bankruptcy, we all

came together to just move forward and help out,” Meir describes. “Family members, friends and a lot of Lubavitcher *bochurim* and *yungeleit* came in to take the places of the workers and do manual labor together. That’s how I spent *shana rishonah* hanging dead chickens.”

There was never denial of the circumstances, but there was also never catastrophizing of it.

“We laid out a road map of *alef, bais, gimmel*,” reiterates Leah, “*emunah* and *bitachon* bring *geulah*. This is from Hashem, this is meant to be, nobody can harm or hurt us and we are going to see the *yeshuah*.”

## In a Place Called Prison

With their “road map” in place, the Rubashkins began the long and winding path through the world of court cases, trials and verdicts.

“There was a press conference right after the verdict came out [that Reb Shalom Mordechai would be jailed] and they wanted a statement from me,” Leah relates. “I said strongly, ‘We are going to keep moving forward and we are going to fight this until we get justice for Shalom Rubashkin.’ If I would have realized at the time that it would be such a long road, I probably would have fainted.”

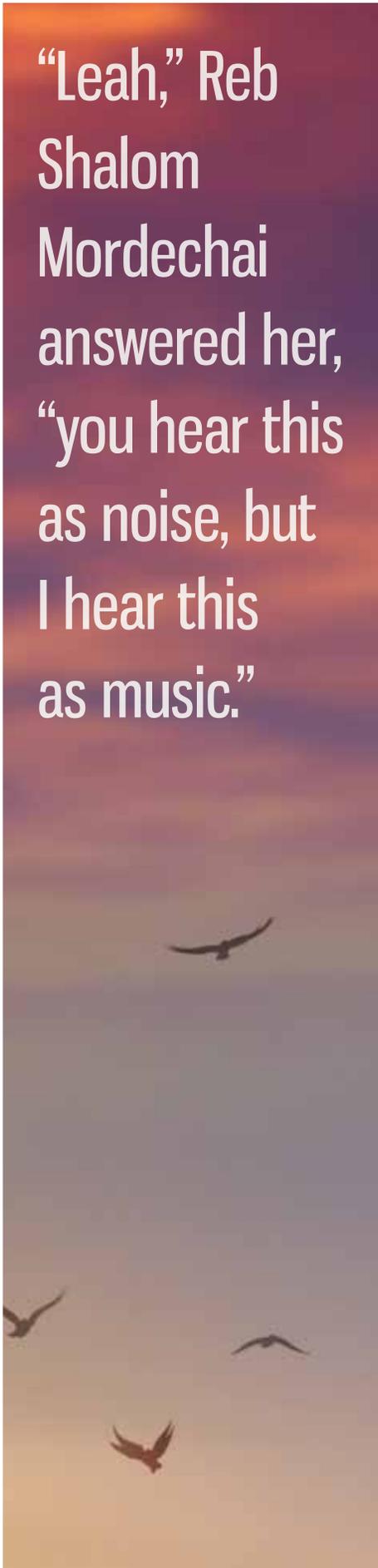
But by focusing on the present and believing that Hashem does what’s best at every moment, Leah found that she was able to handle every situation that came her way. The Rubashkins also kept their eyes open to “winks and smiles” from Above.

One of the biggest and most well-known winks is the fact that Reb Shalom Mordechai was released from jail for a brief period - years ago, during the beginning of this ordeal - on *Gimmel Shevat*. “He had the court case on *Alef Shevat*, the verdict came out on *Bais*, and he had his *geulah* on *Gimmel* - *alef, bais, gimmel*.”

Last week, Reb Shalom Mordechai realized a startling similarity as he left jail, this time for good. “It’s *Gimmel Teves*.” The decision had come in only hours before, on *Bais*, and as he left in the early evening after the sun went down, it was already *Gimmel*.

The Rubashkins felt the winks, and they also returned them: They were constantly doing little actions to show Hashem that they were thinking of Him, and believing in His ability to redeem them at a moment’s notice - *yeshuas Hashem keheref ayin*.

“I kept my husband’s *kapote* and hat in the car at all times, so in case they would call, I would be ready to go right away,”



“Leah,” Reb Shalom Mordechai answered her, “you hear this as noise, but I hear this as music.”

says Leah. And sure enough, when the time came, it did happen that quickly.

“There is commonly a certain amount of time for things to take effect. But the lawyer was insistent that I go right away, without stopping. ‘He’s in the warden’s office,’ he said. ‘Go pick him up.’”

Amazingly, the Rubashkins were compensated *middah for middah* for the way that Reb Shalom Mordechai had been imprisoned. Typically, a person is given a certain amount of time to prepare for jail, as well as a sentencing hearing, between the guilty verdict and the actual imprisonment, but Reb Shalom Mordechai wasn’t – “He was whisked away to prison.” Last week, with the commutation from the president, he was similarly “whisked away home.”

And in between the “whisks”? Reb Shalom Mordechai was never in prison, but in “a place called prison.”

“He never felt that he was actually in prison,” Leah explains. “He always referred to it as ‘a place called prison’ – it happened to be where his *guf* was, but mentally, he was never there. The other prisoners picked up on it, too. They said to him, ‘You don’t even realize where you are; you’re not even here.’ He immersed himself in Torah and *tefillah*.”

Son Yossi describes how his father was able to feel this way, which also provides an explanation for how he was able to emerge so untouched by the filth within.

“There’s a story with Shlomo Hamel-ech, who warned someone that if he left Yerushalayim, he would be punished. The man eventually did leave and was then deserving of punishment. But Shlomo Hamelech was questioned for giving him that condition in the first place - perhaps it was unfair, because the nature of a person is to be a *holeich*, to keep moving.

“When compared to a *malach*, a person is referred to as a *holeich*. A *malach* may start on a higher spiritual level, but a person is a *holeich*, growing. A person has the ability to change levels. Shlomo Hamel-ech answered that if a person is growing and moving *beruchniyus*, then he no longer has that need to be a *holeich begashmiyus*.”

And this is how Yossi saw his father: a true *holeich beruchniyus*. The fact that Reb Shalom Mordechai filled his time with learning and immersed himself in growing closer to Hashem meant that he never was truly entrapped behind bars, and never fell into a “jail mentality.” His *guf* may have been there, but his *ne-shamah* was eons away.

“My father used to joke that he was the only prisoner with no time,” smiles Yossi.

# THE JOURNEY



# HOME

## Tracing the Path Away from Prison

BY CHAIM SALLER

When news of Reb Shalom Mordechai's release went public at around 5:30 p.m. Wednesday evening, people from all factions of *Klal Yisroel* mobilized to greet Reb Shalom Mordechai on his trip home. Wherever Reb Shalom Mordechai went, he was welcomed with the greatest pomp and fanfare. Excitement oozed from the crowds as he made stop after stop, thanking those who *davened* for him and who never stopped fighting for his release.

"No one announced his schedule, nor did he ask that people come greet him," a friend of the family pointed out to the *Yated*. "People just felt such a joy that they spontaneously turned out in droves to celebrate his release along with him. It was truly amazing."

### Wednesday

#### OTISVILLE

As the van pulled out of the prison lot and got to the gas station at the bottom of the hill, Reb Shalom Mordechai was greeted by a group of Satmar *chassidim*, along with the local Chabad *shliach*. For the first time since his release, Reb Shalom Mordechai embraced fellow *Yidden* and danced with them for a while. He was now ready to head home.

#### MONSEY

His first stop Wednesday night was at his Monsey home, where he arrived at about 8:30 p.m. Hundreds of people stood waiting for him as he arrived, greeting him with the greatest brotherly love. He said a few words at his doorstep, and then entered his house. Incidentally, it was his first time stepping foot in the house, as his family had moved there from Iowa after his incarceration had begun.

He was finally home.

#### BORO PARK

Monsey Trails arranged a special coach bus on which the Rubashkin family would be able to travel together.

"Not only did they supply the bus, but they also helped us out by ensuring that only the family could board," Reb Shalom Mordechai's son Meir told the *Yated*.

The Rubashkin family made the trip to Brooklyn, stopping off first at the home of Reb Shalom Mordechai's parents at 15th Avenue and 55th Street in Boro Park. You would be hard-pressed to find a dry eye between the hundreds of onlookers, as Reb Shalom Mordechai embraced his parents in freedom for the first time in

nearly a decade.

After close to an hour at his parents' home, Reb Shalom Mordechai emerged and once again said a few words to the crowd, before boarding the bus and heading off to Crown Heights.

#### CROWN HEIGHTS

The bus arrived at Chabad World Headquarters a little after 12:30 a.m. The crowd had been celebrating for seven hours already, with no sign of letup. Reb Shalom Mordechai was whisked to the front, where he *davened Maariv*, his first *tefillah* as a free man.

After *Maariv*, the music and dancing continued until 3 a.m. Reb Shalom Mordechai snuck out during the celebration to attend the *vort* of a cousin.

"My father promised his cousin years ago that he would attend his daughter's *vort*," Meir Rubashkin relates. "She had gotten engaged that morning, and miraculously, my father got out just in time to attend."

Reb Shalom Mordechai returned to 770 and left in the wee hours of the morning, when he went to the home of his brother in Crown Heights just to catch a bit of sleep.

### Thursday

On Thursday morning, Reb Shalom Mordechai *davened Shacharis* in 770 and recited a resounding *Birchas Hagomel*, to which the crowd shouted the customary "*mi shegemalcha kol tov*" and then broke out in spontaneous song.

After *Shacharis*, Reb Shalom Mordechai attended a brunch for the family and then went to Manhattan to sort out some legal matters pertaining to his release.

On Thursday night, Reb Shalom Mordechai attended a family *simcha* of an *askan* who was very involved in his case.

After the *simcha*, he returned to Monsey and slept at home for the first time in eight years.

### Friday

Friday morning commenced with a trip to Skver, along with his father and lawyer, to thank the community for their help and support throughout the ordeal. He met with the Skverer Rebbe, and then thousands of *Yidden* filed by him and shook his hand.

He later returned to Boro Park, where he spent *Shabbos* at the home of his parents, surrounded by thousands of joyous *Yidden*.

Reb Shalom Mordechai *davened Maariv* Friday night in Kapytshnitz, after which he spoke to the gathered crowd. He *davened Shacharis Shabbos* morning at Tzemach Tzedek, where a special *Kiddush* was held in his honor after *davening*.

“They invited me to spend *Shabbos* with the Rubashkin family,” his lawyer, Gary Apfel, later said. “It turned out that I also spent *Shabbos* with about four thousand friends!”

## Motzoei Shabbos

Right after he made *Havdalah* in his parents’ home, the family went over to the Munkatcher Bais Medrash, where they celebrated with music and dancing for hours.

“My father himself did not go to Munkatch,” Meir Rubashkin explains. “My mother insisted that he stay home, ahead of his heavily planned evening.”

Later, Reb Shalom Mordechai attended an event arranged by Dror, an organization that assists incarcerated *Yidden*, and he wrote a few letters in a *Sefer Torah* destined to be sent to *Yidden* in prison. The event was held in honor of the many *askanim* who had worked tirelessly on the case, and hundreds of others attended as well.

After midnight, Reb Shalom Mordechai arrived back at Chabad World Headquarters in Crown Heights, and addressed the crowd once again in honor of the Chabad-celebrated *hey Teves*, drawing parallels between his *yeshuah* and the one experienced by Chabad on that day years earlier.

With only hours to dawn, he returned to his parents’ house and went to sleep.

## Sunday

Sunday morning found Reb Shalom Mordechai at Yeshiva Karlin-Stolin, the very *yeshiva* he attended as a child. Now, however, he was there to visit perhaps his youngest supporters, the fourth grade class of Rabbi Leibish Lish. Rabbi Lish’s class had written letters to Reb Shalom Mordechai in prison for the past six years, and now he had come in person to thank them.

After speaking to the class, Reb Shalom Mordechai headed over to the *bais medrash* building and delivered a short message as well.

Later in the day, Reb Shalom Mordechai traveled with family members to Kiryas Yoel, where he met with Rav Aharon Teitelbaum of Satmar. They then went to *daven* at the *kever* of the Satmar Rov *zt”l*.

On his way out of the *bais olam*, the family stopped to *daven* at the *kever* of R’ Menachem Stark *Hy”d*.

“My father felt a connection with him, having somewhat shared the experience of getting condemned by the press,” Meir explains. “In fact, my mother actually went to be *menachem avel* when he was murdered.”

Before returning to Monsey, Reb Shalom Mordechai went to the home of *askan* Yoely Schwartz, who was involved in the case.

They returned to Monsey Sunday night and stopped at the house of Rabbi Pinchos Lipschutz to personally thank him for spearheading the campaign.

They then continued on to the home of R’ Shmuel Bedansky, who offered sup-

port throughout the ordeal, and rejoiced late into the night. Singer Benny Friedman, who actually stayed at the Rubashkin home in Postville as a *bochur*, came to sing, and Rabbi Y.Y. Jacobson delivered an emotional speech.

“Rabbi Jacobson read a letter that he received this week from a *Yid* who is still in Otisville,” said Meir. “The letter depicted the other side of the story, describing the *emunah* my father displayed in jail. It was truly inspiring.”

## Monday

Reb Shalom Mordechai *davened Shacharis* at the Satmar *shul* in Monsey, after which he was spontaneously pulled in to an impromptu celebration with the *bochurim*. He also spent time speaking to the Satmar Rov of Monsey.

He then went to visit the Skverer Cheder, where he spoke to children who would frequently write him letters in prison.

“He actually received a bunch of letters from that class just Wednesday morning,” Reb Shalom Mordechai’s son-in-law, Yuda Zaltzman, told the *Yated*. “He responded immediately, and they received the letter after his release. Incredibly, he wrote in that last letter that the class should not make plans to visit him in prison, because he would hopefully be able to visit them. And that’s exactly what happened!”

On Monday night, he held a family event to spend time with many of the family members who had flown in to celebrate his *yeshuah*.

## In Conclusion

“I had the honor of joining him on his trips the past few days,” his lawyer, Gary Apfel, told the *Yated*. “It was amazing how much *achdus* was displayed wherever he was. It truly reflected the *achdus* that *Klal Yisroel* had throughout all the years in working towards his release.

“There is no question that this is the result of all the *tefillos* that added up over the years. This is nothing less than an absolute *neis*.”



# Welcome to Monsey

BY C.B. WEINFELD

It was a frigid Wednesday, an ordinary day with extraordinary undertones.

After all, it was *Zos Chanukah*, day of miracles. As our sages teach us, the final day of *Chanukah* is the final day of judgment, the culmination of the *Tishrei* cycle of forgiveness and heavenly favor. It's a day of *nissim*, as it has been for generations.

That afternoon, Mrs. Leah Rubashkin was in Boro Park, speaking to high school girls in several schools, as she often does, about internalizing *emunah* and *bitachon*. As she stood in the auditorium of Bais Sarah High School, she told her rapt audience of teenagers about the lesson of *Alef, Bais* and *Gimmel*, which has become the Rubashkin family's mantra.

"Aleph is *emunah*, *bais* is *bitachon* and *gimmel* is *geulah*," said Mrs. Rubashkin with firm conviction. She's delivered this speech many times. "Today, *Zos Chanukah*, is *gimmel Teves*, so don't be surprised if you hear that Shalom Mordechai came home tonight."

The girls listened with admiration and a touch of pity. For how long can one nurse a dream before it dies?

They concluded the assembly with *Tehillim*, and then Rav Nochum Klein, the *menahel*, suggested that they say a few more *kappitlach* together for good measure.

Mrs. Rubashkin finished speaking and prepared to leave. As she was heading out, her phone rang. It was her lawyer, who had been incredibly supportive throughout the ordeal.

"*Mazel tov!*" he said.

As Mrs. Rubashkin told me, her voice tinged with awe and disbelief, "I thought he had a grandchild, because, you know, he has a large family and he keeps me updated on his *simchos*. So I asked him what the *mazel tov* was, and he told me, 'Shalom Mordechai is in the warden's office. Go there right away and pick him up.'"

The scenario she'd envisioned in her dreams and during her waking hours for the past eight years had come true. The moment of *geulah* had arrived.

There was no time for contemplation, no time to stop in Monsey and pick up a change of clothing. Fortunately, like the *tzaddikim* of the previous generation, who kept their *Shabbos* clothes handy for *Moshiach's* arrival, Mrs. Rubashkin kept her husband's *Shabbos* suit and hat in her car, ever prepared for the fateful moment that she never doubted would arrive.

Many people had privately debated this

outcome, but the Rubashkins had been expecting it all along. Their faith had never wavered throughout the eight long years and eight final days of their ordeal. Rav Shalom Mordechai's body might have been behind bars, but his spirit, his *d'veikus* to Hashem, was unfettered.

As it had been during *Yetzias Mitzrayim*, which took place "*bechipazon*," in a tremendous rush, the rush to pick up Rav Shalom Mordechai was frenzied.

"As I was passing the George Washington Bridge, my cell phone, which had been low in juice, started shutting down," Mrs. Rubashkin recounted. "It was a long drive to Otisville, which was very frustrating. I was completely in the dark and couldn't communicate with my children to let them know what was happening. Throughout the drive, I was shut off from the world."

Mrs. Rubashkin arrived at the prison in the evening and was directed to the warden's office, where her husband had been waiting since about 4:30 p.m. Although the Rubashkin family and the *askonim* involved knew that President Trump was seriously considering a commutation, they had no idea when - and if - that moment would arrive.

As Shalom Mordechai recalled, "I was in my cell, having a *Zos Chanukah* meal and *davening* for a *neis*, when a guard came in and told me to get my things. I had to follow him to another building. When I arrived, they told me that President Trump had commuted my sentence, and that I was free to go. Some of the guards cried, while others wished me well."

As soon as the news went viral, a group of *yungeleit* from nearby Bloomingburg showed up at the prison to escort Rav Shalom Mordechai to the car with song and dance. While the Rubashkins made their way to Monsey, for a quick stop at their home on Southgate Drive, their children, friends and neighbors were gathering at their home to welcome them.

Although at first there was only a handful of people, by around 8 p.m., moments before his arrival, the street was filled. A music station, courtesy of Reb Pesach Korn's *hachnosas Sefer Torah* truck, was set up, while *Hatzolah* and *chaveirim* members were on hand for crowd control. I stood on the front lawn, craning my neck along with the crowd, when a family friend invited me into the Rubashkin home for shelter from the elements.

I stood in the half-empty dining room, where the table was set with a chocolate cake,



several bottles of liquor, sprinkle cookies and some *challah* rolls. The walls were decorated with pictures of the Rubashkins at family *simchos*, surrounded by their children and grandchildren. The atmosphere was poignant, filled with awe and anticipation. We had waited so long for this day...

The music began, swelling to a crescendo. Shalom Mordechai was here! The crowds thronged toward his car, half-lifting him into the street, crowding each other to shake his hand, to stand near the man they had been *davening* for all these years.

As he reached the front steps of his home, the home he had never seen, Reb Shalom Mordechai made a *shehakol*, drank a *lechaim*, and waved his fist in the air, singing "*didon notzach*." Rav Nosson Spiegel of Bais Medrash Tefillah L'Moshe, where Mrs. Rubashkin davens, made a *Shehecheyanu*. The crowd then propelled Shalom Mordechai, still wearing his prison garb under his old *Shabbos* suit, into the modest hallway of their home.

I was standing near the staircase, flanked by the Rubashkin family, as he entered, immediately heading toward his precious grandchildren, whom he had never seen before, to give them a hug. "*Zaidy iz duh*," he exclaimed in impassioned wonder. "*Shoin nisht in Otisville*." *Zaidy is here. He is no longer in Otisville.*

The surging crowd was mesmerized by the encounter, the meeting between the patriarch and his beloved grandchildren, the moment we had been dreaming about all this time.

What followed next was especially poignant. Directed toward the dining room, Reb Shalom Mordechai started going right, towards the small study, but was soon guided left. "*Ich vais nit*," he shrugged apologetically. "*Ich bin kain mohl doh geven*." *I have no idea. I have never been here.*

Reb Shalom Mordechai had only heard about their new home in the Southgate area, but had never seen any pictures, and had no idea what to expect.

Although one might imagine that someone released from an extended stay in prison would be exhausted and dispirited, one look at

Reb Shalom Mordechai's shining face and serene countenance dispelled that notion. Both he and his wife were calm and in control, despite the incredible chaos.

As his grandchildren held tightly to their Zaidy, and the throngs of people reached out to shake his hand, Mrs. Rubashkin asked the Chaverim members if they could create some order. "Everyone wants to greet my husband," she pleaded. "Can we give the people outside a chance?"

The front doors were opened, but no one wanted to leave. More people came in, and the house became dangerously crowded. People were leaning against the stove, the light switch, crowding into the small laundry room. There were hundreds of people on the porch, which began sagging under the weight. (The railing at the elder Rubashkins' home in Boro Park later broke off from the force of the crowds.)

Soon, a bus, generously sent by Monsey Trails, pulled up outside, and the Rubashkin family left the home, to continue their journey to their parents and a massive celebration in Crown Heights. Reb Shalom Mordechai did not even have a chance to sit down, let alone change his clothes.

For a long time, as the bus stood in the street, which had been shut off to other traffic, Reb Shalom Mordechai danced with his sons, waving his arms in the air in exultation.

Outside, in the frigid night, the singing and dancing continued unabated, long after the bus had pulled out. Men, women and children stood in groups, marveling at the open miracle we'd witnessed on *Zos Chanukah*, an enduring day of *nissim* for generations.

I later asked Mrs. Rubashkin, "What gave your husband the *chizuk* to keep smiling day after day in such a depressing place?"

She responded, "Shalom Mordechai has the ability to stay above his surroundings, to focus on his mission in life regardless of what's going on around him. He also makes a conscious decision to notice the blessings in his life, the small acts of kindness that happen a hundred times a day. That's his hobby, his calling."



BY MALKIE LOWINGER

It's 10:30 on a Wednesday night, and after having just attended a *vort* in Boro Park, we are in no mood to go home. There's a certain euphoria in the air this evening, and lots of people are walking around smiling.

A friend arrives to the *simcha* a bit late, saying that she is coming from the Rubashkin butcher shop on Fourteenth Avenue and 43rd Street, a Boro Park landmark for decades. Apparently, when the news arrived that Reb Shalom Mordechai was released from prison, people just had to go somewhere to express their joy. So they came to the store and started dancing. Spontaneously. In the street. In middle of the night. In the cold and dark. Just because.

