

Sequitur

Steve Mendelsohn

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DEDICATION

In memory of Mom and Dad, who were always my favorite audience.

And to Lauren and Jack. For better or worse, this is your inheritance. Spend it wisely.

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PREFACE

Sequitur is my second (self-published) book. My first book Shallow Draughts: Faith in the Absence of Free Will, also self-published and available at a very reasonable price at www.Amazon.com, is, as suggested by the subtitle, about faith (we all have it) and free will (none of us have it). Someone asked me why I felt the need to share my ideas about faith and free will with other people. Why couldn't I just be content with having my ideas? Why did I need to let other people know my ideas? And why should I try to convince other people that my ideas about faith and free will are correct and that ideas that they might have are wrong?

I have to admit my initial reaction was to doubt myself. Why would I presume that other people should know my ideas? And what defect exists in my personality that would crave the need for such attention from others. And then I realized something: I am not the world's first author. It turns out that there have been (and continue to be) other authors besides me. Lots of them. All you have to do is go to a bookstore (or, better yet, go to www.Amazon.com, where you can purchase a copy of Shallow Draughts at a very reasonable price) and you will find many, many books by lots of authors. People who have written, published, and even sold books to other people. Books containing ideas that the authors wanted to convey to other people. That led me to believe that, if those people could be authors, then so could I.

When I was writing Shallow Draughts, my brother suggested that I shouldn't write a single book about both faith and free will. Rather, I should write two books, one about faith and the other about free will. My response was, "Look, the chances of me getting even one book

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published are slim enough. I need to say everything I have to say in one book while I have the opportunity.”

But then I discovered self-publishing. Self-publishing is a wonderful thing. I wrote to another author recently about one of his books, and he explained that it was very unlikely that there would be a second edition of his non-self-published book. I wrote back to him about the advantage in self-publishing of being able to spit out a new edition any time I needed to. Shallow Draughts is already in its third edition, and I’m planning a fourth.

I was explaining to a friend of mine who has written a significant number of non-self-published books about my plan to publish yet another edition of Shallow Draughts to include some additional thoughts that I have recently had about faith and free will. He suggested that, instead of publishing another edition, I should write a second book about faith and free will. That seemed like a lot of work for just a few additional ideas, and then, when I re-read certain passages in Shallow Draughts, I realized that I had already covered those ideas well enough, so I didn’t need to write a second book about faith and free will after all.

But I did take my friend up on his suggestion to write a second book, just not one about faith and free will. That’s the book you are reading now. Sequitur is a collection of essays that I have written over the years. Some have been published in various forms in various publications, like the Penn Law Forum (the monthly newspaper of the University of Pennsylvania School of Law), the Philadelphia Lawyer (the magazine of the Philadelphia Bar Association), the Jewish Exponent (the weekly newspaper of the Philadelphia Jewish community), and *Free Inquiry*, the magazine of the Council for Secular Humanism. But most of the essays in Sequitur are published here for the first time.

Another author friend of mine suggested that a book of essays had to be limited only to essays that had been previously published elsewhere. Clearly, as a successful author of many non-self-published books, he is not sufficiently familiar with self-publishing, where I can publish just about anything I want to, which I have done here.

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Years ago, I decided to write a book called Non Sequitur that would contain a disparate collection of my essays. The title would be appropriate because each essay would stand alone with little or no relation to the next essay in the collection. But then I found out that there is a successful comic strip called “Non Sequitur,” a book called Non-Sequitur, another book called American non-sequitur, and even one called Sex With Non-Sequiturs.

So, I decided to call my book Sequitur. It’s a disparate collection of my essays, where each essay stands alone with little or no relation to the next essay. Or is it?

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AUTHOR'S NOTE

This book contains a disparate collection of my essays. The book contains essays related to legal stuff, to Jewish stuff, to atheism stuff, and to stuff stuff. If, like me, you happen to be a Jewish atheist patent attorney, you may find most if not all of these essays to be interesting, relevant, and perhaps even enjoyable. If you aren't a Jewish atheist patent attorney, then all bets are off.

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A JEW BY ANY OTHER NAME¹

by Steven Ira Mendelsohn aka Shmuel Yitzhak aka Steve aka Mendy aka Mendel

Officially, my name is Steven Ira Mendelsohn. But I go by Steve Mendelsohn. Steven is too formal for me, and Ira is too weird. (Sorry, Cousin Ira.) Besides, “Steven Ira” flows, but “Steve Ira” just doesn’t sound right.

As a sign of honor, Ashkenazi Jews (that is, Jews from Northern Europe) traditionally name their children after beloved deceased relatives. I was named for my paternal grandfather Samuel Mendelsohn and my maternal grandfather Isaac Forstater. In the late 1950s, American Jews were not naming their children Samuel and Isaac (too ethnic), so I was named Steven Ira, not Samuel Isaac.

In addition to “English” names, American Jews also typically get “Hebrew” names. My Hebrew name is Shmuel Yitzhak, which is Hebrew for Samuel Isaac. There are no Hebrew names for Steven and Ira. Most Hebrew names are from the Old Testament, and I’m pretty sure that none of the Twelve Tribes of Israel was the Tribe of Ira. Nor were any of the men sent by Joshua to spy on the land of Canaan named Steve.