News travels as quick as lightning these days, and soon some musicians showed up and it turned into a *matzav*. The merriment continued for a while, until it was determined that Reb Shalom Mordechai himself would be visiting his parents in their home on Fifteenth Avenue and 55th Street at 11 p.m. The crowd dispersed as everyone began to make their way to that location.

We arrive at Fifteenth Avenue and watch as the throngs of people gather on 55th Street. There are lots of police in the area, and the immediate streets have been cordoned off to traffic. Floodlights bathe the block in their glare and there are masses of people milling about as far as the eye can see. We park on 59th Street and start walking. I am definitely not wearing the right shoes for this, but I trudge onwards.

The atmosphere is cheerful, and although it's late at night, we feel like it's in middle of the day. Not just the streets but also the porches and fire escapes of the nearby homes are filled with onlookers. I see baby carriages and little ones being carried by their parents. Maybe someday they will be told, "You were there when it happened."

When the mood is so upbeat here in Boro Park, everybody has something to say. "Just look at this," observes one *yungerman*. "*Anoshim, noshim, vetaf*. We are all here together." A woman standing off to the side reminds herself of the time decades ago when a young girl named Suri Feldman was found after being lost in the forest. She hasn't seen such euphoric spontaneous dancing since then. In other words, "We needed this badly."

Many comment on the sheer spontaneity of this gathering. Just a few short hours ago, nobody even knew this was happening. And yet hundreds, perhaps thousands, dropped everything to come out tonight and stand on a frigid street corner in Boro Park. Why?

The Rubashkin saga, says one bystander, wasn't about one man in Iowa. It was about all of us. The blatant disregard for his good character, the draconian sentence, the refusal to consider appeals to the sentence, the intransigence - many members of the *frum* community took this as a personal affront.

It's striking how many people in this crowd have been closely following the Rubashkin story all these

years. When it all began, there were organized *Tehillim asifos* and *chizuk* gatherings all across the community. I distinctly remember one that took place in Temple Beth El, not far from where we stand tonight. It's a huge venue, but it was standing-room-only that evening.

Over time, these gatherings stopped, presumably because *askonim* preferred to focus on their behind-the-scenes efforts. So one would think that Rubashkin's saga would slowly fade away from the public consciousness. Yet, the people here tonight insist that his plight remained front and center in their hearts and minds, and, most importantly, in their prayers, all this time. "I've been *davening* for him ever since this started," says one onlooker. Those prayers accumulated, and have no doubt contributed to the *yeshuah* that we are witnessing tonight.

The conversation shifts to how Rubashkin conducted himself during his time in prison. "Did you know," someone tells us, "that his *emunah* remained strong even during the darkest times? Did you know that he would sit in his cell and learn *Chovos Halevavos*?" It may have been eight long years, but the man on the street in this community was keeping tabs on this story throughout.

At about 11:10 p.m., someone in the know says, "They're almost here!" and the crowd shifts in anticipation. By 11:20 or so, we can make out a Monsey Trails bus approaching from the distance, making its way down the avenue from 57th Street. A surge of humanity begins to run in that direction.

The dancing becomes more intense, the music is higher pitched, and we crane our necks for a glimpse. "*Chasdei Hashem ki lo somnu*" is the rallying cry.

My toes are numb, but I am caught up in the excitement. Rubashkin is swept away with the crowd. He seems to be in remarkably good spirits, as if he knew that this day was inevitably going to come. He enters the home of his parents, which is filled with people, and the family is finally reunited. Wasn't it in this week's *parsha* that Yaakov Avinu and his son Yosef are reunited after 22 years?

Tonight, anybody with a Rubashkin connection is an instant celebrity. So it's hardly surprising that someone takes the opportunity to conduct a quick interview with Monsey Trails bus driver Yitzchok Lunger, who indicates that the trip to Brooklyn was joyful and that Rubashkin himself was "*zayer leibedik*" along the way.

The Boro Park visit was followed by a night of continuous celebration at Chabad headquarters on Eastern Parkway. Thousands were there and thousands more watched the livestream in their homes. On this frigid December evening, as the *Chanukah menorahs* are being stored away, nobody could get enough of this man and his story.



# “THE MAIN ‘PLAYERS’ CONSISTED OF KLAL YISROEL AS A WHOLE!”



## A Roundtable Discussion with the “Klal Yisroel Askonim” Who Were Instrumental in the Multi-Pronged Campaign on Behalf of Reb Shalom Mordechai

BY YISROEL LICHTER

*It transpired on Zos Chanukah between shkiah and tzeis hako-chavim. Keheref ayin, in the blink of any eye, the eight difficult years of Reb Shalom Mordechai Rubashkin's incarceration suddenly ended. President Donald Trump recognized that a grave injustice had been done and, altruistically, with no apparent political gain, commuted his sentence, returning him to his loving family and community, and leaving the frum community and all who care about justice ecstatic.*

*The culmination of this saga was the dramatic release of Reb Shalom Mordechai and his return to his family and his parents, and his numerous publicized visits to admorim, rabbonim and others who helped throughout his ordeal.*

*In actuality, however, the release was the conclusion of more than eight years of tireless work by a small group of devoted, caring and talented askonim, Yidden who cared. There were many ups and downs during those eight challenging years. Others might have given up, but this group of askonim, comprised of a Litvishe newspaper publisher, a group of Satmar chassidim from Monsey and Kiryas Yoel, and Reb Shalom Mordechai's family, spearheaded an effort that took many twists and turns but ultimately brought with it the siyata diShmaya*

*and achdus that created a kiddush Hashem of great magnitude.*

*Reb Shlomo Eliezer Meisels and Reb Yoeli Schwartz are two members of that group of askonim. The Yated caught up with them for an exclusive roundtable discussion outlining some of the highlights over the years that led to the moment of Reb Shalom Mordechai's release. They are both quick to point out that they were just two members of a team of caring individuals who made it their mission to help Reb Shalom Mordechai return to his family and his community.*

*Reb Shlomo Leizer and Reb Yoel, let's start from the beginning. How did you get involved in this campaign and how was the group of askonim who advocated on behalf of Reb Shalom Mordechai formed?*

We came in a bit after some of the other *askonim*. In truth, the serious public efforts on behalf of Reb Shalom Mordechai transpired after Rabbi Pinchos Lipschutz, editor and publisher of the *Yated*, paid a visit to Postville more than eight years ago. Upon his return, he was horrified that our community was being duped about what was really transpiring there.

*Duped? Who was duping them?*

You have to understand that at the very beginning of the campaign, public opinion and even *frum* public opinion was not in favor of Reb Shalom Mordechai. There was a systematic campaign by very powerful forces to besmirch him and try to lock him up. The *New York Times*, the *Wall Street Journal* and a whole host of anti-religious, secular Jewish media published all kinds of lies about him, about his alleged mistreatment of workers, his alleged animal rights abuses, and the list goes on.

Those reports were not only digested by the general world, but, sadly, had great influence on *frum* public opinion as well. Reb Shalom Mordechai was deliberately painted as an unsympathetic figure, and that had great influence even in our community.

*How did that change?*

The visit to Postville by Rabbi Pinchos Lipschutz was crucial. Rabbi Lipschutz recounted visiting Postville and actually inspecting the plant, talking to random workers, and just seeing the entire situation close up, and he immediately saw that the entire media effort was



## WITH RUBASHKIN ASKONIM AND THE SKULENER REBBE

contrived. Rather than honest reporting, it was clearly a lynch mob out for blood. Rabbi Lipschutz therefore began to report on what was really happening and bring the news, investigated through his own due diligence, to the community.

We became more familiar with the case at that point, and after much investigation and probing, the truth started to come out. We realized that a tremendous injustice was being perpetrated and Reb Shalom Mordechai was the victim of a planned, systematic effort to sideline him, criminalize him and paint him as a monster unworthy of sympathy.

### What were you able to do about that?

We realized that the wider *frum* community had to be made aware of what was transpiring. The *Yated* had been the first to step up to the plate and we were able to begin to work with others to at least present the Rubashkin side of the story. Reb Shimon Rohnitky was most instrumental with his *Kol Mevaser* news hotline.

I must tell you, though, that when this started, it took great *mesirus nefesh* and conviction to come out on the side of Reb Shalom Mordechai.

### Who else was involved in the early stages of the campaign?

Certainly, the most important mention must go to Reb Shalom Mordechai's daughter, Mrs. Rosa Hindy Weiss. What can I say? *Chazal* tell us that there are no lengths that a parent won't go to on behalf of their child. With Mrs. Rosa Hindy Weiss, we learned that there are no lengths that a daughter won't go to on behalf of her father.

In many ways, Mrs. Weiss was the heroine of this story. When her father was first imprisoned, she was a young mother in her twenties with 3 or 4 little *pitzelach* in tow. Mrs. Weiss was driven to help her father. She would get in her car at night with her children in tow and go from house to house, knocking on door after door, holding her car seat in hand, begging merciful *Yidden* to contribute to her father's legal defense.

One of the doors that she knocked on during that period belonged to Reb Yerachmiel Simins, a lawyer by profession. Reb Yerachmiel's heart melted when he heard Mrs. Weiss's story. How a young mother from a distinguished family was reduced to going door to door to try to reverse what seemed to be a great injustice to her father touched him to his core. He told her, "We are going together to the home of

Rabbi Pinchos Lipschutz." He took her to Rabbi Lipschutz's home. They comprised the first team. Mrs. Weiss and her husband never stopped, pursuing every lead, with tenacity and an *emunah* that is hard to describe.

### But how did you and your chaveirim get involved?

We became aware of the injustice and we asked the Rubashkin family with whom we could meet to try to help. They suggested that we get together with Rabbi Lipschutz, and from that first meeting in Rabbi Lipschutz's house in Monsey, we forged a wonderful working relationship. For a long time, we would get together once a week to plan and strategize. Later, it was less frequently, but we were always in touch, always planning, always trying to follow another lead.

### Who was "we" and what were the first steps that you took?

"We" refers to a group of *askonim* from Monsey and Kiryas Yoel: Yoeli Schwartz, Yoeli Reisman, Yoeli Hirsch, Yoeli Steinberg, Yossi Weisman, Mordechai Weider, Yoeli Sofer and Shlomo Eliezer Meisels, among others.

Later, two of the most important people became absolutely instrumental in the effort. They were Rabbi Zvi Boyarsky of the Aleph Institute and attorney Gary Apfel. They gave up years of their lives with great *mesirus nefesh* to try to help free Reb Shalom Mordechai.

The first step was to create awareness, so that we could begin to fundraise. We understood that the key to everything was mounting a spirited legal defense, something that can cost a tremendous amount of money.

We mobilized with each of us covering our own areas – English speakers, Yiddish speakers, and brought on board the *Kol Mevaser* hotline, a resource that was extremely helpful and for years had a separate section just on the Rubashkin case, constantly updating the community as to what was happening.

### Did it work?

Amazingly, yes. *Yisroel kedoshim*. *Yidden* are holy! We did our *hishtadlus*. We held rallies wherever we could, and the success of the rallies was just above and beyond belief.

Not only did we have massive turnouts, but the way that the *tzibbur* warmed up to the cause was beyond belief. There were

the small donations that came with *mesirus nefesh* from *Yidden* from all walks of life, and the large donations from the affluent above and beyond anything we could have imagined. This was true of our rallies in Boro Park, Lakewood, Williamsburg, Monsey and everywhere else.

### Can you give an example?

The Lakewood rally held at Lake Terrace Hall was called for 8:30. I will never forget the sight. A few minutes before the event was slated to start, a *yungerman* entered with a bent-up, creased envelope and handed it to us. Upon opening it, I noticed singles, fives, a few ten-dollar bills... all haphazardly smashed into the envelope. What was the grand total? \$840! I ran over to the guy and asked him, "Tell me: What is the story behind this envelope?" He replied, "This is my vacation slush fund. Every time I have a bit of change, I put it in this envelope. Then, when *bein hazemanim* comes, our family uses this money to go on vacation. I began thinking," the *yungerman* continued, "how can I go on vacation and enjoy myself this summer when Reb Shalom Mordechai is languishing in prison away from his family?"

At another rally, a *yungerman* came over and said that his wife sold her jewelry to contribute to the fund. In each locale where we made rallies, the momentum and atmosphere were so warm and so loving.

### Slowly, the fundraising began to fall into place and public opinion in the frum community shifted dramatically in favor of Reb Shalom Mordechai. People really became aware and educated about the injustice perpetrated against him. That being said, how were things on the legal front?

On the legal front, things were not simple at all. By the time we got involved, he had already been convicted and whatever we tried to do was only relevant to the sentencing part of the trial. *Boruch Hashem*, after hiring a new team of lawyers, we succeeded in having him vindicated on the state charges and immigration charges. However, we were unsuccessful on the sentencing portion. The injustices and inconsistencies on many levels have already been well publicized over the years.

We had many subsequent difficult setbacks, but we never gave up and, even in the bleakest of times, Reb Shalom Mordechai was always *mechazeik* us. He was stronger than we were!

### Who were the main players and askonim throughout this parsha?

In all honesty, the main players consisted of *Klal Yisroel* as a whole. This saga has brought out the beauty and unity of *Klal Yisroel* to an unprecedented level. There's really no doubt that all the *tefillos*, good deeds, financial help, passion, compassion, and deep connection of every single individual are what brought about this amazing *yeshuah*.

It is important to note that each community had its own "main players" and dedicated *askonim*, with names too many to list. There are literally hundreds of people who worked with every fiber of their hearts and souls to try to see to it that Reb Shalom Mordechai would be freed.

When we came in to every community, we were greeted with warmth and passion by leading *askonim*, who embraced the cause and immediately got involved to ensure an amazing success for the rally event in support of Reb Shalom Mordechai, etc. They were the people on the field in each community who helped us arrange these massive gatherings and very successful events.

### Ultimately, how did it happen? What suddenly precipitated his release?

Before we talk about some of the practical aspects of the case, we would be remiss if we didn't mention something we feel is an important lesson and *ruchniyusdige* component of our eventual success. The group of us involved over these years was, to say the least, an unlikely group of bedfellows. The group included an editor of a *Litvishe* paper who is a scion of a renowned *Litvishe* rabbinic family. There were Satmar *yungeleit* from Monsey and Kiryas Yoel. There was Zvi Boyarsky of the Aleph Institute, a Chabad *chossid*, and Mr. Gary Apfel, a prominent lawyer and Kapytshnitzer *chossid*. And, of course, members of the Rubashkin family.

We were so different. We came from such different mindsets and backgrounds. There were a hundred and one reasons why there should have been friction and disagreement between us, but we worked together with *achdus* and cohesiveness. We never fought about petty things and we were all focused on the ultimate goal: to free Reb Shalom Mordechai and to right a tremendous injustice.

The reason it worked was because everyone was selfless. There were no egos, no desire for credit or headlines. Only to do, do and do on Reb Shalom Mordechai's behalf. I think that this *achdus* brought down a tremendous *brocha* from Hashem, and it was this *achdus* that spread further to all of *Klal Yisroel*, uniting us in a way that I think is unprecedented.

Yes, *al pi teva*, there was *hishtadlus* that we did, but we all feel that the *achdus* that this campaign brought was itself a vehicle that brought down a tremendous *shefa* of *rachamei Shomayim*.

### And on the practical level?

Let's go back a bit. Over the past eight years, we never stopped doing whatever *hishtadlus* was possible on multiple fronts. We had major setbacks, such as when our legal team led by Nat Lewin was unsuccessful in getting a retrial when they appealed the original ruling in front of a federal court in St. Louis.

Much *hishtadlus* was also done to try to get the Obama administration to pardon or commute his sentence, but nothing panned out.

A great turning point was election night last year. When Donald Trump became president, I must honestly say that we, the "*Klal Yisroel askonim*" were jubilant. We felt that an unconventional candidate like President Trump had a much better chance of recognizing the injustice done here than a conventional candidate. We knew that the president wanted to "drain the swamp," and part of that swamp was the injustice of Reb Shalom Mordechai's sentence. We felt that Donald Trump would smell the rat and perhaps do something about it.

On the practical level, aside from Rabbi Lipschutz and our efforts, the tremendous contribution of Rabbi Zvi Boyarsky of the Aleph Institute cannot be overstated. Reb Zvi came through in the darkest and bleakest of times with new ideas, optimism and indefatigable energy. During one of the most difficult periods, he got the signatures of six former Attorneys General, and that made a tremendous difference.

Also, attorney Gary Apfel was not only a leading attorney and legal scholar, but also a *tzaddik* who gave four years of his life, pro bono, on behalf of Reb Shalom Mordechai. Gary was instrumental in pulling everything together and he deserves a tremendous amount of credit for moving things towards the finish line.

Similarly, well-known attorney Allan Dershowitz was a tremendous help. He tried to push the case with the Obama administration, but he was unsuccessful. *Boruch Hashem*, he had a listening ear in the Trump administration, and his efforts were instrumental in leading to the commutation.

It is also important to understand how all the various components of the campaign were integral to the ultimate *yeshuah*. The

huge public outcry and the unwavering opinion of the leading legal professors and highest justice officials made it very clear that this is indeed a case deserving of this executive commutation.

**One more question: Tell us your thoughts about working with the Reb Shalom Mordechai and the extended Rubashkin family.**

The *gevuras hanefesh*, *simchas chaim* and *emunah* of Reb Shalom Mordechai are impossible to properly encapsulate. His iron-clad *emunah* reflected in the way he literally lived with *Shaar Habitachon* was not only inspiring, but was and is *mechayev* each and every one of us. I remember how, in the bleakest of times, when we were down, depressed and feeling like there was no hope, he would call and, in a voice full of sprit, *he* would infuse *us* with *chizuk*. From his positive tone of voice, his optimism and this contagious *simcha*, you would have thought he was a grandfather speaking at the *bar mitzvah seudah* of a grandson, not a person garbed in prison clothing, surrounded by the dregs of society in Otisville.

It wasn't only Reb Shalom Mordechai, however. His family served as a tremendous source of *chizuk* for us. His *rebbeztin*, Mrs. Leah Rubashkin, is an *aidele*, refined woman possessed of an *emunah tehorah* that is awe-inspiring. There are simply no words to encapsulate the extent of her *emunah* and *bitachon*, how despite

everything that she was going through, she *knew* Hashem would help them. His children, too, were such role models for us on how a *Yid* conducts himself in all situations. It was the greatest *zechus* to get to know them, to work with them and to absorb even a bit of their *emunah* and *simchas chaim*.

We deeply believe that Hashem gave Reb Shalom Mordechai a tremendous *zechus*, one that few people have merited. He merited to be *me'acheid*, to bring together, *Klal Yisroel* in an unprecedented manner. He changed people's lives. He brought them to great levels of *emunah* in a profound way, and it is our fervent hope for Hashem to continue to *bentch* him with *siyata diShmaya* and *nachas*, and may he continue to use his unique *kochos hanefesh* on behalf of *Klal Yisroel*.

**Any final thoughts?**

Two small things: Firstly, the commutation order was signed in the waning moments of *Zos Chanukah*. As a Satmar *chossid*, I had not yet *davened Mincha* when I heard about the commutation. Immediately after hearing the news, I *davened Mincha*, wherein I said the final *Al Hanissim* for this year's *Chanukah*, and I remember thinking, "This year, we have one more *neis*, one more answer to the *Bais Yosef's* question!"

# Attorney Cook: "Like Nothing I Have Ever Seen"

BY MALKIE LOWINGER

As the leading attorney for the defense of Reb Shalom Mordechai Rubashkin, Guy R. Cook had plenty of opportunity to get to know him, his family, and his community. A senior partner at the Iowa-based law firm Greife & Sidney, PLC, he's been practicing law for thirty-five years and has been named one of the nation's top 100 attorneys.

In an exclusive interview with the *Yated*, Mr. Cook reflected upon the case.

**Q: Were you impressed with Sholom's character and his faith throughout his ordeal?**

A: The Shalom Rubashkin I know is a kind and optimistic person with an immense devotion to his faith. He embraced his ordeal and was convinced he would eventually receive justice. Simply put, Shalom never gave up. His struggle against all odds and his ultimate success should serve to inspire us all.

**Q: What was your reaction to the overwhelming support of his community?**

A: The community's support was truly remarkable. His ability to stay strong and his eventual freedom can be directly tied to the immense support he received from so many.

**Q: And how about now that he was released?**

A: The outpouring of joy and celebration upon his freedom is like nothing I have ever seen before.

**Q: What are your personal feelings now that his sentence has been commuted and he's been released?**

A: I am ecstatic for Rubashkin and his family. I am proud to have been his advocate. President Trump is to be commended for listening to the extraordinary bipartisan group of members of Congress and over a hundred former senior justice officials calling for Rubashkin's release.

What the president did was right and just. And how fitting that the action of President Trump came on the eighth day of *Chanukah*!

ATTORNEY COOK AT AN AGUDAH DINNER.



# NOT INSIDE.



# JUST OUT!

BY RABBI ELCHONON JACOBOWITZ

Friday, Erev Shabbos Chanukah: Federal Correctional Institute, Otisville, NY.

Unfortunately, the trip had become somewhat routine. *Daven* early, get on the Thruway, exit at Middletown, wind your way up the ominous Two Mile Dr. to the top of the mountain, and enter the alternate universe of prison. But then again, although the trip was routine, the visits never were. How could I ever get used to the fact that someone living a nightmare was happier than myself, that someone who had every reason to give up pulsed with unwavering faith that only grew stronger as the nightmare dragged on?

Truth to tell, I had doubted if it could be true from the moment Shalom Mordechai crossed my radar screen, and even after our correspondence began, I couldn't help but wonder whether the letters truly reflected how this man actually lived his day-to-day life. Perhaps the words were merely a projection of how he strove to live, how he wished he could be...

How small of me. All it took was one short visit, or, more accurately, one long hug and one short dance. As I sat there waiting in the visiting room, contemplating what my first words should be, Shalom Mordechai entered, his beaming countenance striking the starkest of contrasts with the morbid faces surrounding us on all sides. First, there was a warm embrace, and then a short dance. Was this really happening?

"Nu, lummer zingen," he said as he grabbed my hand. "*Ki besimcha seitzei'u uveshalom tuvalun, heharim vehagvaos yiftzichu lifneichem rina, vechol atzei atzei hasadeh yimchau chof, vechol atzei atzei hasadeh yimchau chof!*"

From that moment on, I knew I was dealing with a different kind of person, the likes of whom I had never encountered before. And thus began a deep and warm personal relationship forged in the unlikeliest of places: the cold plastic chairs of a prison visiting room, under the watchful eyes of correction officers constantly on the lookout for the slightest violation of protocol.

Each visit was unique, but in many ways, they were all very similar. Never, ever, a word about *hishtadlus*. Appeals, motions, pardons - these were things for others to deal with. If I wanted information about how things were going, I'd have to speak to someone else, not Shalom Mordechai, or to Mrs. Rubashkin either, for that matter. Here, there was only *Shaar Habitachon*, stories of *Hashgocha Protis*, spiritual triumphs, and, most of all, *divrei Torah*. Lots of *divrei Torah*. As much as a starving man could devour in the short time we had together. In fact, it had only been *Tzom Gedaliah* when I was here last. No children came along that time,

and to my great fortune, the next visitor failed to arrive on time, allowing me three hours of uninterrupted *divrei Torah* being exchanged back and forth.

Arriving back in Monsey, I was asked by family members what good stories I had to share.

I couldn't remember a single one.

We had spoken for nearly three hours, but unless they wanted to hear a long *shiur*, I really had nothing to report.

But this Friday visit was different. No, we had absolutely no inkling of what was coming. Nothing. As usual, it ended with Shalom Mordechai inviting me to his house for *Kiddush* that night. But there was nothing unusual about that. In one form or another, he did that every time, in full seriousness.

No, what was different was that this time, another visitor joined us, one who had never been there before. And so, rather than the usual *divrei Torah*, I merited to hear Shalom Mordechai recap some of the earlier experiences he had shared with me on other occasions for the benefit of the new visitor. At the time, I was somewhat disappointed, but in retrospect, the recap was the greatest gift I could have ever received, because it encapsulated the entire experience and help frame the most crucial points we can all strive to emulate in our own lives.

After describing an early struggle to keep his *tzitzis*, Shalom Mordechai reminded us of the guard who had told him in no uncertain terms, "Listen here, lots of things are about to change for you!" To which he responded: "Listen here, nothing's going to change for me!"

In Shalom Mordechai's words: "I told him that I have a great rabbi, the *Ravatz*, who was also once imprisoned, and he told his guard that while he may be able to imprison the body, he has no power whatsoever over the soul. He gave me this shocked, blank stare, but I wasn't really talking to him. I was talking to myself."

Shalom Mordechai then went on to describe his struggle to obtain kosher food. The guard shoved some food through a trap door, only to find it still there on his next round. "You don't want to eat?" he asked.

"I do want to eat," responded Shalom Mordechai, "but I can't."

Why not?" asked the guard.

"Because it's not kosher," replied Shalom Mordechai.

"So you don't want to eat?"

"No, I do want to eat, but I just can't."

And thus went the game, repeating itself during lunch and then supper. The next morning, having gone without proper food for

nearly forty hours, the guard once again arrived, placing the tray of non-kosher food through the trap door.

“You’re still not hungry?”

“I am hungry. I just can’t eat.”

“So you don’t want to eat?”

And again, Shalom Mordechai emphatically responded, “I do want to eat, but I can’t!”

Thirty seconds later, the guard arrived with a tray of double-wrapped, sealed kosher food.

Shalom Mordechai recalled being floored. “Look how the *yeitzer hara* works! The kosher food was clearly sitting there the whole time, and it was all just one big test to see if I would break! The second he saw I wasn’t budging, he dropped the whole game and my kosher food arrived!”

That lesson, said Shalom Mordechai, shaped his approach throughout. It’s all one big test, and if I don’t budge, then eventually I will prevail.

I shook my head knowingly. I had heard the story from him before, but was happy to hear it again.

But then Shalom Mordechai shared with us something he had never told me before. In the very beginning, he was extremely torn over what approach to take to his surroundings. On the one hand, he wanted to maintain as much of a distance from his environment as possible and conduct himself exactly as he had before, yet on the other hand, maybe it would be better to acclimate somewhat to the surroundings and thereby have a greater influence on people. What was the proper approach?

While thinking it through, he remembered a story he had heard in his youth. There were two young *Poishner chassidim*, both with long flowing *peyos* and *yarmulkas* that covered half their heads, who immigrated to America on the same boat. At Ellis Island, they parted ways, and they only met up with each other again some thirty years later. By that point, one of them had become completely secular, while the other had not changed an iota. After making some small talk and catching up on each other’s lives, the secular fellow turned to his erstwhile friend and said, “You know, I really admire the fact that you stuck to your beliefs all these years, but tell me, do you really have to wear that enormous, funny-looking *yarmulka*? Couldn’t you have changed to something more ‘normal’?”

“You know,” responded the *frum* fellow, “that’s a really great question, and the very first morning after I arrived, the *yeitzer hara* asked me that very question as well. And I was about to agree with him, when suddenly, I caught myself thinking: Wait a second! If I listen to him today, is he going to stop bothering me tomorrow? Of course not! Tomorrow, he’ll pick a different fight, and then another, and then another, until eventually we’ll be fighting over *chillul Shabbos* and the like. So I decided: Why should I fight new fights if, instead, I can just continue fighting the same fight every day, which is a lot easier?”

“And that,” concluded the *chossid* triumphantly, “is exactly what I have been doing for the last thirty years: fighting the same fight over the *yarmulka* every single morning, and I haven’t lost yet!”

Bearing that story in mind, Shalom Mordechai came to a firm and unshakable decision: Nothing would change! Every *mitzvah* would be done as similarly as possible to how it had been done before - every *tefillah*, every *minhag*, everything.

I can testify that this decision was borne out in every single action that he did. *Hu Yosef haro’eh ess tzon aviv, hu Yosef shehaya b’Mitzrayim*. If there was no *mikvah*, then *shefichas tes kavin* would be the *mikvah*. If there was no *zero’ah* for the *ke’ara* on *Pesach*, then the *Seder* must wait until a *zero’ah* somehow arrives. The main thing is that nothing would change, and nothing did.

Listening as Reb Shalom Mordechai spoke on Friday, I recalled another incident he had mentioned to me in passing years before. Although I had heard many anecdotes of *mesirus nefesh*, to me, this one stood out as the most impressive of them all. There was a Jewish prisoner who Reb Shalom Mordechai tried to convince to learn with him, yet the fellow, who was non-observant, was completely uninterested. Finally, after much prodding, the man agreed to learn with Shalom Mordechai for one half-hour a day, but on one condition: In return, Shalom Mordechai would agree to work out with him in the gym for a half-hour. Not thinking much of it, Shalom Mordechai readily agreed. After two days, however, he apologetically told the fellow he had to stop. Reb Shalom Mordechai explained to me: “I saw I was getting a *geshmak* from the workout, and I realized it was a *sakanah ruchnis* for me, so I stopped immediately!”

I remember thinking to myself: Are you for real? You’re sitting over here in jail, there is literally nothing constructive to do, a person is offering to let you learn with him, there is nothing more rewarding for you than teaching another *Yid* Torah, and you’re worried about getting a *geshmak* during an innocent workout?!

But he *was* for real, and it was for this very same reason that he refused to get an MP3 player with his “prison currency,” despite the fact that there was plenty of Jewish music available, which he greatly enjoys. “Why do I need a *keili* that can be used by the *yeitzer hara*?” he said to me in explanation.

I remember feeling so small. If only I could have a fraction of such fortitude here on the outside!

•••••

The visit was drawing to a close. Mrs. Rubashkin had arrived with Moishe, Yossi, and Yehuda, and the visitor I arrived with began taking his leave. But before departing, the newcomer decided to share one final thought he had heard while learning in Brisk. Eliezer arrives at the well just before dusk and asks Hashem, “*Hakreh nah lifonai hayom*. Present me with Yitzchok’s true soul-mate today.” Today? What audacity! How could he stand mere minutes before *shkiah* and make such a demand from the *Ribono Shel Olam*? Present the *zivug* today?! But the very question, answered the Brisker Rov, is based on the mistaken view of a world governed by nature. In the world of *Hashgocha Protis* Eliezer inhabited, today was just as likely as tomorrow, or any other moment for that matter.

Shalom Mordechai smiled appreciatively. Now this was his language. In the world of *Shaar Habitachon*, every second was just as likely as the next.

“We’ll see you at my house tonight for *Kiddush*,” he stated matter-of-factly as the fellow made his way to the exit. I also got up to leave, but Shalom Mordechai insisted on some more *divrei Torah*. And so, I stayed a few minutes longer, and then got up to leave as well. Little did I know what the next few days would bring...

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## Tuesday Morning, Southfield, MI

It was the usual morning perusal of my inbox, but this time, something strange caught my eye: an email from Yossi Rubashkin, whose email account served as the relay point for all email exchanges with Reb Shalom Mordechai. It was the beginning of the week, and I was surprised, since the weekly email rarely arrived before Thursday. Curious, I opened it up. It read as follows:

*Mein Tiere Bruder Reb Elochonon Sheyichye :)*

*Dec 18, 2017 8:20 PM*

*B”H*

*A FRAILICHEN CHANUKAH MAIN TIERE BRUDER REB ELCHONON Sheyichye :)*



*WORRYING ME* although you are right that I probably did look a little pained but the reason was very simple and that was that I **ALSO MISSED OUR USUAL FARBRENGING** and was wishing and hoping we would be able to get some of our usual farbrenging going, *baruch hashem* the fellow who came walked away with a lot of *chizuk* and I was very happy for that but as you can imagine I really was looking forward to a more intimate farbrengen, and I am so glad to hear that you also missed it, because now we can both be *mekayem* what my *heiliger zaida* the *Gra* wrote that the main thing in life is to remember *sheha'adam loy liatzmo nivra ela lihoi'eel l'acharina*, and obviously it is not such a big deal to give up something physical and superficial, but something as near and dear to our hearts as our limited time of *hiskashrus haneshamos* that was given up - in deference to being *mechazek* another *Yehudi* is certainly included and a very big *zechus*

*B'ahava rabba v'ahavas olam,  
Yedidcha, Elchonon*

.....

*Sholom Uvrocho :)*

*BARUCH HASHEM* i really enjoyed seeing you on Friday and as usual enjoyed the *divrai toirah* You shared with on Chanukah and Also Repeated some of them to the *chevrah* here when i learnt with them on Shabbos :) By Hashgocho Protis, some the precious time was with others and i missed the ability to just sit with you and Farbreng!

i Daven so hard for HASHEM to free when we will be able to takeh learn and farbreng together without all the limitations that is forced on us now!

*My Dear Brother :*) I have to tell you that I enjoyed the visit, But you looked worried to me, and that has bothered me allot, which is why i am emailing early in the week to you! actually, i wanted to email yesterday, but the time ran out before i could get to a computer! Anyway, if you want to share with me what is bothering, maybe i could help or at least carry the package with you, PLEASE do so :) you told me you are leaving Yoim Shlishi back to Detroit and BEEZRAS HASHEM i will be freed before then and you will be able to see me and we will be able to dance together to sing and praise HASHEM for all his NISSIM and Wonders :) A FRAILICHEN CHANUKAH :) A LICHTIKER CHANUKAH :)

*MAY HASHEM YISBORAICH GIVE YOU ALL HIS BROCHOIS AND HATZLOCHO IN EVERYTHING YOU DO :)*

*UZI AILECHO AZAMAIROH, KEE ELOIKIM MISGABEE, ELOIKAI CHASDI :)*

*PODOH BESHOLOM NAFSHI, BESUROIS TOIVOIS, DIDAN NOTZACH :)*

*Your Brother :*) Sholom Mordechai Halevi ben Rivkoh sheyichye :)

Stunned, I tried to digest what was going on here. He was in jail. I was free. And who was worried about whom? But after the initial shock wore off, I realized that there was really nothing surprising here. This was vintage Shalom Mordechai, and it was nothing new. Hastily, I wrote up a response:

*Yedidi ahuvi Horav R' Shalom Mordechai shlit"a,*

*I was extremely touched by your letter and I want to make sure right away that BARUCH HASHEM THERE IS NOTHING*

## Wednesday Afternoon, 5:21

“YOSSI, IS IT TRUE?????”

“OF COURSE!!!!!”

“I CAN’T BELIEVE IT!!!! *BARUCH SHEHECHEYONU V’KIYIMONU V’HIGIONU LAZMAN HAZEH!!* WHEN SHOULD I COME???”

“NOW!!!!!”

And the rest is history. By some miracle, I made it to New York in time, and found myself inside the Rubashkin living room in Boro Park by 11 p.m. And there I stood, surrounded by thousands and enveloped by fellow “Rubashkin-Writing-Rebbi” R’ Leibish Lish, as we awaited Shalom Mordechai’s dramatic arrival. Words cannot describe the electricity in the air, and I leave the attempt to paint an accurate picture of the surreal scene to others. But the joy of that moment - seeing Reb Shalom Mordechai’s beaming face as he entered the room, framed by a hat and bedecked in a *kapote* for the first time in nearly a decade – is something that no money in the world can buy.

The list of adjectives that can be used to describe Shalom Mordechai’s emotions on Wednesday is long, but “surprised” should not be among them. And that is not to say that he had an inkling this was coming. Having been there on Friday, I can assure you he didn’t. But I can likewise assure you that he never doubted it for a moment. Those invitations to *Kiddush* Friday night were made in all seriousness. And as I later learnt, on this particular Friday, the seriousness with which the invitation was extended was despite the fact that a mere two days earlier, he had learnt from his lawyer that the very last avenue for appeal had been categorically denied. But then again, why should that make a difference? In the world of *Shaar Habitachon*, *hakreh lifonai hayom* was just as likely as anything else.

And the very first words Shalom Mordechai said to me on Wednesday night?

“I told you so, didn’t I?”

I smiled.

Indeed, he had.

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# UNITED IN EUPHORIA

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## Joy Erupts Throughout Klal Yisroel at the News of Reb Shalom Mordechai's Release

BY CHAIM SALLER

*Klal Yisroel is in the midst of a unique phenomenon. A sense of comradery reigns strong throughout. A shared joy unites us. A boundless exhilaration emanates wherever you go.*

*"Reb Shalom Mordechai is free!" That sentence has lived on the tips of our tongues the entire week. For once, we all felt connected, no matter how separate we may have been before. "Our Reb Shalom Mordechai has been released," was the feeling felt by one and all. It is a time to celebrate. Together.*

*We followed his every move. We watched as he walked through those doors in Otisville, stopping to say a few words outside the gas station. We waited at his house in Monsey, hoping to catch a glimpse of the former prisoner. We danced at his father's store in Boro Park, hoping to capture his joy somewhere within ourselves. We cried at the sight of his reunion with his aged parents. We tapped along with the beat of the music playing in Crown Heights with his anticipated arrival there. We awoke Thursday morning thinking how he is waking up in freedom for the first time in eight years. We trailed him to Skver on Friday, we observed his dancing in Munkatch on Motzoei Shabbos, and our hearts accompanied him to Monroe on Sunday.*

*We continue to rejoice. His troubles were our troubles, and now, his yeshuah is our yeshuah. Klal Yisroel's yeshuah. We earned the right to rejoice, and now we celebrate as one.*

*The Yated follows the path of jubilation, speaking along the way with some of those who revel, and allowing them to share their elation and ecstasy on the very pages on which his plight was strongest depicted.*

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### "Much more than just pen pals"

– Rabbi Leibish Lish, 4th Grade Rebbi, Yeshiva Karlin Stoliner

Rabbi Leibish Lish had the names of five Jews under incarceration hanging on the wall of his classroom. He has already crossed off the names Moshe Lazer Ziegelman and Yanky Ostreicher. This week, he crossed off the third name.

"My connection with Reb Shalom Mordechai started on the sixth of Teves, 5772, with the very first letter that I sent to him in jail. Exactly six years later, on the sixth of Teves, 5778, Reb Shalom Mordechai walked into my classroom as a free man."

Rabbi Lish's fourth grade class has a long history of correspondence with Reb Shalom Mordechai.

"We started by writing letters to him before every *Yom Tov*, and at certain occasions throughout the year. Before each *Chanukah*, for example, I would give out postcards to all my *talmidim*, reminding them to have in mind during their *hadlakah* that Reb Shalom Mordechai should be *zoche* to go *mei'afeila l'ohr gadol*. Then, each *talmid* would sign their card, and we would send all those oil-stained, wax-dripped cards to Reb Shalom Mordechai in jail."

He explains that after some time, the relationship became more personal.

"Since he was a Stoliner *talmid* like me, he began sending me his memories of Stolin Yeshiva. At one point, after becoming quite close, he suggested that we change the occasional letter into a weekly affair."

So, for the past four years, Rabbi Lish's class would send letters to Reb Shalom Mordechai. After some time, Reb Shalom Mordechai began including in his responses the trials and tribulations that he underwent that week in prison, and the lessons he was able to glean from the hardships.

"After getting those letters for three years, I compiled them all into a full 650-page *sefer*, *Kol Shalom Mordechai*," Rabbi Lish relates. "A lot of hard work went into the publication. I even had it reviewed by a lawyer as a precaution."

Rabbi Lish recounts how he went down to Reb Shalom Mordechai with four of his *talmidim* to show him the newly-released *sefer*. When he was ready to leave, Reb Shalom Mordechai asked of him just one request.

"I know that you are busy, and that you must return with your *talmidim* in Boro Park," Reb Shalom Mordechai said. "But please, can you make a stop in Monsey and give a copy to Rabbi Pinchos Lipschutz?" That was his only request."

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### "A song prepared for this very occasion"

Composer and Singer Yossi Green

For many, the song that carried them atop the waves of *simcha* was a new song, *Motzie Asirim*, released the very night of the *besurah*. Composer Yossi Green shares its background with the *Yated*.

## “Bitachon on a whole new level”

R' Abba Klein, Owner of Klein's Ice Cream and The Ice Cream House

R' Abba Klein has a long tradition of visiting prisoners in Otisville, having gone weekly for many years.

“In fact, I was there the very first time Mrs. Rubashkin came with her children to visit her husband,” he tells the *Yated*. “I was there to visit someone else when she walked in.”

He shares a powerful incident that took place around seven years ago.

“According to prison protocol, all visitors have to fill out an application every time they come. Steady visitors like me, however, take home a whole stack of applications, so that we can fill them out ahead of time and save time when we arrive at the prison.”

He explained that if you arrive with a prefilled card, you can expedite your turn by submitting the application without waiting on line.

“One time, as I was sitting in the waiting room, Mrs. Rubashkin walked in and started filling out an application. I approached her and asked why she didn't take home a stack of forms and fill them out before she came.”

Her answer blew him away.

“I decided that I am not taking home the applications, because I consider it a lack of *emunah*. If I take home forms, I am implying that I plan to return and visit again. I have *bitachon* that he can come out any minute and I will never have to visit again!”

R' Abba shares that when he heard the news of the release, he had to double check that it indeed was true.

“In the past, there had been rumors. I had to make sure that he really was out.”

The delight he felt when he confirmed the news was something he couldn't keep to himself.

“My uncle called me very excitedly,” R' Abba's nephew, Head of Operations Dovid Klein, tells the *Yated*. “He said that we must do something to help channel all the excitement. We decided to offer a discount across all of our stores.”

“We have stores in Williamsburg, Boro Park, and Flatbush. It was our greatest pleasure to be able to celebrate along with all three communities and *Klal Yisroel*.”

“A few years ago, the Munkatcher Rebbe went to visit *Yidden* in prison, and he asked them if there is anything they might need. They responded that in terms of material items, they had everything they needed. ‘However,’ they said, ‘we could use a good song that can help unite us and give us hope through these difficult times.’

“The *rebbe* responded that he was unable to compose songs like that. ‘I do know someone who can, though,’ the *rebbe* told them. ‘He comes to me occasionally. Next time he comes, I'll ask him to make such a song.’”

Yossi explains that although he is not a Munkatcher *chossid*, he nevertheless shares a very close relationship with the *rebbe*, having asked him advice many times, and having had the privilege of composing songs for him.

“A while later, I went to the *rebbe* to be share a dilemma, and after he helped me, he requested of me to make the song for the *Yidden* in prison. I suggested the lyrics ‘*motzie asirim ufodeh anavim*,’ and the *rebbe* immediately agreed.”

Yossi went home and composed the song, which later garnered the *rebbe*'s approval. “That is exactly the song I was looking for,” he said.

Incidentally, at one point, the *rebbe* believed that Reb Shalom Mordechai may be released, and the *rebbe* insisted on dancing *Hakafos* that year to this song.

“This year, after lighting his *neiros* the last night of *Chanukah*, the *rebbe* once again asked that the song be sung. Just hours later, when we heard the news of the release, I was shocked.”

Yossi recounted how the joy he felt prompted him to do something he had never done before.

“Normally, the songs I write for him are not publicized. ‘These are my private songs,’ the *rebbe* would often say. For this occasion, though, I thought he might agree. So I called the *rebbe* and asked him if perhaps I can release the song to the public. His response surprised me. ‘Absolutely! You must be *mefarseim* this song.’

“That is how the song, written years ago as a *tefillah* for his release, came to be public at the appropriate time.”

Yossi ends off with an intense lesson that can be gleaned from the *simcha*.

“This has been a *yeshuah* for just one family, and yet the joy is so widespread. Just imagine what the *simcha* will look like when *Moshiach* comes. Every family has their burden, they need their own *yeshuah*. The joy of every single Jewish family having such a redemption will be mind-blowing.”



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## “Not what I expected to hear”

Yossi, a Lakewood Resident

Yossi, a *yungerman* learning at Bais Medrash Govoah, tells his perspective.

“Reb Shalom Mordechai shared absolutely no connection with me, other than the fact that he is a *frum* Jew. I doubt that he ever even stepped foot in Lakewood. The fact that we felt so elated at the news of his release is a testament that our joy is coming from an underlying *achdus* that exists deep within us.”

He related ver how he heard from one of the Lakewood *roshei yeshiva* that everyone could learn *emunah* from Reb Shalom Mordechai.

“No matter where he went, he kept saying that it was the *Aibishter* who took him out of prison. At one point, someone mentioned the President Trump took him out, and he corrected him, saying, ‘No, it was the *Aibishter*.’”

He described how the shared glee was something he had never experienced before.

“Everyone wanted to take part. There was dancing and *l’chaims* at many *minyanim*. People gathered in Seagull Square to dance. Snaps had live music and gave out free *cholent*. Evergreen gave our free cake and coffee. We all felt so connected.”

He recounted that he was waiting in line to ask a *shailah* to a prestigious Lakewood *posek* when the news first broke.

“It was my turn on line, and to my shock, instead of him asking me what my question was, he blurted out, ‘Did you hear the news? Reb Shalom Mordechai Rubashkin was freed from jail!’

“It was truly a once-in-a-lifetime feeling.”

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## “My personal connection through music”

Shua Kessin, Singer and Composer, Harmonics Band

For Lakewood Singer Shua Kessin, the connection to Reb Shalom Mordechai is personal.