When I was 9 or 10 years old, there was another Steven Mendelsohn in my bunk at summer camp. He was Steven M. Mendelsohn. His nickname that summer was “M”, and mine was “I”.

¹ 2011

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Sohn (pronounced “zone”) in German means son, so Mendelsohn is German for “son of Mendel”, which, since David Berkowitz, is a lot better than being named “son of Sam.”

Many years ago, I learned to spell my name out loud to people as “M E N” (pause) “D E L” (pause) “S O” (really long pause) “H N”. And still I get “Mendelshon” about a third of the time.

For probably that very reason, a lot of people have anglicized “Mendelsohn” as “Mendelson”. Every time I see that name, it just doesn’t look right.

For some reason, my brother Jay goes by “Mendelsohn”, as in the great German composer Felix Mendelsohn. When people ask me whether my name is spelled like Felix’s, I say, “No, just one ‘S’, but my brother added a second ‘S’. He’s now ‘Smendelsohn’.”

I just thought of another answer I can use when someone asks me if my name is spelled like the composer’s: “No, just one ‘S’. The composer is “B E E T H O V E N.” I’ll let you know how that line works out for me.

I recently got an email from a lawyer in Boca Raton, also named Steve Mendelsohn. I’m a lawyer in Philadelphia. Somehow, he got an email intended for me from one of my clients in New Jersey.

This other Steve Mendelsohn told me that his family used to be Mendelevski, which is the Russified version of Mendelsohn. It was changed from Mendelevski to Mendelsohn when his forebear arrived at Ellis Island. I guess Smith was already taken.

I had never heard of the name Mendelevski before. Another Russian Dmitri Mendeleev created the periodic table of elements. I wonder if he’s a relative. I gave up long ago hoping that I might be a descendent of the great German botanist Gregor Mendel, what with him being a Catholic monk and all.

My wife’s name is Lynn Siegel. Not Lynn Mendelsohn. Not even Lynn Siegel Mendelsohn. She claims that she kept her maiden name for professional reasons, since, by the time we got married, she had already established a successful career as a psychologist using her original name. I

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don't buy it. I think she was just trying to avoid the whole "S O H N" / "S H O N" thing. On the other hand, she has to deal with "S I G E L" and "S I E G L E" and even "S E A G U L L" – at least from me and our two kids, Lauren Nicole Mendelsohn and Jack Calvin Mendelsohn.

That's right; I successfully avoided having to name my kids "Lauren Nicole Siegel-Mendelsohn" and "Jack Calvin Siegel-Mendelsohn". I would have really hated that.

Lauren is named for my wife's maternal grandfather Louie. That makes sense because Lauren starts with an "L", and we didn't want to name our daughter Louie.

Jack is named for my dad's brother Clarence. That makes sense because Jack starts with a "J", and we didn't want to name our son Clarence.

Actually, my uncle Clarence Calvin Mendelsohn's Hebrew name was "Yekutiel," which was one of Moses's nicknames and, according to that traditional Talmudic source Wikipedia, means "God will feed." The Hebrew alphabet doesn't have an equivalent for our letter "J," so sometimes the letter "J" gets transliterated using the Hebrew letter "yud," which is equivalent to our letter "Y". So, Jack would be "Yack," which I arbitrarily decided was short for "Yekutiel." Get it? Anyhow, that's how Clarence Calvin became Jack Calvin.

Besides, I like the aural ligature of "Jack-Calvin" with a single hard "C" sound. Analogous to the aural ligature of "Lauren-Nicole" with single "N" sound. These are not coincidences. With a name like "Mendelsohn", my wife and I were purposely trying to reduce the burdens on our children and those who had to say their names.

In retrospect, we should have picked a middle name for Lauren to honor my Aunt Renee (Clarence's wife), who passed away just before Lauren was born. At the time, I was too busy trying to find an "N" name to go with Lauren and didn't think about Aunt Renee (pronounced with two long "E" sounds), whose real name was Irene. I'm truly sorry for not honoring Aunt Renee in that way, but "Lauren Renee" or "Lauren Irene"

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or even “Lauren René” just doesn’t sound as good to me as “Lauren Nicole.”

In grade school, my nickname was Mendy. Mendy was also my dad’s nickname. He even had the vanity license plate “MENDY”. (Mine used to be “GO BLUE” but that’s another story for another essay.) I was called Mendel by everyone at my (Jewish) summer camp, except for one Rabbi at camp who always called me “Mental son”. I’m happy to report that my 11-year-old son Jack is also Mendy, both at school and at summer camp.

My dad was one of seven children, five of whom were boys. Even with five Mendelsohn brothers, after two generations, there are only two Mendelsohn grandsons to carry on our Mendelsohn name: my cousin Fred’s son Nathaniel and my son Jack. When Jack was born, Nathaniel thanked me for taking all of the pressure off of him. Now the pressure is on Jack.

Who knows maybe Lauren will help out and name her kids Mendelsohn. I would really like that.

PEAS IN QUEUES²

I was riding the subway the other day, standing just within earshot of a couple of women having a heated discussion about the origins of familiar American idiomatic expressions. Now this is a subject about which I have always been terribly interested, but unfortunately as ignorant as a new-born calf. I could get the gist of what the ladies were saying, but not every jot and tittle. When I moved a little closer, cocking my head to hear better, one of the women wheeled around and snapped, “Mine your peas in queues!”

I said, “I’m sorry, what did you say?”

She repeated, “Mine your peas in queues!” and proceeded to give me the cold shoulder.

As fast as lightening, an image flashed in my mind’s eye of a long line of men with shovels and empty wheelbarrows slowly marching single file into the mouth of a cave, next to another stream of men leaving the cave with their wheelbarrows filled with legumes.

Now there are some expressions that you can just figure out, because they make sense. Take the expression “Happy as a fox in a chicken coop” for example. Even a mental midget can figure out just how happy that is.

Then there are those expressions whose meanings are clear from the context, but whose origins are more obscure. Like when you hear someone being referred to as “a mere babe in the woods.” It’s no problem figuring out that that person is just as wet behind the ears as someone whose cheeks are as smooth as a baby’s behind. But I can’t begin to tell you where that expression comes from.

² 1998

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Now I was under the impression that the woman on the subway was a little ticked off. She was not exactly as pleased as a pig in mud with me sticking my nose into her business. From the context, I knew that, when she told me to mine my peas in queues, she was really saying, “Buzz off and mind your own bee’s wax.” Nevertheless, I was left scratching my head about the origin of “Mine your peas in queues.”

Later that day, I bumped into an old friend of mine with whom I used to pal around back in my school days. I knew Jim had a sharp head on his shoulders, so I thought I’d throw caution to the wind and ask him if he knew where the expression “Mine your peas in queues” came from. Jim said he thought it had to do with the fact that the letter “p” and the letter “q” are printed very similarly, with the only difference being on which side of the little circle the little line goes. So that if you are not careful, if you do not pay attention to what you are doing, if you do not mind your own business, you may mistakenly write a “p” when you wanted to write a “q” or vice versa.

Now everything was clear as the nose on Jim’s face. The lady had said, “Mind your p’s and q’s,” not “Mine your peas in queues.” As I walked on my way, I started thinking about what Jim had said. It struck me that there were other similar expressions lurking in the reeds. What about “Mind your d’s and b’s”? After all, the letters “b” and “d” are really just upside down p’s and q’s. Or how about “Mind your v’s and u’s”? Not only are these two letters easy to confuse, but this alternative expression just happens to rhyme with the original one.

Speaking of rhyming, how about “Mind your z’s and 2’s”? While we’re opening up the floor to numbers, what could be more important than “Mind your 1’s and l’s” and “Mind your o’s and 0’s”? Once the cat is let out of the bag, there is almost no stopping. Before long, we’ll all be saying “Mind your 3’s and epsilons” to those rude people on the subway who try to horn in on our tête-a-têtes. (By the way, for the algebraically and Hellenistically challenged out there, an epsilon “ε” looks like a backwards “3”.)

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After all, each of these variations of “Mind your p’s and q’s” should work equally well. And as I always say, “Take your pick. It’s just six and a half of one, half a baker’s dozen of another.”

CONFESSIONS OF A LAW SCHOOL ASSHOLE³

I remember feeling anxious as I looked over the section assignments posted outside the registrar's office at the beginning of my first year of law school. I wasn't looking just to see which section I was in; I was also looking to see who was going to be there with me.

I'm not talking about checking to see which attractive women were in my section, or even whether I was going to be with friends that I had already made. No, I was checking to see whether I had been stuck with certain individuals who, in just those few short days of orientation, had already established specific reputations for talking a lot in class, sounding pompous, and being generally annoying. Little did I know that I was soon to become one of them.

Yes, I admit it. I was a Law School Asshole. And I was not alone.

You know who we were. We were the ones who always had our hands up in class volunteering to answer the professor's questions, or ready to ask one of our own at seemingly any and every opportunity. Every time you heard one of our names called, you groaned and turned to the person next to you slowly shaking your head from side to side.

³ I wrote this essay in 1990 when I was the Really Senior Editor of the *Penn Law Forum*, the newspaper of the University of Pennsylvania Law School. An Editor was someone who could proofread other people's writing. A Senior Editor was someone who could type. The Really Senior Editor could stuff cubbyholes with copies of the *Penn Law Forum*.

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Asshole Bingo

I talked so much in class that, during the first-year asshole bingo game, I was the center square, the free space, the one everyone gets because there was never any question as to whether or not I would speak.

I later found out that, during the first semester, they kept count of how many consecutive days I spoke in class. I believe the total was 42. I don't think they bothered to keep track the second semester, but I can't remember a single day going by without speaking at least once.

Oh sure, a class here and there, but never a whole day. One day during first semester I tried to go the entire day -- three whole classes -- without talking. Civ Pro was easy: Professor Levin hated me anyway. Contracts was no problem: Professor Summers rarely took questions - - he was always too busy trying to figure out the seating chart. But then came Property and that was too much to ask. I liked Property; I liked Professor Schill. I can't remember exactly, but we were probably studying something fascinating like adverse possession or the Takings Clause. In any case, I didn't make it. I couldn't. I just had to talk.