“Years ago, I was involved in the Unity project, which was a collaboration between a bunch of singers who united together through music to express the injustice done to Rubashkin,” Kessin told the *Yated*. “While working on the project, I had met with his wife and family. Since then, I always felt a special connection to Reb Shalom Mordechai’s plight.”

The grave injustice that was prevalent with each development in the legal proceedings had a strong impression on him, and was seared deep into his mind. When he heard the news of Reb Shalom Mordechai’s sudden release, all those emotions came rushing back.

“For me, music is an expression of my deepest emotions. The emotions that swept over me when I heard the news were so overwhelming, I knew that I had to express it in a song in order to adequately convey my feelings.”

So he sat down and composed a stirring tune to the words “*motzie asirim*.” On the spur of the moment, he decided to release it as a video, departing from his tradition of only releasing professionally mixed videos.

“The emotions were so raw, it is appropriate that they are mirrored in a raw video.”

Shua hopes that the emotions he channeled into the song can help others portray their joy as well.

“By people sharing the song, we can hopefully spread the message that Hashem is in full control, plans everything, and never



forgets us even in the deepest, darkest times.”

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## “I have never been involved in such a joyous transformation”

Mendy Sacho, Primo Hatters, Crown Heights

On Thursday night, before going to a family *simcha* of one of the individuals who worked towards his release, Reb Shalom Mordechai stopped by Primo Hatters in Crown Heights in order to pick up some fresh clothing. The staff at Primo were elated to join in the celebration.

“He came in after hours, and we gave him priestly service,” Mendy Sacho of Primo Hatters told the *Yated*. “We sat him down and dressed him from head to toe.”

“In conversation with him, he kept on repeating how much it meant to him that so many *Yidden* cared about his predicament. He was elated that such a sense of *achdus* came out of his whole saga.”

Mendy related an anecdote that gives insight into Reb Shalom Mordechai’s years in prison.

“When I was fitting him for shoes, he automatically bent down to tie his shoes, totally forgetting the standard practice that the proprietor ties the shoes and checks the fit. He was just so unused to having things done for him.”

“Another interesting anecdote,” Mendy added, “is that I mentioned something about a post on Instagram, and he gave me a blank look. It dawned on me that Instagram did not exist eight years ago, so he had never heard of it.”

# SAY NO

An Address delivered by Rabbi Pinchos Lipschutz at the Torah Umesorah Presidents Conference, December 21, 2017

# TO NAYSAYERS



Nine years ago, I had the *zechus* to grab onto an unfolding tragedy involving Reb Shalom Mordechai Rubashkin, who was very unpopular with just about everyone at the time.

My job entails reading the *New York Times*, the *Wall Street Journal* and other publications. At that time, there was a constant drumbeat in the media about a Jewish meatpacker in Iowa who was mistreating workers and animals in his slaughterhouse. They said the place was filthy and was polluting the community's water supply. They said that the chickens were running free and infecting the soil with their droppings. They said that this rich corporate boss did not provide his employees with uniforms or safety equipment. He did not give them lunch breaks. He lived in a big fancy mansion in a small poor town.

Rabbi Pesach Lerner asked me to go visit the plant. I was, at that time, influenced by the media, as we all are, and retorted, "Are you crazy? I'm going to get involved in this nonsense? There's no way I'm going."

He promised me that I wouldn't have to write an article about it. Most times, when I'm asked to visit a place, it's because they want me to write an article.

So I went down to Iowa to visit this plant. What I saw was the most modern, state-of-the-art meat processing plant perhaps in the entire world, certainly in the United States. The plant was clean, the atmosphere pleasant. USDA and *mashgichim* were everywhere, supervising and overseeing the process. The workers all seemed happy.

I asked some of them, "Why are you so you happy when your boss doesn't pay you?"

They didn't know what I was talking about. "What do you mean he doesn't pay me?" one of them said. He was incredulous. "He even gives me a turkey for Thanksgiving!"

I heard from them about a fellow employee whose son was killed in a motor vehicle accident. "Do you know that the boss paid for that funeral?" one of the workers asked me.

"Does he pay for your uniforms?" I asked.

"Of course he pays for our uniforms. You think we pay for them ourselves?"

The fellow then listed all the benefits that he and his fellow workers receive.

"Do you get a lunch break? Do you get time to eat?" I asked. "How can you do this work without eating?"

They looked at me like I was crazy. They took me to the cafeteria, where they gathered every day for lunch.

Then I met Shalom Mordechai. I met his brother, Yossi, and his father - a *tzaddik*. I was astounded by the string of lies being told about them and their plant. The sheer audacity of it all. There was a man who wrote a book titled "*Postville*." He took every possible vice you can think of and attributed it to Shalom Mordechai. It sounds so convincing. But then you go there and see for yourself that it's all invented.

I went to see the "palace" built by the "richest man who supports the whole town." His house was a prefab structure that stood at the end of an unpaved street. It didn't even have a paved driveway.

What grabbed me about this story was the brazen lying, the way they were crucifying a good person. And everyone was falling for it.

I remembered the words of Rav Yeruchum Levovitz of Mir: "*Even a grocery man can do chesed. Everyone is supposed to do chesed with their tskid.*" My *tskid*, for whatever reason, became my newspaper.

I realized that I had the power to do something to help a good person who was being lynched. How could I not help him? At the time, I did not have anyone's support. People were afraid of getting involved. They were afraid of going out on a limb. What if it turned out that they were wrong? But the visit to Postville had given me clarity. The more I became familiar with the case, the more I realized it was a sham.

Here was a *Yid*, a multi-millionaire, who was running an extremely successful plant that provided affordable kosher meat to Jews all across the country. He was liked and respected by his employees. This man falls victim to people who want to ruin him and his company. First his plant is raided and forced into bankruptcy. They arrest him, make him stand trial for many crimes, convict him and lock him up for 27 years. Basically forever. Like you do to a dangerous criminal.

They would have buried him and buried the truth together with him. But people with conscience objected when they saw things that didn't add up. Sentence a nonviolent first-time offender to jail for 27 years? What are they thinking?

Dozens of prosecutors, judges and individuals who care about justice said that this is a terrible travesty of justice, and we can't stand by and let this happen.

Countless people were distraught by what happened to him. We saw many of them last night in Boro Park and other places, where tens of thousands of *Yidden* who don't know Reb Shalom

Mordechai, never saw him in person, were dancing in the streets. Why? The closest they ever got to him was that they may have given a check at one of the rallies, or sent money in the mail for his legal fund. But they poured out of their homes into the streets on their own, in spontaneous celebration, looking for a *Yid* to dance and sing with.

Where does that come from? What does that say to us?

It says that their hearts were won over when they saw a *Yid* who epitomizes the greatness of *Yiddishkeit*. A *Yid* who never complained, even when subjected to the terrible things he went through. He had a core of happiness inside him that never ran dry, even in prison. Every day, he would say, "Hashem wants me to be here. He wants you to be in Montreal, you to be in Monsey, and you to be in Flatbush. But for me, my *shlichus* is here. Why should I be broken? They have my *guf*, but they will never have my *neshomah*."

This is not just a story that happened in the time of the *poritz*. It's happening today. Everyone puts us down. They say we are no good. But look at the *koach* of *Yidden*. Look at one *Yid* who had his business taken away from him. Who went from being the king of the town to being locked up in jail, all alone, scorned and despised.

I visited him several times in jail. In better times, I once spent a *Shabbos* with him. He paid for everything in the town, the school and the *shul*. He picked up the tab for all of it. He insisted on having only one *shul*. Everybody *davened* there - Satmar, Klausenberg, Lubavitch, *Litvish* and *Yerushalmi*. All *davened* together. One big happy *shul*. Just try to accommodate everybody's *minhagim*.

When *davening* concluded, we started walking to his house for *Kiddush*. I was walking with a Klausenberger *chossid* and we came to a busy highway. I asked him, "How are we getting to the other side?"

"You will now witness something amazing," he smiled.

When Reb Shalom Mordechai came to the street, traffic slowed to a stop. That was the respect shown to him in this town of Iowa. We crossed and the traffic resumed.

He went into jail with his *Chovos Halevavos* and *Devar Malchus*. And he left the very same way, with his *Chovos Halevavos* and *Devar Malchus*.

We learn *Chovos Halevavos*.

He *lived* it and continues living with it.

Today, people ask: What is special about Rubashkin and his case? Why did young children make carnivals for him? Why did elderly people send in their jewelry to us to pawn in order to help pay for the legal team? It is because they saw *netzach Yisroel lo yeshaker*. They saw a *Yid* who, when he was going to court to be judged, came in his *kittel*. Not because he is a *meshugeneh*. But because it's the *din* and he lives by that. As we all know, a day in court is compared to *Yom Kippur*. The judge has the power to decide my life.

He never had *taynos* and I never found him unhappy. When he was in the federal prison, I could not call him, but he would call me. If there was anyone around, I would put his call on speaker and tell them to guess who it is. From his happy tone and topics of conversation, no one could guess that this was someone behind bars.

He would usually call me on *Motzoei Shabbos*. The call would start with a *niggun*, *ah gutteh voch*, *mit brocha* and *hatzlocha*. He would mention how, *im yirtzeh Hashem*, the following week, he would be released, and we believed it every week. We were all car-



ried away with his *bitachon* that his *yeshuah* would be that week. He would ask for a new insight or share his thoughts on the *parsha*. He would ask for a joke. He laughed like the richest person in the world sitting in his plush recliner. You could not conceive that he was in that lonely, dark place, eating his *matzah* and tuna fish for a *melavah Malka*. Whoever heard his call had their spirits lifted. It was infectious...

They could not be impressed.

What is the lesson for us?

One of the lessons is, never listen to the naysayers, to the people who tell you that you're crazy, that you don't know what you're doing, that you're wrong. Don't pay attention to negative people, when you are right.

Don't be afraid to be alone, because you are not alone. If you work *l'shaim shomayim*, *Hakodosh Boruch Hu* is putting the rest of the puzzle together.

When Senator Rand Paul was running for president, Rabbi Nate Segal and I formed a connection with him, and we joined him on a trip to Israel. Alas, he couldn't beat the Trump juggernaut. Then, last Tuesday when we needed sixteen senators to write a letter to President Trump, Rabbi Segal was able to connect with the Senator and he wrote a letter on behalf of Shalom Mordechai.

That's *Hakodosh Boruch Hu* preparing the *refuah* before the *makkah*.

The Sadigurer rebbe went to Postville to visit prisoners in the camp. When he came in, a *Chasidische Yid* was waiting in his prison uniform with a *gartel*, *shukeling*, saying *tehillim* because a Rebbe was coming. The Rebbe came in, Rav Shalom Mordechai kissed his hand, they sang a *niggun* and danced. Then he spoke, not about what he was missing, what he didn't have.

Tell me a *dvar torah*, a *chiddush*, a *gut vort*. The Rebbe was so impressed at his *emunah*, from a man who lived with Hashem, that he told someone influential they have to work on getting him out. That person arranged for someone else who was instrumental in obtaining the commutation.

There were so many little things along the way. So many people like Hershey Friedman, whom the *Ribono Shel Olam* put in the right place at the right time. Some people gave ten cents, some a dollar, and some gave thirty-five thousand, once, and twice. Everyone wanted a *chelek* in this, because we are all one *guf*; if our



# A Look Back: From the Pages of the Yated

BY RABBI PINCHOS LIPSCHUTZ

## After Prosecutors Recommended, In Effect, Life in Prison

May 16, 2010

I have a painting of an old Sephardic woman. Painted in 1963 by a famous Israeli artist named Weintraub, I bought it for \$200. It was dusty and banged up and lying in a pile of junk in the back of a store, but the minute I laid eyes on it, I knew that it had to be mine. The lady was talking to me from under the dust and grime which had accumulated on the sorrowful painting that the storekeeper had purchased as part of an estate.

What is so great about this painting and what attracted me to it is that when you study the woman portrayed in it, you sense in her the tale of the Jewish exile. You can almost hear her telling her tale of woe: how she was driven from her native land and brought to the Promised Land where she was forced to live in a tent city. Her children were educated by the state in a language and fashion totally unfamiliar to her. Yet, she attempts to maintain her dignity and pride. And if you look carefully, you can note the hints of a smile on her lips.

This well-executed portrait tells the tale of an era much as a couple of stanzas of well-written poetry so potently because the author is able to illuminate and portray a detailed, complicated story in but a few words.

We have been highlighting the plight of Sholom Mordechai Rubashkin for some two years now, portraying it as a man fighting for his life. We were accused of being hyperbolic and, at times, I wondered if perhaps I was overplaying the drama. Maybe some secret journalistic juices which I never knew I possessed had gotten the better of me and caused me to exaggerate what was transpiring in the heartland of America. But on Friday, when government prosecutors recommended that Sholom Mordechai be sentenced to life in prison - yes, life in prison - for his bank fraud conviction, the veneer of justice was peeled off. No longer can anyone claim that the government is simply carrying out their mandate of pursuing equal justice under the law. Now it has become blatantly obvious for all to see that there is something sinister at work here.

In our Pesach edition, we published a painstakingly researched article documenting the way in which the Rubashkin case was prosecuted and the way he has been treated since his conviction. It appears as if the tale of Rubashkin is a microcosm of the tale of the Jewish people.

A simple, G-d-fearing man gave up his rabbinic position to move to an area of this country which had never had Jewish residents in order to assist his father in providing affordable kosher meat to the citizens of this land. Successful beyond anyone's imagination, he aroused the ire of unions

and radical vegetarians who marked him for destruction. Though he was an exemplary citizen, providing employment for an entire town, dispensing charity to people from all walks of life, supporting religious and educational institutions, and contributing immeasurably to the betterment of mankind, once the fix was in and the word from the bosses came down, he could do no right. The man who was regarded as a heroic figure and revered by people of all religions in town was vilified to such an extent that representatives of a country known for its pursuit of justice and fairness dedicated themselves to locking him in jail for the remainder of his life.

A nationwide media storm convicted him of crimes against humanity and cruelty to animals long before he even went to trial. In fact, those charges were never heard in a court of law. They didn't have to be. He was convicted in the court of public opinion. Charges unrelated to what had caused his downfall were brought, and he was convicted in a case which will be pointed to for years to come as a travesty. Deemed a flight risk, because he would flee to that far off country of the Jews which embraces all Jewish crooks and swindlers, he sits in a country lockup dressed in a bright orange uniform, is housed in a small room with a pillow-less bed fit for a murderer, and is treated like one of the worst predators to ever walk the lily white streets of Iowa.

Yet, he maintains his belief and refuses to be broken. His relationship with G-d remains steadfast and he prays and studies holy books from that awful place as he awaits his redemption.

My friends, that is the story of the Jewish people in exile. His story is our story. His tale is our tale. His pain is our pain. And it's no exaggeration. Wherever we have gone, we have been buffeted about. In whichever country we have found ourselves over the past two thousand years, we have done our best to be model citizens, to support ourselves and to help others. We have sought to cause no harm to anyone and we have brought wealth, education and health to whichever exile we landed in. Yet, we have been accused of poisoning the wells, murdering babies, demanding pounds of Christian flesh as loan repayment, and every other crime imaginable.

Without comprehension, we were pushed beyond the pale of



WITH ATTORNEY PAUL CLEMENT, WHO REPRESENTED SHALOM MORDECHAI BEFORE THE US SUPREME COURT.

settlement, crucified, imprisoned, and taxed into poverty. We were unable to work or go to school. Our sin? We were Jews. We believed in a Higher Authority. We hewed to an ancient honor code and moral system. We looked different. We acted different. We spoke different. We dressed different. Yes, we were different.

It made no difference to anyone how much we paid in taxes. It was never enough. We were never patriotic enough. Never clean enough. Never good enough. We were always suspect. We were always despised. We were always, dare I say, dirty Jews.

We have risen to unprecedented levels in this country and thought that here it would be different. Here we would always be accepted. Here we would always be tolerated. In this land of opportunity, anti-Semitism wouldn't rear its ugly head so obviously. In this *malchus shel chessed*, we thought that we would forever be given a fair chance.

What can we do about it? Where do we go from here?

In this, as well, the Rubashkin saga has a lesson for us. Sholom Mordechai maintains his *bitachon*. As an *eved Hashem*, he knows that all that transpires is for a greater purpose, which we do not yet understand. *Yidden* of all types demonstrate true *achdus* as they stand by him. Our appeal to write letters to him brings him mail from Jews of all ages from around the world, who pen letters of *chizuk* which warm the heart and move the people who read them to tears.

People who will never meet him, who *daven* a different *nusach* than he does, pour their hearts out in *tefillah* for Sholom Mordechai *ben Rivkah*.

Thus, not only does all this assist him in ways we can perceive

and feel, but the *achdus* generated by the care and compassion rises above and evokes Heavenly mercy on behalf of a righteous man who spent his life helping others prior to his legal battles. It will no doubt lead to his eventual freedom.

This is the secret of Jewish survival throughout the ages. The way we cling to *emunas avoseinu*, the fact that we stubbornly refused to surrender in the face of overwhelming adversity, the fact that we maintained our *emunah* and *bitachon* in the darkest days of *golus* - all this is our lifeblood.

The *Chofetz Chaim* writes that if the *mitzvah* of *gemilus chasodim* would spread among our people, the world would fill with *chessed* and all tragedy would disappear from the world. He says that while in Mitzrayim, all of *Klal Yisroel*, rich and poor, looked for ways in which they could do *chessed* with each other and this was one of the things that led to their redemption from slavery.

It is comforting to see how people continue to contribute to institutions of Torah and *chessed*. Untold amounts were distributed by *maos chittim* funds in every town and city where Jews reside to those unable to afford the myriad expenses of *Yom Tov*.

The forces of Torah strengthen from day to day as *yeshivos* burst at their seams and more *bochurim* and *yungeleit* than ever before in Jewish history dedicate their lives to *aliyah* in Torah.

The Rubashkin case portrays our tribulations in *golus*, but it also hints that we may very well be on our way out of here. The way *Yidden* have risen to the challenge and performed so many acts of *chessed* and *achdus* has created major *zechuyos* for all of us and has hastened the day of our redemption.

May it happen speedily, in our day. *Amen*.



# The Rubashkin Miracle and Our Children

BY RABBI AKIVA KLEIN

Last Wednesday afternoon, I was driving home when my nine-year-old son called me and excitedly told me, “Totty, I have amazing news! Rubashkin is out of jail!” I realized that the great miracle that *Klal Yisroel* just experienced was being celebrated by the youth, too. I saw it again on Friday night, when I came home from *shul* and all my kids screamed out at once, “Totty, can you please tell us stories about Rubashkin?”

I’m starting to recognize that for the past eight years, Reb Shalom Mordechai Rubashkin was a man who was deeply etched in the hearts of every young Jewish child. *Rabbeim* and teachers spoke about him in their classes, and parents talked about him over their supper tables. The children thought about him. They read about him. They cared so much about him. They *davened* for him. And now the children are all rejoicing in his great miracle.

As *mechanchim* and parents, we have many values that we constantly teach our children. We all know that there are certain special times when a child’s heart opens and we can fill it up with these values. We are forever looking for these special moments, so that we can catch them and use them to teach. Without question, we are right now in middle of one of these powerful times. The children are so full of emotion. Positive emotion. Their hearts are so full of feelings of excitement, and we must seize the moment to teach them.

It seems clear that the value that is to be taught at this time is *emunah*. We have a moment when we can tell our children about Hashem and His endless love towards us, and *they can feel it*. The children have lived through the sadness and despair of the eight years in prison, and right now they are feeling the feelings of freedom and redemption. The words “*Yad Hashem*” that they have heard so many times is now a Hand that they see and feel. Now is the time for us to tell them again and again of Hashem’s strength and Hashem’s love.

Let’s remember that one of our greatest challenges in this generation is that we are teaching our children so many *heilige* values

that are not tangible or visual. At the same time, they are living in a Western world that presents its pleasures in a very visual way. We use all types of stories and *mosholim* to create in the children some level of excitement so that they will connect to the Torah’s teachings. But now we don’t need any tricks. They can feel it. It’s so real to them.

Our responsibility now is to slowly replay for our children the last eight years. We have to retell them the story *they* lived through. We must emphasize *Borei Olam*’s Presence at every point. We now have to infuse into the hearts of our children all the feelings that Reb Shalom Mordechai had for all these years. Reb Shalom Mordechai lived with absolute *emunah*. There wasn’t a moment that he didn’t feel the presence of the *Borei Olam* with him in his cell. He spoke about this, he wrote about this, and this was the source of his unusual *simchas hachaim* in his dreadful situation. Reb Shalom Mordechai didn’t just encourage himself with hopes of leaving. He honestly believed with a full heart that his loving Father in heaven will bring him back to his family.

Now that we are at the end of this miracle, it is so easy for us to teach this great *emunah* and *bitachon* as part of the story. Tell the children to close their eyes and picture again the scene of Reb Shalom Mordechai in jail. Tell them to feel again the feelings of pity and sadness that they felt. And now tell them to feel that Shalom Mordechai wasn’t there himself. Hashem was there with him. Hashem watched over him. And Hashem lovingly took him out in the most miraculous way. Then tell them, “Hashem is always with you. Hashem loves you dearly. Hashem and only Hashem watches you and will save you from any *tzarah*.”

Hashem gave us a unique gift this past week. He gave us a real feel of all the love that we believe and know He has towards us. He told us so clearly that in the greatest darkness, He will always shine the light for us. We have to hold on to this gift by talking about it and carefully teaching it to our children.

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## AGUDATH ISRAEL OF AMERICA STATEMENT

With a profound sense of appreciation, Agudath Israel of America gratefully welcomes the news of President Trump’s commutation of the sentence of Shalom Rubashkin.

The injustice of Mr. Rubashkin’s grossly excessive 27-year sentence was readily apparent to any fair-minded individual who reviewed the facts of the case. That is why so many Congressmembers from both sides of the political aisle, led by Senator Orrin Hatch and Minority Leader Nancy Pelosi, and well over 100 former high ranking Justice Department officials and other legal luminaries, have been publicly calling for executive clemency.

Through this action, President Trump has shown that he too understood that something went terribly wrong in the prosecution and sentencing of Shalom Rubashkin - and, further, that he would not allow this blot on our criminal justice system to stand uncorrected. The president deserves to be congratulated and thanked - not only by Mr. Rubashkin’s family and friends, but by all who care about fairness and justice.