Self-Conscious

I was always self-conscious about being a Law School Asshole. (Obviously, not self-conscious enough to make me shut up, but somewhat self-conscious nevertheless.) I don't necessarily have to be friends with everybody in the world, but I don't want anyone to hate me either. At least, not for that reason.

It was obvious to me though that some of my classmates did not like me. There were certain people who seemed to grow cold towards me after the first few days -- they would no longer return my daily greetings. I have to admit, that hurt a bit.

But then, when I was feeling really depressed about my status, someone would come up to me and thank me for talking a lot in class.

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One reason given was that I slowed the professor down. One classmate told me that she could always count on me to ask a question five minutes before the end of class, thereby keeping the professor from getting to the next case and reducing that night's reading assignment a bit. (Although a Law School Asshole, even I refrained from asking questions with only one minute left in class.)

Sometimes people would come up to me and thank me for asking the very same question they had, but were afraid to ask. I can still remember all the heads turning and shaking approval on the third day of torts class when I asked Professor Austin: "What's a tort?"

Simple Questions

I asked a lot of simple questions in class. I remember prefacing one question ("What's a magistrate?") to Professor Levin, by stating that I had a simple question to ask. Before I had a chance to ask the question, he interrupted and explained to the entire class that there is no such thing as a stupid question. I reminded him that I didn't say I had a stupid question; I said I had a simple question.

I didn't mind asking simple questions. I figured that if I didn't know the answer, then at least one other person in the room also didn't know the answer. And besides even if I was the only person who didn't know, I was still paying over 15 god-damn thousand dollars a year⁴ to be there, and I was going to ask questions and talk in class if I felt like it.

Reasons

Despite what people may think, there were actually many reasons why I talked in class -- it was not just to show off. The fact is that I was usually genuinely interested in the subject matter. You see, I actually liked law school. Many of you who went to law school right after

⁴ Obviously, I went to law school a long time ago.

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graduating from college didn't realize it at the time, but those of us who had already been in the real world and escaped back to the ivory tower knew that, in comparison, law school wasn't so bad.

Most of the time, I asked questions because I really was confused. But there were other times when I asked questions for my classmates. A person sitting next to me might have leaned over and suggested that I ask the professor a certain question. Sometimes, when a professor was being needlessly obtuse, I'd make a statement to clarify what the professor was talking about or I'd ask a question which I knew that at least a few other people must have had, even though I already knew the answer. That may appear patronizing or condescending, but I looked at it as a type of public service to those too intimidated to ask for themselves.

Many times, I talked in class out of embarrassment or to avoid being rude to the professor. It was awful when a professor requested a volunteer, or directed a question to the class in general, and everyone just sat there like log lumps. I often raised my hand just to end the pain of that silence.

Of course, I also talked in class to give professors a hard time. I loved to argue. I also happen to suffer from a mild strain of George Carlin's disease. I admit it: I liked the attention that came with acting the role of class clown.

The best reason for talking in class, however, was one I realized only after some time: because I talked a lot in class, I successfully avoided being called on unexpectedly. I discovered that, if I volunteered in class enough, the professors would get so sick of hearing from me, that they would never call on me when I didn't have my hand up. That way, I never got called on when I didn't want to talk in class (although a true Law School Asshole always wants to talk in class). In all three years of law school, I was never once called on unexpectedly to give the facts of a case.

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Professors

Different professors reacted differently to Law School Assholes. Depending on the professor, I experienced everything from the total rejection of never being called on to the total acceptance of being called on whenever my hand went up.

After I asked her “What’s a tort?” on the third day of class, Professor Austin never called on me again the rest of the semester, but then she rarely called on any male volunteers anyway. I had to ask Julia Melendez, who sat on my right in alphabetical order, to ask questions for me. There was no sense asking Jim Miller on my left.

Professor Rudovsky usually gave me a limited number of chances to talk in class. He’d call on me anywhere from one to three times, maybe four times tops, in any one class session. That made it imperative for me to pick my opportunities carefully. I usually tried to ask questions rather than give answers.

Professor Gorman and I had an unspoken understanding: If anyone else in the entire class besides me had his or her hand up to give an answer, he would call on that person. Otherwise, as a last resort, I would get the nod. That was okay with me; I didn’t mind that at all. You see, I was the kind of Law School Asshole who didn’t mind letting other people talk in class, too.

Career

While it may have been a liability in law school, from what I’ve seen so far, it appears that being an asshole can actually be beneficial to my career as a lawyer.

HELP!!⁵

The *Penn Law Forum* needs your help. Whatever your skills, whatever your capabilities, we can take advantage of them ... and you.

If you own a camera, or know how to use a camera, or know someone who knows how to use a camera, you can be Chief Photographer and take pictures for us. If you can draw, you can be Production Illustrator and draw political cartoons for us. If you can beg people for money, you can be Business Manager and get businesses to advertise with us.

If you can write, you can be a Staff Writer and write articles or editorials for us. If you can correct grammar, spelling, and punctuation, you can be an Editor and edit articles and editorials for us. If you can type, you can be a Senior Editor and type articles and editorials for us. Even if you can't do any of these things, you can still be a Really Senior Editor and help stuff mailfolders with copies of the *Forum* for us.

Okay, so maybe you won't be able to put "Editor, Law Review" on your resume. Big deal. Just think how impressed those megacorporate law firms will be when they read "Really

⁵ *Penn Law Forum*, 1989

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Senior Editor, *Penn Law Forum*.” And then, to top it off, during the interview, you can mention that the *Penn Law Forum* is an ABA-award winning newspaper. Never mind the fact that nobody knows just when or for what we won that award; they don’t have to know that.

We know you’re out there. Maybe you’re a third-year student who’s really bored. Maybe you’re one of those second-year students who insists that you didn’t even try to write on to one of the journals. Maybe you’re a first-year student, who has already realized that you really don’t have to prepare briefs for class.

In the past, we’ve had articles on *law school news* such as interview with new professors, reviews of the recruiting process, descriptions of the recent search for our new dean, and articles describing the activities of law school organizations. There were articles on *law school sports* like rugby and intermural basketball. We’d love to continue to print those kinds of articles. But we’d also like to branch out into other areas – like *law school weather*. We would love to print articles about school affairs (and that includes those of either a business or a personal nature).

Whatever you want to do is fine with us. If you want to interview your professors about the recent trends in Supreme Court adjudication, that’s okay with us. We won’t care if you really just want an excuse to suck up.

If you have an opinion, we would like to hear it. You can do reviews on restaurants, bars movies, music, whatever you want.

We’re going to have a humor section this year. In fact, the first installment appears later in this issue. We’ve already

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had someone volunteer to be Really Senior Editor of the humor section. Right, Bob? But he's going to need lots of help, because, quite frankly, he's not that funny a guy. But if you are, or even if you just think you are, now's your big chance. Did you know that Bill Cosby, Woody Allen, Eddie Murphy, and Jay Leno all started as Staff Writers for the *Penn Law Forum*?

So come on, give us a hand. Come to our kick-off meeting on Monday, September 11 at 2:00 p.m. in Room 46, or leave us a note in the *Penn Law Forum* mailfolder saying that you're interested in joining us. Please.

DING LETTER CONTEST ANNOUNCED⁶

In the course of cleaning up the old *Penn Law Forum* office, we came across an old Wall Street Journal clipping from 1986 which described ding letter contests held at both the University of Georgia's School of Law and the University of California's Hastings College of the Law. For those in their first year of law school and for those second- and third-year students who actually enjoyed their summer vacations, a ding letter is another name for a rejection letter from a prospective employer.

(Receiving a ding letter is like getting a "Dear John" letter from your lover, except that receiving a ding letter means that you are getting screwed by the sender, while getting a "Dear John" letter means that you aren't. That reminds me of a joke: What did the farmer's wife leave him when she ran off with the traveling tractor salesman? Give up? A "John Deere" letter.)

While we are sorry that we did not think of the contest idea first, we are certainly not above stealing it, noting that we are at least giving credit where credit is due.

That being the case, we are announcing the inauguration of the University of Pennsylvania Law School Ding Letter Contest (that's UPLSDLC, pronounced "upples-dellik," for short).

The earlier contests had categories for Shortest, Longest, Most Pompous, Best Use of Euphemisms, Most Obviously a Form Letter, and Most Humorous ding letters. Awards were also given out to recipients of the largest quantity of ding letters and highest rates of rejection. If you receive a rejection letter which fits one of these categories, or if you feel

⁶ *Penn Law Forum*, 1989

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you have a letter which belongs in some other category, drop a copy of the letter in the *Penn Law Forum* mail folder. Let us know in which category or categories you are competing, and whether or not you want your name printed.

We'll be collecting entries over the next few months from the 2L and 3L students, and will run another contest for the 1Ls in the Spring. Remember, it is a Law School policy that first-year students are forbidden from submitting UPLSDLC entries prior to December 1. Those who break this rule will face immediate expulsion, execution, and/or ridicule.

If anyone has any ideas for prizes, please let us know. Otherwise, we'll just print the winning entries and make the grand prize a free trip to a future condo development in the Poconos (not far from where Route 80 intersects the Northeast Extension), where you will have a chance at winning a brand new Lamborghini, but will most likely come home with only a free AM-FM toaster oven.

Good luck, and may the worst job applicant win.

COMMENTS AND COMMAS⁷

Penn Law Forum Announces New Editorial Policies

We are pleased to announce the establishment of two new editorial policies this year for the *Penn Law Forum*. In keeping with the traditions of the education focus within these hallowed halls, these policies fall into two different broad categories: substantive and procedural.

As you may recall, last year's issues of the *Penn Law Forum* contained a couple of essays that many people found very offensive. We can remember one piece that ridiculed the Professional Responsibility course that first-year law students take every January. This so-called editorial even contained some disparaging remarks about some of our more prestigious faculty members.

Then there was another opus which cast exceedingly negative aspersions on one half of our illustrious two-party political system. We don't think that we need to remind you just which of our grand old parties was so unceremoniously affronted.

The point is that this year we are establishing a new substantive editorial policy. From now on, the *Penn Law Forum* will not tolerate the abusiveness demonstrated in those two articles. No, it will not be tolerated; it will be encouraged.