# KEEP ACHDUS ALIVE

BY RABBI PINCHOS LIPSCHUTZ



Iran is back in the news again, as its citizens muster up the courage to protest against the crushing regime. The Iranian threat has dominated headlines for several years now, with its radical, irrational leaders pursuing a nuclear weapon with the ability to exterminate Israel. Jews and freedom-lovers the world over fear that Iran is on the precipice of realizing its ambition, and have serious concerns about the safety of the citizens of Eretz Yisroel.

Iran supports terror groups across the Middle East and is at Israel's border in Lebanon and Syria. Their plans keep military planners up at night. Iran and its allies represent a serious threat to Eretz Yisroel. But Rav Michel Stern, a prominent *Yerushalmi boki* in *niglah* and *nistar*, says that Iran is not our biggest problem. He says that the lack of *achdus* is much more dangerous than what is going on in Iran.

*Peirud*, division, represents a more lethal threat than Iran.

*Achdus* is something we often discuss, and last week we saw how beautiful our world is when there is unity. Virtually all of *Klal Yisroel* was troubled by Shalom Mordechai Rubashkin's excessive sentence. Jews everywhere *davened* for him, thought about him, cared about him, and followed his saga. And when he was suddenly freed during the last minutes of *Chanukah*, Jews with love in their hearts and *achdus* in their souls broke into spontaneous celebration. With few sorry exceptions, we showed that we can come together and that we are more united than we know.

We were awash in good feelings as we realized that despite all we have been through and despite our differences, we felt as one. The euphoria that washed over us provided hope that going forward we can maintain the state of togetherness and accomplish much together.

This week, we begin the study of *Sefer Shemos*, also referred to as the *Sefer Hageulah*. It charts the course of our nation from the bitterness of bondage through the thrill of redemption. *Sefer Shemos* traces our progress from the lowest depths to the greatest heights, from the harrowing dangers of drowning in the Red Sea to the climax of creation at *Har Sinai*.

The way we act towards others impacts our souls and proclaims what kind of people we are. If we are cognizant and appreciative of others, it helps us. We become better people and can work to achieve *achdus* and accomplish much more with our lives.

By Hashem's design, human beings are unable to see success if they work only for themselves. It is only as a community and as a member of a group that we can endure. From the time we are born until the very end, we can only survive if we are connected to other people. As infants, we need everything to be done for us. Even as we grow and become more independent, most everything that we require for our daily existence is provided by others.

Arrogant, unappreciative people refuse to recognize that as great as they are, without the contributions and help of other people, they would be hungry, unloved, homeless, illiterate and without much to live for. Everything that we know and everything that we have is thanks to someone who took the trouble to teach us and equip us with the essentials of life and good health.

It is impossible for a person to be totally independent and live a meaningful life. Those who cause *peirud* engage in anti-social

behavior that is detrimental not only to the broader community, but also to themselves.

In order to maintain our humility and *mentchlichkeit*, the Torah gives us many *mitzvos* to ingrain in our psyches awareness of this world's abundant blessings and the goodness with which Hashem showers us.

No matter where we are and what we are trying to accomplish, it is crucial that we remain focused on the goal - not the immediate victory, but the ultimate one. Through unity, we can achieve more and be more effective.

The *posuk* in *Devorim* (7:7) tells us that Hashem didn't choose us because of our great numbers, because, in fact, we are the smallest among the nations. We are not the largest in numbers, but we are the most in the sense that when we are *b'achdus*, all our deeds combine and add up, while the other nations, though much greater in number, can not combine all their deeds because they are not *b'achdus*.

We have to figure out how to work together as a united group with common goals, not as separate individuals who walk on the same path.

Even before the birth of Moshe Rabbeinu, his mother and sister, referred to by the Torah (*Shemos* 1:15) as Shifra and Puah, made a career out of caring about others and extending kindness toward other human beings. The Torah states that in reward of their kindness, "*Vayaas lohem botim*," they were blessed with institutions of *Kehunah*, *Leviyah* and *Malchus*.

The savior of the Jewish people was placed in a bassinet and saved through acts of kindness by Basya, the daughter of Paroh. The Torah (*Shemos* 2:10) recounts that she called him Moshe, stating, "*Ki min hamayim meshisihu* - Because I plucked him from the water."

The *Maharal* (*Gevuros Hashem* 18) teaches that of the many names of Moshe, he is eternally known by the one Basya gave him, since it reflects her act of kindness. The Torah is all about pleasantness - *derocheha darchei noam* - and all its paths are peaceful. It is a *Toras Chesed* and, therefore, everyone, including Hashem, refers to Moshe by the name given to him by the daughter of Paroh, who performed an act of *chesed* in saving the infant from death among the reeds.

The Torah reports concerning Moshe (*Shemos* 2:11), "*Vayigdal hayeled* - And the youth grew bigger." What was the catalyst of his growth? The *posuk* continues: "He went out to his brothers and saw their suffering." The young man who was growing up as a prince left the king's palace to walk among the slaves and experience the cold, privation and oppression, so that it would be palpable and remain with him even after he returned to the privileged confines of the citadel of wealth.

When he saw a Jew being assaulted by a Mitzri, he reacted quickly and forcefully, refusing to accept it. When he saw a Jew raise his hand against a fellow Jew and then heard the Jew's response to his rebuke, he cried out, "*achein noda hadovor*." He was proclaiming that *geulah* results when Jews join together. It is a product of everyone being connected *b'achdus*. If there is division, *peirud*, he was telling them, we will remain in *golus*.

Moshe escaped to Midyon, where his first act was also one of *chesed*. He was at a well, and when he saw that shepherd girls were chased from watering their flock at the well, he performed that duty for them. His act of kindness to strange girls and their sheep led to him finding a mate for himself and beginning a family of his own.

The *parshiyot* and their lessons are timeless. Into each *golus* and subsequent *geulah*, the teachings accompanied us, instructing and providing insight into the minds of our oppressors. The storyline is always the same. *Chesed*, kindness, plays an integral part.

It behooves us to study the force that carried the Jews through Mitzrayim and the *middah* that accompanied them as they left, so that we can incorporate it into our lives and merit building a new world in the spirit of *olam chesed yiboneh*.

If we stand tall, remind ourselves who we are and what we stand for, and grab hold of our neighbor's hands and work together, then we can succeed in building a brighter future.

We need to live lives of sensitivity, realizing that our Torah is *Toras Moshe*, a legacy of the kind, compassionate shepherd who was also our *rebbe*, and teach and learn it in a way that builds people, leaving them feeling good.

We need to bear in mind that the Torah is a *Toras Chesed*. Greatness means being aware of the needs of others - not only the *klal*, but every individual in the *klal*.

This is the sensitivity demonstrated by great people, which we must emulate and incorporate into our everyday lives. By living with such focus and compassion, we will trigger Heavenly mercy and bring about the *geulah* for which we are all waiting.

The *posuk* states (*Shemos* 8:1), "*Vayokom melech chodosh al Mitzrayim asher lo yoda es Yosef - And a new Paroh arose over Mitzrayim who did not know Yosef.*" *Rashi* quotes a *machlokes* between Rav and Shmuel. One explains that the *posuk* is saying that there was a new king. The old Paroh died and the new one did not know Yosef. The other opinion maintains that the Paroh of *Shemos* was the same Paroh with whom we became familiar in *Sefer Bereishis*. He knew who Yosef was - after all, he had saved his kingdom - but acted as if he did not know him.

According to the second explanation, he is referred to as a *melech chodosh* because he *pretended* to have forgotten Yosef. He worked with the talented, reliable, efficient young man who stepped out of the obscurity of prison to save the country. He listened as Yosef spoke to him and followed his advice. And then, he abruptly erased the many accomplishments of the Jew who had made Mitzrayim into a world superpower and established a system that filled Paroh's coffers.

He did that because he had an agenda. There were many Jews and Paroh began perceiving them as a threat. They had to be contained, stopped and subjugated, and his advisers suggested enslaving them. But he had a problem: What about the debt of gratitude he owed Yosef?

He arrived at a solution. He craftily rewrote history and convinced himself, and his people, that the Jew had contributed nothing to the rehabilitation of Mitzrayim. His marketing people launched a campaign to change the public perception of Yosef and his people.

They likely started small, with a comment here and some innuendo there. But that was followed by: "Yosef? Who's Yosef? I don't know any Yosef."

One of the great heroes of the civil rights movement was a Jewish fellow from Chicago who taught America how to organize individuals and entire communities against an enemy. Not only was he the consummate community organizer, but he actually invented the concept and term.

His premise was that the way to triumph over the one who stands in your way is to first isolate him. Then you demonize him and lob your arguments against him, and after he has been sufficiently weakened, you move in for victory.

What he invented was the art of discrediting, which is used to perfection by politicians all the time. That tool is also used against us and our community, as we are regularly tarred with a wide, filthy brush. We have to work to ensure that the allegations don't stick. We must act in ways that ensure that the libels will not be believed. We should always be above reproach.

Certainly, anyone breaking the law should be punished for their crime. Anyone engaging in anti-social behavior should be ostracized. Anyone causing a *chillul Hashem* should be vilified.

Nobody should be permitted to bully another into submission. No one should take advantage of other people. Abuse must never be tolerated. We should not be silent as we watch travesties take place. Everyone should be treated with compassion, honesty and decency.

Each week, as the *melava malka* candles flicker, we gaze at them and think about the sublime joy of *Shabbos* and wonder how we'll face another week, six more days of *zei'as apecha*, until we can experience *Shabbos* again.

The transition, from *Shabbos* to *Motzoei Shabbos*, is sort of like the one the *Bnei Yisroel* faced as they left Eretz Yisroel, traveling to Mitzrayim to avert hunger. They left behind light and holiness, and descended into darkness and *tumah*.

We partake of *melava malka* to ease that transition. We sing "*Al tira avdi Yaakov.*" We say, "Do not fear. You are equipped with the strength and ability to rise above it all and remain true to yourselves, to each other, and to the Torah if you remain loyal to the teachings and lessons handed down from *avdi Yaakov.*"

"*Hakol kol Yaakov.*" With the calm voice of Yaakov, with the restrained *middos* of Yaakov, with the *temimus* of Yaakov, and with the dedication to Torah that Yaakov personified, we can overcome.

Together, we have the key to bring the *geulah*. Together, we can bring salvation to those who suffer. Together, we can beat back those who lie and portray us all as being dishonest. We can overcome the demagogues who demonize us. We can refute those who seek to demean and divide us.

We hail from different backgrounds and different countries. We are spread out across the world, speak different languages and have different life experiences. We have different views on many things, but deep down we are brothers and sisters, more interested in getting along than in squabbling.

One on one, we are able to get along, irrespective of dress or differing *minhagim*. We should not permit labels to divide us into different groups. There is more that unites us than divides us, and we should always do what we can to keep Jews together as a united cohesive group.

We should press on, always going upward, reaching new heights every day. Each day represents an opportunity to grow in Torah, *emunah* and *bitachon*.

Where others see darkness, we should bring light. Where others battle loneliness, we should bring brotherhood.

When we are *b'achdus*, we demonstrate that we are worthy of being redeemed from *golus*. When we are *mefuzar umeforad* (*Megillas Esther* 3:8), Amaleik can scheme to destroy us, but when we are united *ke'ish echad beleiv echod* (*Rashi, Shemos* 19:2), we can surmount all obstacles and reach the greatest heights available to man.

In a time of tragedy, we cry together. In times of joy, we celebrate together. No man is an island, no man is a rock. We mourn and we dance as one, spontaneously and without prodding. We help each other financially and spiritually. We don't live only for ourselves. We live for others. We are positive, not negative; loving, not cynical; looking to praise each other, not condemn.

We tasted what it feels like to be *geulim*. We resolve to remain united, strengthen the *achdus*, increase the love, and feel part of a greater, larger group, so that we merit the *geulah ha'amitis vehashleimah bekarov*.

# IS THERE A LOGICAL EXPLANATION FOR THE SIMCHA THAT HAS ENGULFED KLAL YISROEL?

BY RABBI AVROHOM BIRNBAUM



Is there a logical explanation to explain the *simcha*? Can someone perhaps encapsulate why, *al pi seichel*, *Klal Yisroel* came together with such profound joy, even ecstasy, last week?

There was a visceral need to just call someone on the phone and share the *simcha* with them. It didn't matter if that person had already heard that Reb Shalom Mordechai Rubashkin was released. You just had this tremendous, inexplicable urge to share the news, to revel in the news, to exult in the joy of his release.

I don't think it is an exaggeration to say that hundreds of thousands of *Yidden* spanning the four corners of the world came together with *achdus* and *simcha* that simply defy description. It wasn't just dry knowledge that he was freed. It was an instinctual feeling of pure joy, relief and general warmth that people just couldn't get enough of.

The first pictures and the small clips that went around did something to people that, in this writer's memory, is unprecedented. People were just fixated on them. *Yidden* who came to *Maariv* that night and *Shacharis* the next day spontaneously broke into dancing. *Lechaims* were held everywhere and there was a palpable, genuine *simcha* in so many communities. If *Klal Yisroel* does something with such *achdus*, there is no question that it has profound meaning. *Im ein nevi'im heim, bnei nevi'im heim...*

So, what is the source of this *simcha*? Why did the commutation of Reb Shalom Mordechai's sentence impact the *frum* community so deeply? Is there a logical explanation?

The truth is that I am not sure. The deep way that Reb Shalom Mordechai's plight and subsequent release touched people is truly unique, but let us at least try to underscore a few points that might at least offer some perspective.

## A YESHUAH FOR ONE, A YESHUAH FOR ALL?

Firstly, Reb Shalom Mordechai's *yeshuah* was in many ways a personal one for all of us, because it was clear to any thinking person that the egregiously exaggerated sentence of 27 years given to a fifty-year-old man was not just an attack on an individual, but an attack on the *frum* community in general and our way of life.

Because the story happened so many years ago, many have forgotten the lynch mob atmosphere in the general press and the left-wing Jewish press. It was a confluence of animal rights activists seeking to curb *shechitah* and anti-*charedi* forces that ganged up in a coordinated attack. It wasn't just Reb Shalom Mordechai who was on trial. In a sense, it was our way of life itself that was on trial. This was a campaign to tarnish the name and reputation of Jews who were not afraid to proudly practice their religion. They

were Jews who didn't seek to conform to the cultural and politically correct norms out there. Reb Shalom Mordechai symbolized that kind of Jew and was thus, in a certain sense, representing us. In some way, we felt that we were on trial in Iowa and that the obviously unfair 27-year sentence was not just given to him, but to us as a community.

His release was therefore an indication that things had finally become sane again. Things were back to normal.

## THE POWER OF EMUNAH

Secondly, who wasn't touched by the simple *emunah* of Reb Shalom Mordechai and his family? One would imagine that a person facing such a sentence, a 50-year-old once sitting *bikvodo shel olam*, who had to suddenly leave his family to spend his days and nights robbed of his freedom in an atmosphere so diametrically different than all that was near and dear to him, would naturally become depressed, wallow in self-pity, and simply not be able to carry on with life.

How can a son, husband, father and grandfather of 50 years face a 27-year sentence? How can one even contemplate all of his children's weddings that he would miss and all of the grandchildren he would never really know?

But Reb Shalom Mordechai and his wife and children and parents possessed a level of *emunah* and *bitachon* that touched an extremely deep chord with anyone who merited seeing sparks of it. It was a deep, simple faith that Hashem would help him. He knew he would get out. We were skeptical. This *bitachon* in Hashem, this unconquerable *nekudah penimis* of a son who knows his Father loves him and is holding his hand, characterized Reb Shalom Mordechai's eight years in jail. He never allowed himself to fall and falter. Not only was he strong himself, but he gave strength to others in such a simple yet profoundly heroic way that when we saw how he was right and we had all been wrong, we were suffused with *simcha*. Hashem was showing that He takes care of those who truly trust in Him. We saw it. Indeed, every *Yid*, no matter how cynical, couldn't help but be engulfed by a shower of *temimus*, of *emunah peshutah* in the ultimate goodness of Hashem and His kindness to those who trust in Him. No matter what happens, Hashem helps those who truly trust in Him. "*Becha botchu avoseinu, botchu vatefalteimo* - In You our fathers trusted, they trusted You and You delivered them" (*Tehillim* 22:5).

## THE "PERSON" OF KLAL YISROEL



# FROM CELL TO

# CELEBRATION

BY RABBI YOSSI ROSENBERG

Okay, so Rubashkin's out of jail and the entire *frum* world is literally dancing with collective joy and happiness. There will be photos, speeches, articles written, and thousands upon thousands of conversations centering around the long-awaited release of Reb Shalom Mordechai Rubashkin from his unjust and vindictive prison sentence. This week, wherever one goes, whatever the occasion, the topic of conversation seems to be one thing and one thing only: the *Zos Chanukah* miracle of Reb Shalom Mordechai's release.

What about next week, when the headlines change and the news moves on to other things? What will be in a month, when the euphoria and boundless joy will have long worn off? If the awesome story of this week is nothing more than a story of *this week*, then we are in danger of missing a boat here. If we don't learn something *from* this week's amazing event, then all the dancing and exhilaration may be no more than a superficial thrill, a *l'chaim* that lasts only as long as the effects of the alcohol.

Surely there is a *lot* more to this story.

While there are no doubt *many* lessons and ideas with which to come away from this week's thrilling event and the spontaneous outbreak of joy which was in itself an awe-inspiring occurrence, perhaps it would be worthwhile listing a few of them as they come to mind. In this way, we can turn what might otherwise remain little more than an awesome "news event" into a *meaningful* event that can remain with us for the rest of our lives.

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There are those who may be wondering about the validity itself of the virtually unprecedented collective joy that we all experienced this week. Suppose a man was ill with a life-threatening illness, one fellow asked, and he suddenly had a miraculous turnaround and recovered completely. Is that any less good news than what happened this week? His wife and children almost lost him, for good, and suddenly, from one day to the next, he recovers and is back. Is that any less of a *simcha*?

Surely it is not.

So why, one might ask, whereas in the case of a sick person only *his* family and friends would be jumping for joy, in this case, *all* of *Klal Yisroel* is collectively excited? Is that legitimate, or is it merely because this "happened to be" a huge news story?

Why indeed was there such an unbelievable – and heart-warming – collective joy when anyone and everyone heard about the release of Shalom Mordechai Rubashkin?

The answer is clearly because anyone and everyone was invested in the saga of the incarceration, the trial, the injustice, the *tefillos*, the support, the visits, the letter-writing, and every other aspect of

the Rubashkin story. In the same way that the family and friends of someone who was critically ill and miraculously recovers do indeed feel an unprecedented excitement and joy at the recovery, in this case, *we were all* family and friends because we had given of ourselves towards this situation.

The sheer number of people – from children to adults, simple folk and big *machers*, and from all groups and neighborhoods – who took *kabbalos* upon themselves, raised money, said *Tehillim* or did any of numerous other things for the sake of Shalom Mordechai *ben* Rivka is the *reason* that joy at the outcome was as shared, as collective and as widespread.

Years ago, I was in the home of an American family living in Bnei Brak when the wail of an ambulance was heard passing by. Of course, many of the children ran to the window to view the ambulance. The mother immediately stopped what she was doing and said, "*Kinderschach*, let's all say a *kappitel Tehillim* in the *zechus* of whoever may be needing it." She then proceeded to say one *kappitel* aloud so that the children could say along.

How long does one *kappitel* take? Half a minute? Those *tefillos*, however, can have a lifelong affect on whoever needed them.

We may see Hatzolah rushing by and cluck, "*Oy vey*," or just do nothing and move on with our lives. Or we can invest half a minute of our lives and do something real, something concrete, for someone else in need. It need not always be a huge fundraiser, a jail visit, or a month-long *kabbolah*. We *can*, however, do our utmost to ensure that we never merely say, "*Nebach*," when we hear of a sad situation – and then move on. Even just one short *kappitel* of *Tehillim* can not only help (far more than we could ever imagine), but it can also change who *we* are, turning us into more caring, more attentive people.

Most of us did not know Rubashkin beforehand, yet we gave of ourselves for him. We can do the same thing from today onwards for everyone else as well.

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We must never forget that before this unbelievable moment of joy came eight long years of unfathomable pain. It is surely not possible for anyone who had not lived through such an experience to imagine what it is like. Additionally, because Reb Shalom Mordechai was so unusually positive throughout (as we read or heard anytime he was visited or called or from the letters he wrote), it was almost easy to forget that it cannot possibly be that simple to remain this way day in and day out, week after long week, month after month, year after

## Is There a Logical Explanation

Another aspect that contributed to the euphoria was the remarkable *achdus* that efforts on behalf of Reb Shalom Mordechai fostered and promoted. The effort was largely a grassroots one. Certainly, many important organizations were involved, but at its core, it was an effort carried out by individuals who saw a crying injustice and felt that they couldn't stand by and make peace with it. They were *Litvishe Yidden*, *Satmar Yidden*, *Lubavitcher Yidden* and so many others who came together despite their differences, because a *Yid* was in need.

There is a well-known *vort* said in the name of Rav Meir Shapiro at the time of the infamous trial of Mendel Beilis, a Jew accused in a blood libel in early 20<sup>th</sup>-century Russia. The prosecutor accused Jews of harboring contempt for non-Jews, quoting a statement from the *Gemara* that, according to his understanding, ostensibly demonstrated how superior Jews feel to gentiles and how they loathe those who are not of their faith. "*Atem keruyim adam*, you [the Jewish people] are called 'man,' and the nations of the world are not called man," says the *Gemara*. The *rov* of Moscow, Rabbi Yaakov Maza, is reported to have received advice from Rav Meir Shapiro, who explained that the *Gemara* specifically uses the term *adam* rather than *enosh* or *anashim* because the term *adam* reflects the essential character trait of the Jewish people, a trait of oneness and togetherness. We are all one "man."

"This essential Jewish characteristic is on display during this very trial in a courtroom in Moscow," he said. "The entire Jewish world is up in arms. Jews across the globe are using all the resources at their disposal to intercede on behalf of their falsely accused brother, Mendel Beilis. We are one *adam*, one man, one organic whole. We feel each other's pain and are willing to sacrifice for each other in a way that no other people has ever dem-

## From Cell to Celebration

year, always saying that surely soon the salvation will arrive.

It's easy now – perhaps – to speak of *bitachon*, of Hashem running the show, and of Hashem's salvation coming in the blink of an eye, etc. To speak the same way when one is, say, four years into a terrible situation with no end in sight is what is awe-inspiring and a lesson for us all.

How did he do it?

Surely we will yet hear many things from him, but there is one item that he has already pointed to over and over, something we can all take with us from this amazing week. Shalom Mordechai told how at the very beginning of his incarceration, someone sent him a *sefer Chovos Halevavos*, *Shaar Habitachon*. This one *sefer*, authored by a *Rishon*, is what he says helped bring him through the next eight unfathomable years.

This is also a *sefer* we can all learn.

While the language of the *sefer* itself may not be the easiest, the *sefer* is sold today with the *peirush* of the *Lev Tov*, which makes it practically accessible to anyone. There are many other *peirushim* as well, and there is no question that anyone who learns this *limud* on a constant basis will find his or her life changed forever. Yes, we lead full and busy lives, but a ten-minute *sefer* in *Shaar Habitachon* (as well as any other part of the *sefer*), perhaps the first or last ten minutes of a regular *chavrusaschaft* or as a stand-alone *limud*, would pay out lifelong dividends well worth the effort.

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onstrated."

This is what we felt throughout the entire Rubashkin saga, and that possibly explains why there was such euphoria and such profound *simcha* across the *frum* world. It was our *simcha*. It was we, the one "man" that constitutes the Jewish people, who had been released from a profound injustice.

Perhaps those who are not *b'simcha* because of Reb Shalom Mordechai's release should do a bit of soul searching as to why they feel excluded from the collective body of *adam* that characterizes the Jewish people.

### OF MESIRUS NEFESH AND RACHAMEI SHOMAYIM

So, my dear friends, coupled with the tremendous feeling of *hoda'ah* to Hashem and gratitude to His *shluchim*, the indefatigable people who worked so hard on behalf of his release and President Trump, who deserves our unreserved *hakoras hatov*, let us not forget one more thing.

Let us not forget that initially, Reb Shalom Mordechai's plight was not a cause célèbre. It wasn't popular to support him and work on behalf of his release. The coordinated campaign to besmirch him and us made it difficult to come out and support him. Yet, there were those who were *moser nefesh* to do so anyway, most prominently the publisher and editor of this paper. It was this small group of *mesirus nefesh Yidden* who were ultimately Hashem's *shluchim* to arouse the world to recognize an injustice that demanded rectification.

It was their altruism that certainly brought about much *rachamei Shomayim*. As we celebrate with *Klal Yisroel*, let us remember that doing the right thing even when unpopular and never giving up are seeds that eventually grow and flourish into tremendous *yeshuos* and a *simcha* that encompasses *Klal Yisroel* across the globe.

Of course there are many, many more lessons we can take with us from this inspiring, exciting and eventful week. There is the fact that *yeshuas Hashem k'heref ayin*, G-d's salvation can come in the blink of an eye. This should be a *chizuk* for those going through a difficult time. It is also an *achrayus*, a responsibility, for all of us. If the collective *geulah* can come at any second, are we ready for it? Will our actions, our thoughts, our dress and our behavior be what they ought to be should the *geulah* suddenly be upon us?

We see, as well, that rather than us being pawns to world events, Hashem orchestrates world events, whether big and small, so as to serve the results *He* seeks for every Jew, no matter who.

There is also the lesson of the power of one person. Rubashkin's cause, at the very beginning, was one almost no one sought to champion. Yet a few tenacious individuals – notably the editor of this very paper – took upon themselves the impossible cause of raising concern, support, as well as millions in legal fees for someone they astutely perceived to have been targeted unjustly.

Today, with the truth and the degree of corruption involved in the prosecution already an established fact, of course we all felt for, supported and *davened* for our brother who was wrongfully and dishonorably targeted. Let us never forget for the future, though, that if there ever comes a time when *we* feel something strongly, but we feel inadequate to the task, we must never underestimate the power of one. With the power of the *real* One at our side, we can always succeed.

Whether any of the above, or any other lesson from this unique event, as long as we take *something* – something real, something concrete – with us, we can turn it into a truly special and meaningful time rather than simply a thrilling piece of news that fades away like all news ultimately does.

# THE LONELY BENCH AND TABLE AT THE OTISVILLE CORRECTIONAL INSTITUTION

BY M. PROIZDOR



This evening, we, the institutional bench and table located in the cell block formerly occupied by a federal prisoner in Otisville, NY, are saddened by the abrupt departure of our long-time companion and cellmate. The murmurs that we hear from just beyond the bars of our dank concrete walled environs are saying something about some “Hanukah miracle.” The other prisoners are stunned that their compadre, who many have come to respect and admire for his steadfastness and piety, is now walking towards the wardens’ office and will soon be a free man. The talk of the correctional facility is that President Donald Trump has personally asked for his release via a commutation of his sentence, which seemed like only a wishful far-off dream to our cellmate just a few days ago.

We, though, are left to wallow in our loss. We have been bolted to the wall of this forsaken place for too many years. We have hosted some of the most frightful people, the underbelly of society, who have used and abused us during their time spent in our proximity. Their mannerisms and language are just some of the nightmarish memories that we have of them.

But our most recent occupant, he was oh so different. From the moment he arrived, the dark and dingy cell began to brighten, if ever so subtly. He lined me with books, though I could not make out what language they were written in, but it was certainly not English. The books all seemed well-worn and our occupant reached for them constantly on a daily basis. One of the most powerful experiences was when he seemed to sit on me for hours at a time and pray from a book, while tears openly flowed from his eyes. He seemed to be simply pleading to G-d. He would don a prayer shawl and transport himself to another realm entirely – it was almost like his body may have been physically imprisoned, though mentally he was not imprisoned at all.

Over time, we began to put some of the pieces of the puzzle together and understood that he was reinforcing his faith in G-d (we learned a new word: Hashem), and that through the many letters he received and the books that he studied, he only grew stronger in his faith in Hashem.

Through the many letters of correspondence that he relished reading each time they arrived, we could tell that he had a very wide and varied support system. His legal team seemed to be top-notch and his family spared no expense and effort in procuring the best possible representation. Numerous organizations filed amicus briefs in support of his cause and numerous former Department of Justice officials came to his defense. The miscarriage of justice, in that his sentence of twenty-seven years was so blatantly disproportionate to similar instances, was decried by many members of the United States Congress as well as the general public. Some in the press went so far as to call it a veritable “witch-hunt” with a strong stench of prosecutorial misconduct.

We could tell that his time spent away from his wonderful family was very painful. He wrote to them and spent precious few minutes visiting with them in the prison lounge, but the agony of watching them grow up without their father at home was at times unbearable.

He built some of the most unusual friendships while in prison. It was not so much with the other prisoners per se, though he did befriend

many, who in turn confided in him, trusted his advice and valued his friendship. It was with people he typically would have never crossed paths with if his life had remained outside the confines of the Otisville Correctional Facility.

As an ardent follower of the Chabad *chassidus*, his affinity was toward his Lubavitcher upbringing. His familial ties to this Chassidic dynasty run deep, and that is where he felt most comfortable in furthering his relationship with his Creator.

And that is why it is so incredible that we, my bench friend and I, got to know a weekly newspaper called *Yated Ne’eman*. It sat on my table top from week to week, and the bench and I were able to get a glimpse of the numerous articles that seemed to focus in strong defense of our fellow cell-mate. There were personal ads from the publisher on a weekly basis soliciting funds for the legal defense fund. Not only was this boosting our cellmate’s morale, but the publisher was also using the newspaper as a fulcrum, generating even more publicity and press coverage. The articles were well researched and maintained a sense of urgency even as weeks became months and months became years.

As best as I can tell, Rabbi Pinchos Lipschutz, the paper’s editor and publisher, had clearly never crossed paths with Sholom Mordechai Rubashkin prior to his incarceration, as they obviously “danced in different circles.” What is further bewildering is that he not only came to his defense, but he likely became one of his most ardent and effective advocates, raising tens of thousands of dollars for his legal defense fund and become his true and cherished kinsman.

The author of this article is privy to an actual cell phone conversation that took place just after Shalom Mordechai pulled out of Otisville, as a free man, this past Thursday evening. Most of the conversation between Reb Pinny and Shalom Mordechai is personal in nature, but two comments that were uttered at the tail end of the emotionally charged and celebratory banter must be highlighted if only to possibly learn a valuable lesson. It was Reb Pinny’s words of “I love you” and Shalom Mordechai’s heartfelt and instantaneous reply of “I love you, too” that may be the key to unlocking this most unusual conundrum of relationships.

The myriad and spontaneous celebrations that followed the astounding announcement of Shalom Mordechai’s release throughout the tri-state area, as the sun set on *Zos Chanukah*, had the hallmark stamp of *pesukim* we just read in this past week’s *parsha*: “How great! My son Yosef is alive, let me go and see him,” and, “He then kissed all his brothers and wept upon them.”

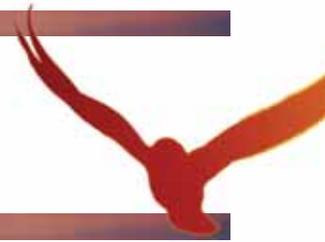
So many of us wept with joy upon hearing the news, yet 99% of us never even met Shalom Mordechai or any of his family members.

In Chassidic lore, we are told that “tears are the sweat of the soul.” When our *neshamos* are truly filled with joy, the differences between us and our fellow *Yidden* seem so miniscule and only seem to further melt away. When we collectively, as an *am echod*, feel the exhilaration and pure delight at the release of another *Yid* from physical bondage, there does not seem to be much that really separates us.

# THE JOYFUL BROKEN HEART:

BY RAV YAAKOV FEITMAN

## RESPONDING TO RECENT EVENTS



I usually try to separate the *divrei Torah* I send to my *shul* every week from these *Yated* columns. However, I would like to share with my readers a thought about recent events that began last week.

I sent my *mispallelim* a thought from the *Ayeles Hashachar* explaining that one aspect of Yosef's and Binyomin's greatness was that they surmounted their own emotions upon their pivotal meeting and thought only of their future ramifications for *Klal Yisroel*. In Rav Aharon Leib Shteinman's words, "their only life's purpose was understanding their divine mission. They never relented from this goal no matter what emotions were raging inside them."

I then added that "therefore, when Yosef and Binyomin looked deeply into each other's eyes, what they saw was the *Mishkan* and *Bais Hamikdosh*. *Chanukah* and *Asarah B'Teves* are two sides of a coin. They represent the triumphs and tragedies of Jewish history. Each of them beckons us to rise above ourselves for a day or a week. They alert us to the fact that there is more to each of us than our personal concerns and joys. The uniqueness of the early giants in our history is that they lived every day – indeed every moment – on this celestial level. Hashem only asks to achieve this self-expansion once in a while.

One way in which we must enlarge our horizons is to empathize and feel the joy and pain of our brothers and sisters in *Klal Yisroel*. There were two such opportunities in the past weeks. During *Chanukah*, a horrific tragedy engulfed a beautiful family in Brooklyn with the death of a mother and three children, and the father and other children fighting for their lives *r"l*. At the end of *Chanukah*, we experienced the euphoria of Sholom Mordechai Rubashkin being freed suddenly from prison. The extent to which we cried with the Azan family or rejoiced with the Rubashkin family indicates how connected we are with every Jewish soul, whether or not we know them personally. Only after we achieve that level can we seek to join Yosef and Binyomin in connecting with *Klal Yisroel* of the past and future as well."

With our readers' permission, I would like to continue this conversation in these pages. Every *Yated* reader should be proud to be part of a newspaper whose editor led the crusade to free Sholom Mordechai. The cause was joined in columns and arguments composed of pure *ahavas Yisroel*. The eloquent words and ringing paragraphs should have moved us all to action or at least *tefillos*. Why didn't more of us respond? Let us explore together a possible reason that may help us toward greater empathy in the future, hopefully only for sharing joy and gratitude.

It is actually the wisest of all men who said that no one can fully understand someone else's problems or happiness. Shlomo Hamelech (*Mishlei* 14:10) teaches that "the heart knows its own bitterness and no stranger will share in its joy." *Rishonim* (see *Daas Zekeinim Mibaalei Hatosafos*, *Shemos* 18:13) quote a *Medrash* that is of the opinion that Yisro joined *Klal Yisroel* after *Mattan Torah*. It explains that the reason he did not merit being

part of the great event is that he did not suffer along with *Klal Yisroel*. Many *gedolim*, including Rav Mordechai Hakohein, one of the *Arizal's talmidim* (*Shach Al Hatorah*, *Yisro*), Rav Aharon Leib Shteinman (*Ayeles Hashachar*, *Yisro*, page 152, and *Yemalei Pi Tehilosecha*, "Mattan Torah," page 543) and Rav Boruch Mordechai Ezrachi (*Mussar*, page 180) suggest that personal suffering was a prerequisite for the monumental *zechus* of receiving the Torah. However, the most basic explanation of this *Medrash* is that since Yisro – great as he was – had not suffered in *Mitzrayim*, he would not be able to understand or appreciate the many *mitzvos* that are *zeicher l'Yetzias Mitzrayim*, in memory of the pain and suffering we endured before we were redeemed.

We may thus conclude that as much as we may try, it is virtually impossible to artificially empathize with someone's anguish or joy unless we, too, experienced the occurrence.

So perhaps I was wrong to adjure my congregation to cry and rejoice with those they have never met. Yet, we know that *gedolim* have told us that this is exactly what we should do.

Rav Shlomo Auerbach *zt"l*, in his powerful *hesped* upon Rav Elazar Menachem Man Shach *zt"l* (printed in the "Mussaf Shabbos *Kodesh* of the Hebrew *Yated*, 23 *Cheshvan* 5762, page 32), said of the great author of the *Avi Ezri*: "There was probably no other heart that felt the pain of *Klal Yisroel*, the pain of [lost] *kavod Shomayim*, the pain of [lost] *kavod haTorah* and its lost grandeur." He described seeing Rav Shach weeping in his private chambers ("Kodesh *Hakodoshim*") over some attack on the Torah, even when no one else had yet perceived the severity of the assault. So apparently it is possible. But what is the secret? What about Shlomo Hamelech's wise warning?

Actually, Rav Shlomo Zalman did not ignore the *posuk* in his eulogy. He dealt with it directly, quoting the explanation of the Gaon of Vilna (commentary on *Mishlei* 14:10). The Gaon states that when *Moshiach* arrives, all the organs will ask the heart why its joy at the *geulah* is so much greater than theirs. The heart will answer that its anguish, too, was infinitely deeper, so concomitantly, its celebration is greater as well." It is at that point that he references the noble heart of the Rav Shach. Rav Shlomo Zalman goes on to remind us that "*Rachmana liba ba'i* - The Torah (or: Hashem) requires [that we have] a heart" (*Sanhedrin* 106b).

Perhaps we may understand Rav Shlomo Zalman's profound words best with an adage from an early Chassidic *rebbe*. The *rebbe*, Rav Simcha Bunim of Peshischa (quoted by the *Likkutei Yehudah* on his ancestor, the *Sefas Emes*, "Tefillah," page 194) declared that "there are those who [only] think they have a broken heart. However, they still don't have a heart at all." The author also quotes his uncle, Rav Meir Alter, who died *al kiddush Hashem*, that the correct quote was actually "when someone claims to have a bro-

# SHOLOM MORDECHAI'S



BY DOVID LIPSCHUTZ

## STORY ON A PERSONAL LEVEL

As my father walked up to the podium at Yeshiva Ohr Somayach of Monsey to address the *Yidden* who gathered for a Klal Yisroel Fund rally, he handed me his phone. The reason for this was so that I should be able to continue my nightly learning session that I had with Sholom Mordechai if he was to call.

I learned with Sholom Mordechai for many months leading up to that night, but I knew something was going to be different about this call. It was April 27<sup>th</sup>, 2010, the night that the prosecution asked Judge Linda Reade to sentence Sholom Mordechai to 25 years.

Sholom Mordechai played a large role in my upbringing the last 8 years. My father had read some negative articles about Agriprocessors and its owner. He flew down to Postville, Iowa, to see it for himself. What he saw didn't correlate with the description he'd read in the papers. These were outright lies. He decided then and there that he would not let this one pass. He is going to do something about it. He was not looking for *kavod* or anything of the sort. All he knew was that he was going to do anything he could to help this *Yid* out, no matter the strength or time it would take.

When he got back, he made a few phone calls to try and see what he can do. His phone rang. It was the special Satmar fellows who were ready to help in whatever way they could. They got to work.

The main objective was to raise awareness amongst all of *Klal Yisroel*, because they knew all along that the only way to succeed is through *tefillah* and *achdus*. The decision was made to start holding large rallies all across the East Coast. These rallies would have speeches from *rabbonim*, *askanim*, lawyers and family members. Thousands of people attended these events and the mission was set.

I was in 7<sup>th</sup> grade at the time and a job was given to me and my younger brother, Ari. It wasn't such a great job, but it was something we always did with a smile. Every day, after school, while most children our age would unwind, we were given the task of opening Klal Yisroel Fund mail. We sat for an hour plus, on a nightly basis, opening hundreds of envelopes. At the time, it didn't make such an impact on us, but the things we saw were amazing, be it money from a lemonade stand, gold jewelry to be pawned, \$2 cash, or a check for \$4.50 with a note saying "We wish we can give more, but right now this is all we can give." We once opened an envelope and found a little over \$100 in it, with pictures of a carnival that young children made to help raise money for Sholom Mordechai. All these seemed like little donations, but somehow they added up to millions.

One night, while I was hard at work with my new job, a life-changing event happened. My father asked Sholom Mordechai if he'd want to learn *Mishnayos* with me. I'm not quite sure if this was supposed to be a one and done thing, but it lasted for months. Every night, Sholom Mordechai would call my father. When they finished sharing some Torah thoughts and discussing important matters, the intercom would go on and I'd hear, "Dovid, Sholom Mordechai is on the phone." I would

drop whatever silly thing I was doing at the time and to the phone I ran. We would learn some *Mishnayos* and then he'd tell me some *vertlach* and stories.

As Reb Yerachmiel Simins began his remarks at Ohr Somayach, my father's phone rang. I ran out to see who it was. It was Sholom Mordechai calling to learn *Mishnayos* with a little boy the night I thought he was coming to the realization that life will never be the same. I answered and suddenly began crying uncontrollably. He let me cry before saying, "What's bothering you? What are you crying about?" When I got control of my emotions, I said, "Who knows what the future will look like?" He responded in a calm and charming way, saying, "Dovid, Hashem has His plans, and no matter what the judge said, all will be fine. We are here to serve *Hakadosh Boruch Hu* no matter the circumstance. All we can do is *daven* and say *Tehillim*."

The man who just learned hours earlier that, for all practical purposes, he was going to spend life behind bars was calming me down, saying that it's all Hashem's *ratzon* and there was no need to worry.

I had the *zechus* of learning with him for a bit longer. Then he was transferred to Otisville. In Otisville, he was only allowed ten minutes on the phone a day, so our *chavrusahshaft* was forced to end.

For the next years, we kept in touch by mailing letters to each other. If the Rubashkin story needed a title, it would have something to do with his *emunah* and *bitachon*. In the first letter I received (the letters were numbered *Alef* for *emunah* *Bais* for *bitachon*), he wrote that there's an *inyan* to give *tzedakah* before *davening*. "In a place called prison, no one has money," he wrote. "Then I remembered '*shoveh kesef k'kesef*,' so I decided every day to set aside a stamp, and when I'm freed, I'll redeem them and give the money to *tzedakah*." He continued: "It's these little physical things we do in the free world to do *mitzvos* that is so missed here. Like the ability to put your hand in your pocket and place a coin in the *pushka*. Seems so simple, yet when we can't, *Rachmana litzlon*, we yearn and ask *Hakadosh Boruch Hu* to allow us the ability to serve Him." The letter closes: "I have *emunah* and *bitachon* that very soon, like today, *Hakadosh Boruch Hu* will free me and we will be able to say *Hallel l'Hashem* together and learn some more as we used to, this time face to face. :-)"

This was the first of many letters filled with smiley faces and *mus-sar vertlach* that we exchanged. I can say that each one was more impacting than the previous.

He once wrote how he remembers in *yeshiva* dormitory how some *bochurim*, when their *yarmulka* would fall off in middle of their sleep, they were so connected to Hashem that they'd awaken, pick it up, and place it back on their head. He saw a stark contrast to this in prison. Roll call in the prison is early, and when they came around, his cell-mate was fast asleep and snoring. The guard yelled his name, but there was no response. So he screamed his name. Nothing doing. A second

## Sholom Mordechai's Story on a Personal Level

time and still nothing. He decided to try something. In a low, calm voice, he said, "Roll Call," and all of a sudden his head popped up. Because in a place called prison, who you are has absolutely zero value, and the thing you connect to is "Roll Call."

On many *Motzoei Shabbosos*, we would have the *zechus* of hearing from Sholom Mordechai. My father would put his phone on speaker and we would all listen to Sholom Mordechai singing "Ah Gutte Voch" in a happy tune. When the call would end, we would all marvel: "It sounds like he's relaxing on a couch in his house with absolutely no worries."

I called his wife on *Erev Rosh Hashanah* this year to give her my

## The Lonely Bentch

It is at that moment, when we feel that unmistakable bond with another *Yiddishe neshamah*, that we can say to a "complete stranger" who may be of a completely different "stripe and flavor" than us, "I love you!"

While it may or may not be true that "there are no atheists in a fox-hole," it is categorically and unequivocally true that when one *Yid* feels the pain of another *Yid* so acutely, he has no choice but to cry out in *tefillah* for him and do everything he can to help that person out of his predicament.

That is why so many of us for these past number of years kept on our lips as we *davened* the name "Shalom Mordechai *ben Rivka*." That is why *roshei yeshiva* and laymen alike made the long trip up Old Mountain Road and subjected themselves to the whims and moods of the guards on duty in order to just spend a few minutes with Shalom Mordechai and give him some *chizuk*. [Whether or not they were the givers or the recipients of that *chizuk* is up for debate.]

That is why *cheder kinderlach* in Detroit and beyond were so easily

## The Joyful Broken Heart

ken heart, we must first check if has a heart at all." He continues that with this concept, Rav Bunim explained the *posuk* of "Harofei *lishvurei lev umechabeish le'atzvosam* – He is the Healer of the brokenhearted and the One Who binds up their sorrows" (*Tehillim* 147:3). It would seem that if Hashem is healing the broken hearts, why would there still be sorrows? Rav Bunim answers that indeed Hashem first removes the sorrow, although there is still a broken heart. A person can have a broken heart and still be full of *simcha*.