⁷ *Penn Law Forum*, 1989

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And if you don't like it, if you read something that ruffles your feathers or gets your dander up or otherwise plays havoc with your plumage, don't just sit there stewing about it, don't squawk to your friends, don't fly home to Mommy, -- scratch us a reply, responsible or otherwise. We promise, if you're not too embarrassed to sign your name to it, we won't be too embarrassed to print it.

The second new editorial policy is procedural in nature, and just as in the age-old dichotomy in Law between the substantive and the procedural, we view this new procedural policy as the more important, taking precedence even in the absence of precedent.

From this day forward and, we hope, for all eternity, any sentence containing at least one (1) list of items, where each of said lists within each of said sentences contains at least three (3) said items within each of said sentences, shall be punctuated, wherein said punctuation shall be of such, without limiting said punctuation thereto, that each of said items within each of said sentences shall be followed by a comma, or, in those lists in which at least one item itself contains a list of items or in those lists in which each item is itself a sentence in structure containing, without limiting thereby, a subject or a verb, by a semi-colon, excepting the last said item in each of said lists in each of said sentences, but including and emphasizing the second-to-last said item in each of said lists in each of said sentences, that being the item immediately preceding the word "and" or the word "or" which immediately precedes the last said item in each of said lists of each of said sentences.

So, for example, if somebody writes an article explaining that he or she had a breakfast which contained toast and jelly and cereal and milk and bacon and eggs and waffles and syrup, that passage would appear as follows: "The next morning, I ate toast and jelly, cereal and milk, bacon and eggs, and waffles and syrup. Then I threw up."

With our new procedural editorial policy firmly ensconced, there will never again be any ambiguity, no more uncertainty over what was eaten; whether the person ate the cereal and the milk together in a bowl or had dry cereal with a glass of milk on the side; or whether the person threw

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up. (Note the strategic exemplary use of semi-colons in the previous sentence.)

We, the editorial staff of the *Penn Law Forum*, want to thank you for your patience and we look forward to receiving many scathing rebuttals this year to our incendiary editorials – all properly punctuated, of course.

MONOLITH: A JOURNAL OF LAW AND SOCIAL STATUS AND STASIS

MEMORANDUM

TO: Law School Community

FROM: Editorial Board, *Monolith: A Journal of Law and Social Status and Stasis*

RE: Requests for Submissions

DATE: April 1, 1991

We are requesting submissions for our new journal *Monolith: A Journal of Law and Social Status and Stasis*. *Monolith* is a scholarly journal founded in the interest of providing a platform for homogeneity among legal professionals. Articles will be accepted only from fully tenured law professors, retired appellate judges (Federal Court only), senior partners in well-established law firms of over 150 lawyers, and law students who aspire to join those ranks. Not only will submissions from non-legal professionals be rejected, but subscriptions will not even be sold to social workers, community activists, and other “touchy-feely” sorts.

We are interested in exploring the relationship of law and legal reasoning to Social Darwinism, and in promoting the use of law, legal action, and legal scholarship in the struggle to maintain the status quo.

Obviously, only traditional modes of expression are acceptable. Please keep your drawings, performance art, poetry, and fiction to

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yourselves. Proper blue-booking is our highest priority. Naturally, we insist on the exclusive use of the singular male pronoun.

The deadline for submissions is August 15, 1991 and early submissions are encouraged. Submissions may be mailed to:

Monolith: A Journal of Law and Social Status and Stasis
c/o University of Pennsylvania Law School
3400 Chestnut Street
Philadelphia, PA 19104-6204

Please be sure to enclose a return suburban mailing address and your unlisted phone number with all submissions. Also please enclose a copy of your birth certificate, a photo, and identification of all ancestors who came over on the Mayflower -- for adherence to *Monolith's* citizenship, gender, and ethnicity requirements. If there are any questions, don't bother us with them. If you are one of those annoying people who ask questions all the time, then we simply don't want to hear from you.

Submissions can be forwarded to Chesterton "Bip" Smith-Peobody IV, Chief Editorial Officer, (215) 898-8730.

LAW SCHOOL ADOPTS TWO NEW POLICIES⁸

Penn Law Forum Responds with Its Own

The Law School has recently adopted two new policies, one dealing with plagiarism, and one expanding the writing requirements for graduation from law school. In response to these new school policies, *The Penn Law Forum* has adopted some of its own.

Law School Adopts Policy on Plagiarism

According to a November 6, 1989 memorandum issued from Vice-Dean Margo Post Marshak to all law students, faculty, and staff, (and I quote):

“The Faculty and CSR representatives who vote at Faculty Meetings have adopted a policy on plagiarism. This policy is effective immediately, and becomes an addendum to the new Disciplinary Code.”

⁸ *Penn Law Forum*, 1989

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The policy states that “any use of another’s work without attribution, whether such use be verbatim or merely conceptual or structural” is conduct which violates the Law School’s Disciplinary Code.

Vice-Dean Marshak’s memo explains that “one is guilty of plagiarism if one intentionally, knowingly, or recklessly uses another’s words or ideas without attribution in written work submitted in satisfaction, or partial satisfaction, of academic or co-curricular requirements, or in any other writings done under the auspices of the Law School.”

(Did I mention that the previous quote is from a memo written by Vice-Dean Margo Post Marshak and dated November 6, 1989?)