What exactly do these cryptic words mean? Perhaps, now that we, too, have experienced weeks of conflicting emotions, we can begin to understand. Acting upon Rav Bunim's admonition, we must labor mightily to "have a heart," and develop our hearts, so that we can feel other people's pain. We must do this when we are not "under the gun" to react to breaking events and news. Yet, at the same time, we must leave room in that expanding heart for the joy of someone who has been healed, released, given birth or achieved some kind of salvation. A great heart doesn't find contradictions in these events, only an ongoing empathy and love for

*brachos*. When I finished, she said, "Amein. You probably want to speak to my husband. He's not home now, but *im yirtzeh Hashem* he will be home later and I'll tell him you called." They never lost hope and always believed that today would be the day, which is why she kept Sholom Mordechai's *kappote* in the car, waiting for a call to go pick him up. *Boruch Hashem*, today he is a free man. His *guf* reunited with his *neshomah* after being released from "a place called prison."

When I spoke to Sholom Mordechai a night after he was freed, I asked him what he sees different in the world today than the day he went into prison. His response was, "I don't want to talk negative. The true *achdus* that is so noticeable really means a lot. To see all these people coming together is what's really amazing and going to bring the ultimate *geulah*."

To all of *Klal Yisroel* who were involved, whether by *davening* for Sholom Mordechai Halevi *ben Rivka* or by helping cover the legal fees, we were all *zoche* to be a part of this amazing *kiddush Hashem* and this extremely special story.

Just remember: *Alef, Bais, Gimmel*. It's that simple!

energized to bring just a little bit of joy into a very dark cell by conversing as "pen pals" with Shalom Mordechai. That is why people of all backgrounds authored thousands of letters to government officials, keeping the issue front and center in the minds of these politicians. And the list goes on. In my humble opinion, I would posit that this is also why Reb Pinny himself became so deeply-rooted in this cause that so profoundly affected another *yid*.

In the *posuk* quoted earlier, wherein Yosef "kissed all of his brothers and wept upon them," the *posuk* ends with the following words: "Afterwards, his brothers conversed with him." Why was it only *ipso facto*, after the fact, that the brothers spoke to each other in this way? Why couldn't they have spoken to each other and said, "I love you," before everything unfolded and unraveled the way that it did?

If only we could take this lesson to heart in all of our daily interactions with our fellow *Yidden*. We could then bring the *geulah* that much closer. If only we could comfortably turn to our fellow *Yid*, in whatever stage and status of life they may find themselves in, and state plainly and without any inhibitions, "I love you, too." Then we will surely merit the ultimate *ahavah* that the *Ribono Shel Olam* has set aside for each and every one of us with the coming of *Moshiach Tzidkeinu bemeheirah beyomeinu*.

others and whatever they need at the time. Rav Bunim teaches that this is part of a great human process, which does not conveniently end or completely go away.

Perhaps, too, that is why the Vilna Gaon evokes the *Yemos HaMoshiach* in explicating this sensitive matter. Only then will we be able completely put aside our sorrow and be completely *besimcha* at all times, *bimeheirah beyomeinu*. In the meantime, let us find it in our hearts to care enough to cry or laugh with others when they want to know that we care.

Interestingly, my *rebbe*, Rav Yitzchok Hutner *zt"l* (*Maamorei Pachad Yitzchok, Pesach* 54:2, page 198) reveals a tradition from the *Chachmei Ha'avodah* that "true empathy with someone's *simcha* is a greater form of commiseration than sharing his pain." He notes that "this matter is very profound" but offers one "superficial" aspect of this distinction: "when someone empathizes with another's pain, there is also a touch of *rachamanus* – pity – involved." This explains the *Chachmei Ha'avodah's* preference for sharing in someone's joy, for then the desirable *middah* of total identification with someone else's emotions is totally pure and unadulterated by other traits, no matter how laudable they are. May we be *zoche* to share in many *simchos* with *acheinu bais Yisroel*.



# Rubashkin Reflections

## A PEEK BEHIND THE SCENES

BY DEBBIE MAIMON

As the public gleans tantalizing tidbits about behind-the-scenes dynamics that led to Sholom Rubashkin's release from prison, something mysterious and elusive continues to radiate across those watershed moments.

"Over the past eight years," wrote *The Des Moines Register* a day after President Trump commuted Sholom's sentence, "a bipartisan chorus representing seemingly every ideological perspective present in American politics has weighed in on the Rubashkin case, either to demand a Department of Justice review or to ask for a presidential commutation of his long sentence."

How did this happen? Who got so many influential people outside our community to listen to the truth and actually care? There was a time when no one wanted to get involved because the name "Sholom Rubashkin" had been so maligned. How did that change?

### His Own Community Had to Love Him

The answer is that Sholom's own community had to first believe in him and support him. As painful as it is to admit, that brotherhood and loyalty was at first grievously absent. By the time a hostile media got finished with Sholom him back in 2008-2009 at the time of the Postville raid and ensuing federal trial, he had few friends.

The man who had for many decades used his wealth to benefit not only his own people and his employees, but the city of Postville itself, donating large sums to a host of town charities and good works, had been reinvented by the media as a greedy, heartless corporate boss who exploited children and the poor.

And many of his fellow Jews bought it.

Into this desolate landscape stepped one man who had the integrity to see the truth – that Sholom was the victim of a modern-day blood libel. He also had the resources, as the editor of this newspaper, to push back against the lies. Rabbi Lipschutz had the courage to do what nobody else dared to do at that time: to stand solidly behind Sholom Rubashkin and expose the terrible injustices being perpetrated against him.

Almost all other voices were careful to remain neutral. But there are times when neutrality is not a virtue but a sin.

In the beginning he wasn't taken seriously. People scoffed, made jokes, rolled their eyes. But he persisted, forming a nucleus of askanim who together with him spread the message until the tide of public opinion slowly changed. Slowly, the community learned the truth about Sholom Rubashkin, and the crimes being done to him under the guise of legality.

Only when his own community adopted him and began to love and support him, did public opinion begin to shift in the secular world. That is perhaps what spawned the first seeds of redemption.

### The Boomerang Effect

In retrospect, the negative forces that drove the ruthless government

campaign against Sholom paradoxically contributed to this shift toward redemption. As devastating as they were, these virulent forces ultimately boomeranged.

"Darkest dark led to lightest light," remarked Mrs. Roza Hindy Weiss in a wide-ranging interview with the *Yated*.

She noted some of the lowest points in the saga for her family, such as prosecutors originally calling for a life sentence for her father. Yet, this so outraged judicial officials that it triggered, as early as 2009, a harsh protest to Judge Linda Reade by six former US Attorneys General.

"Our attorney said it was hopeless to approach these men, they would never get involved with a case that is ongoing. But to our amazement, they did. Rabbi Zvi Boyarsky of Aleph Institute and others somehow pulled it off."

Subsequent letters of protest in the next few years by over 100 high-ranking judicial and legal luminaries buttressed by support from dozens of members of Congress, all grew out of that first outraged response to the prosecutors' overkill.

Another example of the "boomerang effect" was in relation to the court's refusal to acknowledge the powerful exculpatory evidence in the 2255 Petition and the Merits Brief, and the clear evidence of government misconduct. These appeared to be serious legal setbacks for the defense at the time.

Yet these defeats, disheartening as they were at the moment, became the fuel that powered support for a sentence commutation at the highest levels of government. Treated with denial and indifference in Iowa, the evidence of gross injustice in the Rubashkin case galvanized some of the most respected legal authorities in the country.

"An entire family is being destroyed by a draconian sentence that was meted out based on the underpinnings of fraud and deceit," wrote former U.S. District Judge Charles Renfrew in the *Des Moines Register* in 2016, in a sign that public opinion was radically shifting.

"With potential buyers being thwarted and intimidated at every turn, and a false witness being brought into the court to flagrantly lie and counter bidders' testimony, the legal wrongdoing evident in the Rubashkin case constitutes an extraordinary miscarriage of justice."

"The evidence of a complete breakdown in the justice system is what mobilized outrage across the political spectrum," affirmed Sholom's LA-based attorney, Mr. Gary Apfel.

### Hashgacha's Dazzling Footprint

The sense of wonder over Sholom's release grows with every discovery of spine-tingling "coincidences" that turned out to be game-changers, and acts of courage and humanity that took this saga to its jubilant finale. Only now are some of these astounding twists and turns coming to light. Gazing beyond their cloak of serendipity, who can fail to see the dazzling footprint of *Hashgacha*?

Did it just happen that person A knew person B who knew of someone else who had in his possession the "smoking gun" evidence long

sought by the defense?

Could it be random coincidence that a series of “cold calls” by activist Boyarsky of Aleph Institute reaching out for support for Sholom, kindled the dynamic involvement of two former deputy US Attorneys General? Their outrage over the travesty of justice spilled over to others; they set in motion a chain reaction that helped turn the tide.

Like a giant mosaic in which countless tiny pieces fuse into a stunning whole, the Rubashkin case drew together an unlikely and eclectic mix of individuals, organizations and communities. Many were from opposite sides of the political, ethnic and religious spectrum, often totally unaware of their ideological counterparts in the quest for justice until the “mosaic” was complete.

Mrs. Roza Hindy Weiss elaborated on some of these fascinating connections and pivotal breakthroughs in the case. She spoke of many individuals who made her father’s quest for justice “a life mission,” notably the editor of this paper, Rabbi Pinchos Lipschutz, attorney Gary Apfel and Rabbi Zvi Boyarsky.

She recalled the heartfelt sympathy and efforts of Rabbi Chaim Dovid Zweibel of Agudath Israel, and unsung heroes such as CPA Brian Dror; NY bankruptcy attorney Scott Steinberg; Rabbi Sholom Druchman of Kollel Chabad; former deputy US Attorneys General Michael Mukasey, Philip Heymann, Charles Renfrew and Larry Thompson; former FBI director Louis Freeh; attorney Alan Dershowitz; and many, many others who gave of their time and money for the effort.

## He’d Have To Be Brilliant. And Unafraid.

“When we went to work on the 2255 Petition, we knew we needed to do some deeper digging into the financial value of Agriprocessors when it first declared bankruptcy,” explained Mrs. Weiss as she pondered one of the many breakthroughs in the case.

“We wanted to prove the auction bids were high enough to pay the bank’s \$27 million loan, but we needed our own independent assess-

ment of the plant’s value before the government scared off the bidders. So we were scouting around for an accountant who’d be willing to get involved in this mess. He’d have to be brilliant. And not afraid of the prosecutors.”

The man for the job turned out to be CPA Brian Dror, an LA-based close friend of attorney Apfel. When asked for his help, Dror threw himself into the task with all his heart. “We swamped him with boxes and boxes of documents...” recalled Mrs. Weiss. “He went through everything... he even communicated with my father who knew of assets the government had not included in their audit.”

Dror found the government’s valuation of \$68.5 million was too low by at least ten million dollars. That meant that had the plant been sold to any of the serious bidders, there would have been more than enough profit to repay any outstanding creditors. The amount of loss inflicted by “bank fraud” would have been zero, making the fraud a “victimless” crime and shortening Sholom’s sentence by about 25 years.

To prove the plant was really worth this much, the defense needed to show, in addition to the new audit, that bidders were prepared to pay upwards of \$30 million for it. But at the time of Sholom’s trial in 2009, the defense was able to produce a sworn affidavit from just one bidder, Mordechai Korf. He testified he had wanted to purchase the plant but had no choice but to back off after prosecutors informed him of the “no-Rubashkin” edict and their right to exercise forfeiture of the property.

Judge Reade disdained Korf’s affidavit as of no value, saying she chose instead to credit the testimony of government witness Paula Roby who denied there was a “No-Rubashkin” policy.

Reade thus rejected the defense’s argument that the prosecutors, not Sholom, were responsible for the bank’s \$27 million loss. Based on this reasoning, she wrote, she felt justified in imposing a 27-year prison sentence.

## “You Can Tell Your Mother We’re Going To Bring Her Husband Home”

Senator Orrin Hatch, R-Utah and Senator Nancy Pelosi, D-CA were two of the most recent members of Congress to join the bipartisan chorus calling for a sentence commutation for Sholom. Mrs. Pelosi lined up additional support in Congress and repeatedly called to check on the progress of the sentence commutation.

Mrs. Weiss recalled traveling to Washington last year to meet with a few members of Congress who had agreed to hear about the case. “Gary introduced me to Senator Hatch... I spoke about how devoted my father is to his family and the community, what a loving, kind person he is, how much he’s always been there for others...” He was really listening, not just being polite. Then Gary showed him a power point presentation which gave a summary of the case, including the defense arguments, and all the evidence of government misconduct.”

“Senator Hatch seemed very moved. ‘You can tell your mother we are going to bring her husband home,’ he said to me.”

Hatch penned his own heartfelt petition to President Trump, pointing out the injustice of Sholom’s excessively long sentence asking him to commute it in time for his youngest son’s upcoming bar mitzvah.



SHOLOM MORDECHAI THANKING FORMER FEDERAL JUDGE AND U.S. ATTORNEY GENERAL MICHAEL B. MUKASEY FOR HIS EFFORTS ON HIS BEHALF.

## The Bidders Come Forward

It wasn't until five years later that an additional eight bidders were persuaded, after months of effort, to come forward. Each had flown down to Iowa in 2008 with intentions of bidding at the bankruptcy auction. In their sworn affidavits to the court, each testified that he had been forced to meet privately with prosecutors during the auction. The bidders all described very similar scenarios, with prosecutors aggressively insisting on the exclusion of all Rubashkins from any management role in the new company. Each bidder had been threatened with government forfeiture of the plant if, as the new owners, they failed to heed the prohibition.

"These nine affidavits were pure dynamite," said Mrs. Weiss, "They proved that the defense allegation of "No-Rubashkin" rule was true, that the government was lying."

"What we needed, in addition, was the testimony of someone who had no connection to my father. Someone who the government couldn't try to discredit as they did Mr. Korf, saying he was a friend of Sholom Rubashkin and his testimony was therefore suspect."

In a blaze of Divine providence, CPA Brian Dror turned out to be a business acquaintance of the one person who fit this criteria: the government-appointed bankruptcy trustee of Agriprocessors, Joseph Sarachek.

"What are the odds that these two men would know each other? How crazy is that?" Mrs. Weiss laughs. "Brian flew to New York to meet with Mr. Sarachek...Eventually, after lengthy discussions, Mr. Sarachek agreed to meet with Gary and Stephen Locher in LA in Brian Dror's office. At that meeting he provided very valuable information to the defense team.

Encouraged by former US Attorney General Michael Mukasey and Rabbi Shlom Duchman, head of Kollel Chabad, Mr. Sarachek eventually provided his own sworn affidavit. In it, he attested to the prosecutors' manipulation of the bankruptcy auction through the No-Rubashkin policy, and how difficult it made his job of selling the plant."

"The Sarachek affidavit put to rest any claims the prosecutors had that the bidders were lying," Gary Apfel affirmed. "It was a major breakthrough in the case."

## Smoking Gun Evidence

In another game-changing "coincidence" around this same period, attorneys Gary Apfel and Iowa-based Stephen Locher discovered the infamous "Rieland memo" of a 2008 government meeting with bankruptcy trustee Sarachek and his counsel, attorney James Rieland.

The memo reconstructs the scenario in which the "No-Rubashkin" policy had been imposed.

"No-Rubashkins is very important to us—non-negotiable," US Attorney Rich Murphy had announced to trustee Joe Sarachek. He and assistant U.S. Attorney Peter Deegan insisted there could be "no involvement of Rubashkins from any standpoint (control or benefit), in the successor entity to Agriprocessors."

The new evidence thus shone a light on government schemes—later denied by the prosecutors—that led to the massive bank loss for which Sholom was falsely blamed.

Rieland's notes reveal that government witness Paula Roby, who would later deny under oath at the sentencing hearing that a "No-Rubashkin" policy had been issued, actively participated at this very meeting where prosecutors spelled it out.

Roby's brazen charade at the hearing was matched by that of the prosecutor who knowingly solicited her perjured testimony, the transcript shows. Their duet performance infuriated those in the courtroom who knew the truth. But their cover might never have been blown if not for the discovery of the Rieland memo.

"We didn't know it existed," recalled Mrs. Weiss. "We were looking for a different document and in the process, stumbled onto this one!"

The memo was the defense's long sought "smoking gun" and its impact, coupled with the net effect of the bidders' and Sarachek's sworn affidavits as part of the Merits Brief, was explosive.

An unprecedented letter outlining the new evidence and signed by over 100 former high level Department of Justice officials, U.S. Attorneys, federal judges and legal experts, including three former Attorneys General of the United States, petitioned the U.S. Attorney of Iowa's Northern District, Mr. Kevin Techau, to right a severe miscarriage of justice.

"There is new evidence of false testimony and willful manipulation [of the bankruptcy auction] that exacted the most possible punitive sentence for Rubashkin. That makes this a shocking case of prosecutorial misconduct," wrote legal luminaries Judge Charles Renfrew and former U.S. Attorney James Reynolds in the *Des Moines Register*. ["Prosecutors, Judges Decry Rubashkin Witch Hunt," 5/8/2016]

Reynolds called on Techau to rectify the miscarriage of justice, or be "as culpable" as the perpetrators.

## The Long Trek To Iowa

Before the powerful Merits Brief with the explosive memo was filed, Gary Apfel coordinated a meeting in Cedar Rapids, Iowa between three distinguished former deputy US attorneys general—Charles Renfrew, Philip Heymann and Larry Thompson—and U.S. Attorney Techau. In an interview with Yated, Apfel, who took part in the meeting, described its highlights.

"Why are we here, Mr. Techau?" Heymann, a man in his eighties, asked the U.S. Attorney at the start of the meeting. "We're here because we care about justice, about integrity. They are very important to us."

He then produced the incriminating Rieland memo that exposed the prosecutors' misconduct and explained its significance to Techau. There were some explosive moments as Heymann lost his composure, lashing out at Techau for the way "your prosecutors engineered a gross miscarriage of justice in order to punish Aaron Rubashkin by destroying his company!"

"We offered to bury the notes and never to publicize them, if his office would commute Sholom's sentence to time served," recalled Apfel. "I explained to Techau that his prosecutors had taken a remarkably kind-hearted, decent, generous human being and painted him as a monster..."

"Had he agreed to our proposal, he could have spared his office a great deal of negative publicity. But he did not. In the end, thanks to President Trump, Sholom got out anyway. The difference is that the world found out what an abomination this case was, and what a stain it became on the Department of Justice."

"Renfrew, along with judicial colleagues Philip Heymann and Larry Thompson, worked tirelessly for Sholom's cause," added Apfel. "These men believe deeply in the American justice system. They gave some of the best years of their lives to the Department of Justice as deputy US attorneys general. That's why Sholom's case pained them so deeply."

Another year and a half passed after the Cedar Rapids meeting as the relay of defense court filings continued, all of them ultimately denied by Judge Reade. In the meantime, activists continued marshalling support in government and legal circles.

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That Chanukah, Sholom learned that his final appeal had been rejected, bringing to an end all hope of a legal remedy. Yet his letters to his family remained buoyant, full of glowing *divrei Torah*.

"Something wonderful happened tonight," he wrote. "I was actually allowed to be alone in the room for two hours after lighting the menorah, with no guard present – unheard of here! So I had two beautiful hours with *neiros Chanukah*..."

The intense *tefillos* that must have permeated the room as he gazed into the flames in those private moments are left to the imagination.

A few days later, he was free.

# THE CELLIE

BY RABBI YITZCHOK HISIGER

## An exclusive interview with Sholom Mordechai's cellmate of five years in Otisville

When I tracked down Roy Morgan this past *Motzoei Shabbos*, he was at his home in Panama City, Panama. The 55-year-old was a cell mate - or "cellie" - for five years of Sholom Mordechai Rubashkin at Otisville Correctional Facility in Otisville, NY, and he has loads to say about the man he got to know quite well. Our conversation lasted well over an hour, disrupted only when my overseas minutes ran out on my home phone and I had to recharge my account. (It was *so* 1980s. Aren't the days of limited overseas calling over?)

Roy, who told me that his first name is really Michael, speaks English minimally, with a heavy accent, in short sentences, as reflected in our exchanges below. His speech is peppered with Hebrew terms and Jewish terminologies, the majority of which, he explained, he picked up from his "brother" at Otisville, Sholom Mordechai, who he referred to during our tête-à-tête simply as "the rabbi."

### Hello, Roy. Thanks for graciously agreeing to speak to the Yated. What are you up to?

Well, I'm finishing Shabbat now. I've been doing it at home.

I'm off today. The place I work for now, a call center, wants me to work on *Shabbat*, but I don't. I don't have a *shul* to go, so I do *Shabbos* on my own.

### Tell me a little bit about your background.

I grew up in Panama, an only child. My great-grandma was Jewish.

I went to school here and I studied electrical engineering. I have also been a high school teacher, teaching math to tenth, eleventh and twelve graders. I left that job because my home got flooded and I had to find a different house, which was too far from that job.

My grandma used to call me Michael, which is my real first name. My Spanish last name, which I never use, is Quiros.

### Why were you in Otisville and for how long?

I got caught up in a case and did some time.

### Would you care to be more specific?

Nah. I'd rather not talk about it. I went to Otisville in 2004 and I came out in 2016, so I was there before the rabbi.

When I got out, I was brought to immigration and sent back to Panama, where I am now. I'm trying to fight the extradition still and maybe get back into the US.

### When did you first become Sholom Mordechai's cellie?

If I'm not mistaken, he came in 2009, about five years after I came. His case was devastating. He didn't know nothing about the jail. They put him through a lot of stuff. As a matter of fact, the cellie they gave him was not the type of dude you'd be comfortable with. The guy hung all types of pictures on the wall... And the guards made his life impossible from day one.

### How?

They invented all kinds of stories about him. The rabbi couldn't stay in that room no more. I told him, "I'm a Jew. You can come into my cell." We had to find a way for him to get another cellie. It took a couple of days, and they put him into another cell, and in that other cell, there were also issues, so I said, "I can arrange for you to come to my room." Finally, we got him into my room, and we were together for five years. We made *Kiddush* together. We made *Havdalah* together.

He taught me a lot. He taught me so much. He taught me almost everything I know. He taught me how to read and write. I said to him, "Rabbi, I need to know how to *daven* and pray the right way," and he taught me.

## Can you describe what the room looked like?

We had a window. We made the room comfortable. We hung up a curtain to cover the toilet.

We were like brothers, fighting like cats and dogs for the little things that weren't permitted unless you had some kind of permission. You cannot have certain foods, like vegetables, in the room, and you could only have a certain amount of food at a time. Also, you can't have more than a certain number of religious books, so we shared them between my locker and his locker in the room.

## What was the schedule like day to day?

For the rabbi? He studied the whole day. He would wake up at 5 a.m. every day.

### 5 a.m.?

Yes. And he *davened* and learned from 5 a.m. until the night. I told him, "I like *davening*, but man, this is too much. You're killing me, rabbi! Please, man." But he just *davened* and learned. And on the holidays, it was even more.

They would lock us in at 9:30 p.m., but he was just studyin' and prayin'.

There are no words to describe how much the rabbi *davened*. He would read the whole *Tehillim* like five times a day.

My job was working in the electric shop.

## What types of books did you keep in the room?

I would say that between him and me, we had 200 books in the room! The rabbi had all the *Gemaros*... I challenge you to mention any book. I would say that he had it in the room.

## Did you know the background of his story before you met him?

No, I didn't know. I just saw his *yarmulka* and I said, "Okay, we have to embrace each other." I used to learn with the other *Yids* there.

We started speaking and he told me about his situation. And I said, "I'll try to help you."

## What challenges did you have from a religious standpoint in prison?

Making *Havdalah* was a problem, because you can't have candles. So I had to go to some people who had candles and we got them for *Havdalah* and for Hanukah.

For *Havdalah*, before I knew it, the rabbi invited all the *Yids* in the whole unit to our room! There were like twelve people! So the next thing you know, the guards wanted to know why twelve people are in one room with candles! I said, "Rabbi, what you thinkin'?"

The rabbi would pray loud and hard. I never saw anything like that in my life. I've been with *Yids* before, but nothing like this.

## What kind of impact did Sholom Mordechai have at the prison chapel?

At the chapel, he changed the whole routine. He led the prayers. Then, when we finished on *Shabbat*, he would take two little breads and we made a meal. Before the meal, he would have us read the *parsha* and ask questions. Not everybody there, even though they

were Jewish, had the background and knowledge, so he taught us *parsha*, *Pirkei Avot*, and other things.

## What was your reaction to Sholom Mordechai's saga and his draconian 27-year sentence?

Me and him spoke personally. The situation is that I'm more from "the street" than the rabbi, if you know what I mean, so I could see what was going on even when he could not see. I understood the whole thing. It wasn't necessary for me to follow it. But based on the little he told me, I understood exactly what was going on. I told him, "Rabbi, you're gonna do no more than 10 years." I said, "Get ready to go out in 8-10 years."

## Why did you feel that way?

I felt that even though his story sounds complicated, it was transparent. You can see what was wrong with it. The government works on hearsay, not on facts. Like the claims that he was running a sweatshop... How can you confirm that if you have no knowledge of the person? They said he had all these people working for him... I'm Latin-American and I know what goes on. So I said, "Come on. This don't fit. Something is wrong. The system is not working the right way. Anybody can come up with a story."

## So why did you feel that he would be allowed to leave before his full sentence was up?

Because with a story like this, the more time you leave the person in prison, the more you – meaning the government – will be exposed. So I knew that they'll let him go, because the case was going to keep exposing the judicial system for what it is.

## Was it dangerous in jail? Were you worried about your or Sholom Mordechai's safety?

There are a lot of people there, and just being locked up makes people react in a different way. Every day is different. You can't pinpoint how all that is gonna affect a person. It's always tense, and most people are not there for being nice, so yes, it's a dangerous environment, mostly for someone religious.

## Did you have to protect Sholom Mordechai?

A lot of times. He knows.

I love him like a brother. He was a friend, but speaking about him is like speaking about a real brother from the same mother and father. That's the way I feel about him. I see him as a big brother, an older brother and a mentor.

In the jail, I was just happy to see him smile. I did things just to see him smile. We laughed and cried together. We had good days, when we stayed up late. We did the *Afikoman* together. I have good memories about him.

I want to tell you the truth: I feel blessed to have met someone like that. Jail is not a nice thing, but the best thing in that situation is that Hashem sent me to meet him. 80 percent of what I do now every day is based on what he taught me. I made my mother meet him when she came to the jail, and I let her know what he means to me, like a teacher and a brother.

You can't get a bad word out of me about him. We had some misunderstandings from time to time - like family! - but I still loved him. He would break it down and teach me: A *Yid* doesn't say *lashon hara*. A *Yid* does this. A *Yid* doesn't do that. And after a while, it sunk in.

## Is there anyone else who impacted you during your time in Otisville?

Yes, there were, especially Rabbi Yehuda Fischer of Monsey. He made sure that I got all my Friday meals, and he made sure that once I left, and I went to immigration, that I had all my *Shabbat* meals and praying books.

Also, the Aleph Institute gave me books and a calendar. They helped me.

I was lucky to meet some of the best *Yids* around. They gave me enough knowledge for the rest of my life.

## How did you first hear that Sholom Mordechai was released?

The Chabad rabbi in Panama, Rabbi Mendi Karniel, sent me a WhatsApp message. As I mentioned earlier, I don't go to *shul*, because it's like a 25-minute drive from here, but I keep in touch with the rabbi.

## What was your reaction to his release?

It brought tears to my eyes! I was really, really, happy to hear the great news that he got out. I *davened* for him so much. He's a very special person. He helped me. He changed my whole way of seeing things. He brought me to certain level of understanding of what being a *Yid* means. And I still practice what he taught me. I can't eat without blessing my food first and I wake up in the morning and say *Modeh Ani*. He really made an impact on the people he met.

## Did you hear about all the celebrations after his release?

Yeah! They sent me videos of everyone in *shul* clapping and jumping. It was amazing.

## I must ask: Did you read the *Yated* in prison?

Yes, I used to read the *Yated* faithfully. We would fight over it. I wanted to read it! We had to fight to get the *Yated*, because everyone wanted it. And Sholom wanted to read it. So many good articles. I read all the columns. I read the whole paper. I used to ask the rabbi to explain to me certain words.

## Have you spoken to Sholom Mordechai recently?

No, because I know the proceedings. You are not allowed to keep communications with another cell mate.

I want to tell you that we lived in a cell like two brothers. When people saw me, they would ask for him. When they saw him, they would ask for me. We were like family. I met his wife, his father and mother, his sons... They were also like a family. And they were extremely nice to me.

## What message would you send to Sholom Mordechai?

Please, if you see him, let him know that he has a brother for life in me. And let him know that I will keep on fighting to the end to have my *bris*, and to keep *davening*, and to put on my *tefillin*, and to do the right thing. I'm very appreciative to him.

## What message would you want to convey to people about your experience with Sholom Mordechai?

That he is a real, real example of what a *Yid* is supposed to be. He doesn't look at people's skin color. I'm black, and he never judged me. I never saw discrimination. He tried to help everybody. He did so much for me and he never showed any fear of anyone.

He helped every *Yid*, making sure that every *Yid* put on *tefillin* every day. He went around. There were a lot of dudes there. Some of them had life sentences. But he made sure that if you needed a certain *tefillin*, he found a way to get it for you. I told him, "I want to learn," and he made sure to find a way to study and learn.

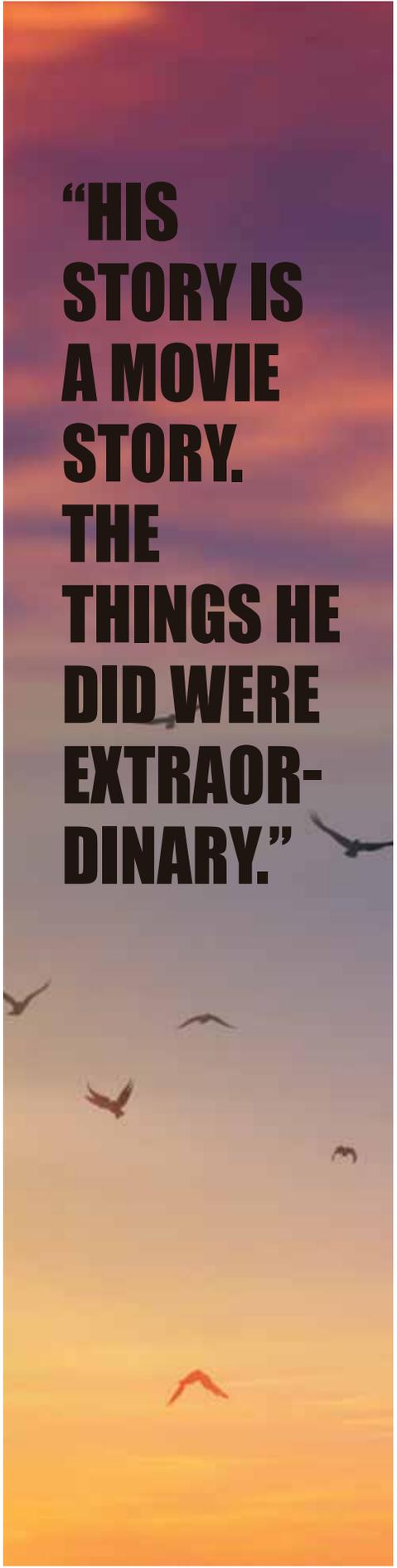
He went to sleep each night at 1 a.m. and woke up at 5 a.m.

## He slept four hours a night?

Yes. I challenge anyone who wanna dispute that. I said, "Rabbi, one of us are gonna have to move! You only sleep four hours, like a superman!"

We had prison uniforms, but he made sure that we got new uniforms for *Pesach*. They give us sheets and certain clothes, and he took the brand new clothes and cut it so you don't gotta put on *tzitzis*. I told him, "You can't cut the clothes! They will charge you for it!" He said, "I follow Hashem." I said, "But rabbi, they gonna find out." He didn't worry.

His story is a movie story. The things he did were extraordinary. You hear about these kinds of people, but it's hard to meet one. You read all these stories. I never thought I'd actually meet such a person.



**“HIS  
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# UNITY

BY DEBBIE MAIMON

A stirring event took place in recent weeks that drew together scores of Rubashkin family, friends and supporters for a *seudas hodaah* and *hakoras hatov*. The gathering celebrated R' Sholom Rubashkin's freedom and the dedicated *askonim* who supported him in his long struggle for justice.

It was an evening that showcased the raw power of *achdus* to unite and electrify a community, to break down barriers and to achieve redemption.

Intended as a private, low-key affair, it did not aim for media coverage. But some extraordinary features of this memorable evening and the timelessness of its core message deserve to be shared with a wider audience.

The roster of speakers included Rabbi Shlomo Leizer Meisels, tireless *askon* throughout the Rubashkin saga; Rabbi Simon Zev Meisels, prominent *rov* in Kiryas Yoel who addressed many of the "Rubashkin Rallies; Rabbi Menachem Meir Weissmandl, Nitra Rov and *rav hamachshir* of the Postville plant and a strong advocate on R' Sholom's behalf; *Yated* editor Rabbi Pinchos Lipschutz; Rabbi Sholom Mordechai Rubashkin; Attorney Gary Apfel; Professor Philip Heymann, speaking on videotape from Boston and Rabbi Avrohom Malach.



The evening began with a live performance of the Unity Song, based on a music video created five years ago by celebrities in the *frum* music industry who pooled their time and talent to rally support for R' Sholom Rubashkin. Many in the audience recalled the unprecedented fusing of musical gifts and passion that made spirits soar with the hope that a community united could accomplish miracles.

Now, so many years later, this same song echoed from joyous throngs of people clasping hands on the stage as they sang and swayed to the music, celebrating R' Sholom's miraculous release. With a radiant R' Sholom and his son, Moishy, right in the center.

## WE WERE FIGHTING FOR TORAH. FOR OURSELVES.

"Tonight we're celebrating *achdus*. That's a word that gets thrown around a lot," Rabbi Lipschutz told the audience. "But *achdus* is not just a word, it's something real. It was the *achdus* we *askonim* had for this cause, it was the *achdus* and unity we created in Klal Yisroel – an *achdus* so rare and unprecedented – that got Sholom Mordechai out."

Rabbi Lipschutz recalled the beginning of the painful saga when the first incitement against Sholom Rubashkin began by an animal rights organization who cast *shechitah* as inhumane, and the allegations were quickly exploited by a hostile media.

"Ten years ago, we started on a long, lonely path," he reflected. "Who could imagine then where this would lead? There was a war being waged; it wasn't just a war against R' Sholom Mordechai, it was bigger than that. It was a war against *shechitah*, against the *Shulchan Aruch*. It was a war against *us*. And it was being waged on the pages of the *New York Times*, *Associated Press*, *The Wall Street Journal*..."

"These papers were full of what we refer of today as fake news. 'There's a kosher slaughterhouse down in Iowa that's a complete jungle,' they said. And congressmen on television were talking about 'an evil man who runs this company who treats animals cruelly, who exploits and hurts people.'

"These were pre-Trump days when people didn't know about fake news. And they believed it."



Rubashkin  
Event  
Celebrates  
Power Of  
Unity



“You may not remember but around the same time, there were people calling one of the finest *mohalim* we have a murderer.” *Yated*’s editor continued. “These two campaigns were going on at the very same time. *Shechitah* is inhumane. And *mohalim* are baby killers. How could we not fight back? We were fighting for Torah, for *halacha*. We were fighting for ourselves. And yes, we were fighting for R’ Sholom Mordechai.”

The battle to strip aside the façade covering up the real issues and to explode the lies and misinformation played out for years in the pages of *Yated*, as the paper’s unrelenting coverage rallied the Torah community.

Rabbi Lipschutz asked rhetorically how it was possible for the justice system to ascribe all kinds of lurid crimes and vices to a man of unusual kindness and decency, whom even the simple folk of Postville recognized as “a man of G-d.”

“Because he ‘walked with G-d,’ G-d walked with him. He was never alone. Nor will he ever be alone.”

“The *neis* that freed him came on *Zos Chanukah*,” Rabbi Lipschutz noted, “so that we could clearly see the *Yad Hashem* in these events. Even in a time of *afeilah vehastara*, we were *zoche* to see light, to see a bit of the *ohr haganuz* which shines on *Chanukah*. And through the *achdus* we created, we were *zoche* to experience a taste of what the world will be like when *bayom hahu yiyeh Hashem echod ushemo echod*.”

“Look around,” he continued, indicating the dais. “Here in one room we have a *rov* from Kiryas Yoel, the *rov* of Nitra... Rav Kotlarsky from Crown Heights... Rabbi Genack from the OU... In one room! Where else could this happen? Look at the *askonim* from all *machanos*. Look what *Yidden* can accomplish together! People say it can’t be done, we can’t overcome our differences. We proved them wrong. We have to know we need each other, we can’t survive in *golus* without each other; we can’t bring *Moshiach* without each other.”

Applause broke out as Rabbi Lipschutz pressed home his point. “... We have a living example before our eyes of the miracles *achdus* can accomplish, and what *tefilla* can achieve! We have a living example of what it means to be a *Yid*, a good *Yid*. What it means to be a *chaver*. And what it means for a *chaver* to never be alone.”

## INTO THE LOVING ARMS OF KLAL YISROEL

“It’s an open *neis* that I stand here before you,” began R’ Sholom Mordechai, “when two weeks ago I was still in the degrading *matzav* where a person feels he’s just a number, an object. Coming from that cold, dark place into the loving arms of Klal Yisroel, the singing and dancing and *Yiddische varemkeit*... I have no words to describe my feelings. I want to thank all the *askonim* for their great *mesiras nefesh*, all of Klal Yisroel for their *tefillas* and *davening* for me all these years. Thank you for the help and *chizuk* you gave my family, and the *hachlotos* many of you took on, often difficult ones, as a *zechus* for me.”

R’ Sholom shared his feelings about what kept him *b’simcha* in prison, even in dark times when legal efforts to obtain justice were defeated, “when problems started piling up... when the *koach* of *rah* seemed to have the upper hand.”

In the “*Alef, bais, gimme!*” formula [*Emunah and Bitachon lead to Geulah*] that the Rubashkin family has made famous, R’ Sholom said he found the strength to maintain his *emunah* and *bitachon* throughout the long years of his incarceration.

“A human being is so limited. It’s only when he connects to *Hashem* who is beyond limitations that a person is then capable of overcoming his natural limitations, and doing what seems impossible.”

“*Emunah* is knowing that He alone can help me. Knowing that

the *Ei-bershteh* is *kulo tov*, even if I can’t immediately see the *toiv*. *Emunah* is being able to say *gam zu letovah* when it seems bad, yet having *bitachon* that He will grant me not only hidden good but revealed good. That’s a big *avodah*. That is what kept me going.”

R’ Sholom offered heartfelt thanks on behalf of himself and his family to President Trump for “the humane and righteous action he performed” in commuting his sentence. He noted that “*Hashem* sends *nissim* and *yeshuos* through the worthiest people;” that to be chosen as His agent of good is the highest compliment to an individual.

## IN CEDAR RAPIDS, IOWA... FAR FROM THE CAMERAS

Attorney Apfel thanked the many individuals who helped from behind the scenes to bring this long-running saga to its happy closure. He lauded the efforts of many high-ranking former justice officials including former US Attorney Generals Edwin Meese, Ramsey Clark; John Ashcroft and Michael Mckasey; former deputy US attorneys general Larry Thompson, Judge Charles Renfrew and Philip Heymann; former FBI director Louis Freeh, Professor Alan Dershowitz and many others.

Mr. Apfel shared fascinating details of the extraordinary efforts by three former deputy US attorneys general, two in their mid to high eighties, to negotiate a private deal in Iowa—from the cameras—after explosive evidence of government misconduct broke open the case.

Professor Heymann, Judge Charles Renfrew and Larry Thompson had traveled long distances at their own expense to Cedar Rapids, Iowa, where attorney Apfel working with attorney Guy Cook of Iowa (R’ Sholom’s lawyer in the 2009 federal trial) had coordinated a meeting with U.S. Attorney Kevin Techau.

There they would present the evidence that implicated prosecutors from Techau’s office in illegal, disreputable behavior in the Rubashkin case, and hope to strike a deal.

“Our message to the U.S. Attorney was, ‘We’re ready to bury this evidence, to never use it against your office in any way. All we ask in return is that you commute Sholom Rubashkin’s sentence to time served.’”

“We divided the presentation between the four of us,” recalled Apfel. “Professor Heymann had the most difficult task.”

“Why are we here, Mr. Techau?” Professor Heymann opened the meeting. “None of us know Sholom Rubashkin. We’ve never met him. Why should we care about him, and go to all this trouble on his behalf? It’s because we care about justice. We’ve all spent many years in the Department of Justice and its integrity and reputation are very important to us.”

Renfrew and Heymann then presented the incriminating “Rieland memo” that proved the prosecutors had knowingly solicited perjured testimony in the Rubashkin Sentencing Hearing, allowing the judge to impose the draconian 27-year sentence on Sholom. Seeing the U.S. Attorney’s intractability, Professor Heyman lost his composure.

“Your prosecutors wanted to punish Aaron Rubashkin but for whatever reason, decided not to indict him,” Heymann fumed. “Instead, acting as prosecutors, judge and jury, they punished him by destroying his business and locking up his son!”

“To do this, they used perjured testimony!” the former DOJ official practically shouted. “They either actively solicited or actively tolerated perjury! And in doing so, they ruined the reputation of a judge and put a terrible stain on your office, and on the US Department of Justice.”

“As a consequence of that, a fine man named Sholom Rubashkin has been torn from his family all these years. Shame on you! And shame on this office!”

Professor Heymann, speaking from Boston, shared his own perspective on the case, describing why, despite the failure to accomplish their goal in Iowa, he refused to give up.

## WHY WE COULDN'T QUIT

Professor Heymann remarked on the “passion and conviction” of Rubashkin supporters that first drew his interest. “They were deeply committed in righting what they believed was outrageous injustice. They knew how to prod someone’s conscience.” He was impressed and decided to look into the case.

By the time he got involved, he said, activists had accomplished something very rare: “Six former Attorney Generals had publicly opposed a life sentence in the case that was ongoing. Over 150 justice officials had protested the injustice in the case,” Professor Heymann marveled. “Sholom Rubashkin’s supporters had organized half a dozen rallies in different communities...By word of mouth, through the media... the word spread and support rapidly grew.”

Professor Heymann noted his frustration over the apathy he encountered in the DOJ about the case. “We – my colleagues and I—tried our best. Many senior officials we went to with the facts of the case refused to get involved. They should have been outraged. With so many legal scholars advocating for a new trial or sentencing, they should have insisted on a thorough review. At the very least, they should have called a meeting with Sholom’s attorneys and listened to what they had to say.”

Professor Heymann noted how different things were during his own tenure with the Department, when the guiding principle was loyalty to justice, not to this or that individual. “We had a case of a man sentenced to 38 years in prison that we investigated [due to legal issues with the prosecution] and we took action. The Rubashkin case was ten times as bad!”

Although he and some of his colleagues battered away at the wall of indifference, “we were largely ignored,” he said. “The question is, when all of your efforts are not bearing fruit, why not quit?”

“We couldn’t quit. And that is because the people we were working with on the case, Rabbi Zvi Boyarsky and Gary Apfel, refused to quit. They were tireless, insistent. Their belief sustained *our* belief, and sustained our efforts to see justice done.”

## IN HONOR OF PRESIDENT DONALD J. TRUMP

Attorney Yerachmiel Simins, one of the earliest *askonim* who gave generously of his time and expertise to the case, who interfaced with the defense team and enlightened and rallied the community, offered the following tribute to the President of the United States.

“It is a rare honor to have been asked by Reb Sholom Mordechai and his family to represent them in offering a special tribute and prayer on behalf of one of the *harbeh shluchim laMakom*, a remarkable individual who played a unique, towering role in this *gevalidige simcha*.

“I speak for the many *askonim* and many thousands in *Klal Yisroel* whose hearts and *tefilos* so beautifully united, the thousands who cried together and remained together throughout this long ordeal. At this moment, we voice our enormous gratitude to a man who, with courage, strength and conviction, in a moment of greatness, put pen to paper and instantly transformed a wrongful virtual life sentence into a new life of freedom

for Reb Sholom Mordechai Rubashkin, and a restored sense of justice for us all.”

“He did this without an agenda, without asking for anything in return. He heard the facts, cut through to the truth and did what his heart told him was right. That person is the esteemed and honorable President of the United States of America, Donald J. Trump.”

“And so, *al pi daas Torah*, in line with our long tradition of blessing heads of state in the many lands in which our people have lived throughout our history, we now offer, Mr. President, in your honor and with heartfelt gratitude, a public declaration of these time-honored words of prayer and blessing.”

The prayer, recited by Mr. Simins in Hebrew, asked the Creator and Master of the World to safeguard President Trump and to cause his star to shine brilliantly; to bless him with great leadership, world stature and respect, success in his endeavors and lasting achievements throughout his tenure in office.