That very same memo (the one from Vice-Dean Marshak, dated 11/6/89) explains further that “the rule against plagiarism is intended to prevent theft of another’s ideas or language by representation that they are one’s own.”

According to Vice-Dean Marshak’s memo (op. cit.), there are only two exceptions to the aforementioned plagiarism rule: 1) when “there is an explicit exemption of the attribution requirement by the person assigning the written work” and 2) when “the student is writing an examination” other than “papers or take-away examinations unless there is an explicit elimination of the attribution requirement” by the person assigning the work.

All of these ideas are expressed in Vice-Dean Marshak’s memo of 6 November 1989; I didn’t make any of them up myself.

Law School Expands Writing Requirements

In addition to the new school policy banning plagiarism, the Law School has recently expanded the writing requirements each student must fulfill in order to graduate with a JD degree. Besides completing the first-year Legal Writing course and satisfying the Senior Writing requirement, each law student will have to submit at least one article to *The Penn Law Forum* for publication in order to graduate. This writing requirement has

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also been extended to the LL.M. students, so that they wouldn't feel left out.

Not only does this new requirement apply to all students currently at the Law School, but this year's third-year students are required to submit two articles each. According to someone only remotely affiliated with the Law School and who wished to speak off the record, the double requirement was levied on the Class of '90 because "they have been such lazy sons-of-bitches this whole year."

Penn Law Forum Responds to New School Policies

In response to the new Law School policies, *The Penn Law Forum* has announced its own policies. Articles submitted to satisfy the new writing requirement should be submitted on 5-and-a-quarter-inch computer disks containing files generated using WordPerfect software (Version 5.0 preferred) on an IBM-compatible machine. Disks can be placed in the *Forum* mail folder and, if properly identified, will be returned to their original owners.

Articles must be over 300 words long (sorry, Mike Levine; you're going to have to submit another article) and should be signed. Letters to the editor will qualify, although the words "Dear Editor" will not count towards the 300-word requirement.

In order to make life easier for students, the Editorial Staff of *The Penn Law Forum* has decided to add a third exception to the school's plagiarism policy by allowing students to plagiarize all they want in their submissions to the *Forum*, so long as they do so for at least 300 words.

As an additional help to students, the following examples of excerpts from possible submissions are presented:

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Dear Editor:

Four score and seven years ago, our forefathers brought forth upon this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal...

Sincerely yours,
Mike Levine '91

Dear Editor:

“What’s the name of your first baseman?”

“Oh, no, What’s the name of our second baseman.”

“I’m not asking you the name of your second baseman. I’m asking you the name of your first baseman. What’s the name of your first baseman?”

“I told you, What’s the name of our second baseman.”

“I’m not asking you who’s on second.”

“Who’s on first.”

“What are you asking me for?”

“I’m not asking you; I’m telling you.”

Fondly,

Mike Levine '91

Dear Editor:

When I get to the bottom I go back to the top of the slide where I stop and I turn and I go for a ride till I get to the bottom and I see you again. Yeah, yeah, yeah.

Do you, don’t you want me to make you? I’m coming down fast, but don’t let me break you. Tell me, tell me, tell me the answer. You may be a lover, but you ain’t no dancer. Helter Skelter. Doo, doo, doo, doo, doo, doo, doo. Helter Skelter...

Love,

Mike Levine '91

UH-OH !⁹

I was sitting in my first-year Constitutional Law class minding my own business when our professor first mentioned something called the Commerce Clause. I leaned over to the person sitting next to me and asked him, “What’s this Commerce Clause that he keeps talking about?”

“It’s part of the Constitution,” came the reply.

“Oh. Okay,” I nodded back.

I was very impressed that there was a part of the Constitution so important that it actually had its own name. I immediately turned to the front of our casebook and read the full text of the Commerce Clause in Article I, Section 8, of our beloved Constitution:

The Congress shall have Power ... To regulate Commerce ... among the several States.

“That’s it?” I thought. “That’s the Commerce Clause? What’s all the fuss about?” I was not impressed.

My respect for the Commerce Clause soon returned. Over the next few weeks, we studied case after case in which the Courts bestowed more and more power upon Congress under the authority of those dozen little words. I was amazed to find out just how much judges could find to read into such a simple phrase.

I soon found out that the Commerce Clause is not the only clause in our Constitution. Far from it. We also have the Contracts Clause, the

⁹ *Penn Law Forum*, 1989

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Establishment Clause, the Takings Clause, the Arising Under Clause, the Supremacy Clause, the Exceptions Clause, and the Equal Protection Clause, not to mention the “Advice and Consent” Clause and the “Full Faith and Credit” Clause.

There’s also the Due Process Clause which, to be more accurate, should be called the Due Process Clauses, since it appears twice in the Constitution, once in the Fifth Amendment and once in the Fourteenth Amendment. The “Privileges and Immunities” Clause also appears twice, tying the existing record held by the Due Process Clause.

All of these clauses are very well known to lawyers and law students, because they have been deemed as critical in the interpretation of the powers and rights provided by our Constitution.

When studying Constitutional Law, you soon realize how meaningful and important each and every word of the Constitution is. Nothing is extra; nothing is superfluous. The words are to be treated like those received by Moses upon Mt. Sinai.

So when God used ... I’m sorry, I mean, when Madison used the word “among” in the Commerce Clause, our job as Constitutional scholars is to figure out what “among” really means. When we interpret the Commerce Clause, we must be vigilant in recognizing and understanding the implications of the use of the word “among.” Madison obviously had something very specific in mind when he wrote “among” instead of “between” or “within” or “amid” or “betwixt” or something else.

As important as is the word “among” in the Commerce Clause; as important as is the Commerce Clause itself; in fact, as important as all the clauses mentioned earlier truly are; that importance pales in relation to a clause that until today has been neglected by Constitutional scholars: the “The” Clause.

The word “Congress” appears in the Constitution 57 times (although two of those instances were repealed by the 21st Amendment). In 37 of those 57 instances, the word “Congress” in the Constitution is immediately preceded by the word “the.” In the remaining 20

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occurrences, the word “the” does not immediately precede the word “Congress.”

Of the 26 instances in the original text of the Constitution (i.e., ignoring the amendments), the word “Congress” is immediately preceded by the word “the” an amazing 21 times!

When apprised of these startling facts, most people are inexplicably unimpressed. “So what?” they say, “Big deal. Who cares?” They look at me like I’m some kind of nut or something.

“What do you mean ‘Big deal.’?” I shout as I follow them down the hall. “Have you forgotten about the word ‘among’ in the Commerce Clause? What about the first occurrence of the word ‘shall’ in Article III, Section 1? And what about all those ‘or’s in Article V?”

As dedicated students of Constitutional Law, what shall we make of these startling facts? What did the Framers mean when they wrote “the Congress” some of the time, and just “Congress” at others? What are the differences between these two phrases? How should we interpret the meaning of the Constitution in light of these facts?

The very first use of the word “Congress” in the Constitution appears in Article I, Section 1, which begins: “All legislative Powers herein granted shall be vested in a Congress of the United States ...” (emphasis added). Significantly, this is the only time in the entire Constitution of the United States of America, including all 26 amendments, that the word “Congress” is immediately preceded by the word “a.”

Why did the Framers use the phrase “a Congress” instead of “the Congress”? The word “Congress” is immediately preceded by the word “the” over 80% of the time in the original text of the Constitution. Why did the Framers go against their clearly established preference for the phrase “the Congress” and use instead the phrase “a Congress” in Article I, Section 1?

The answer is simple. If the Constitution began: “All legislative Powers herein granted shall be vested in the Congress of the United States,” it would have been talking about the Congress which was in existence at that time, that is, the Congress established under the Articles

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of Confederation. In order to avoid this undesirable but inescapable interpretation, the Framers chose the phrase “a Congress” to signify that they were not referring to the existing Congress, but rather to a new, different one.

The logical conclusion is inescapable: When the Constitution refers to “the Congress,” it is talking about the old Congress under the Articles of Confederation, and when the Constitution simply refers to “Congress” without the “the” immediately preceding, it is referring to the new Congress established in Article I, Section 1.

This then is the meaning of the “The” Clause, a clause so incredibly important that it appears in the Constitution an amazing 36 times (thereby shattering the old record of 2 shared by the Due Process Clause and the “Privileges and Immunities” Clause).

The implications of the “The” Clause are truly sobering: This society in which we have been living for over 200 years, which we thought was so ordered and correct, is really nothing more than a complete anarchy, a mass of people running around thinking they are following laws which in fact do not exist.

For example, all the powers enumerated under Article I, Section 8, and that includes those granted by our old buddy the Commerce Clause, are powers granted under the Constitution to “the Congress,” that is, the old Congress, the one under the Articles of Confederation. All the statutes enacted by the new Congress presumably under powers granted to it in Section 8 of Article I, and all the jurisprudence thereon, are actually null and void. According to the sacred Constitution, only the old Congress can exercise those powers.

What powers were given to the new Congress? Well, under the original text of the Constitution, the new Congress can prescribe discipline for training the Militia. See Article I, Section 8. It can decide where to put the District of Columbia. *Id.* And it can give consent to states to “lay any Duty of Tonnage,” whatever the hell that means. See Article I, Section 10.

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The new Congress can draft legislation to enforce the 13th and 19th Amendments, but not the 14th, 15th, 16th, 23rd, 24th, or 26th Amendments, because only the old Congress can do that. Fortunately, the new Congress cannot violate the First Amendment.

Never mind the Civil War and Reconstruction. Never mind Roosevelt's Court-packing plan and Watergate. The most critical period in the history of our great nation as a constitutional republic is today! Where is the old Congress? Who are its members? And, most importantly, what laws have they been passing over the last 200 years?

We must act now to rectify this terrible situation! As a first step, I hereby offer the following to be enacted as the 27th Amendment to our Constitution:

Section 1. Every occurrence of the word "the" immediately preceding the word "Congress" in the original text of and first 26 Amendments to this Constitution shall be stricken.

Section 2. All references to Congress, either directly or indirectly, within the body of this Constitution shall refer to the new Congress established in Article I, Section 1, and not to some dumb old Congress left over from the Articles of Confederation.

Section 3. Each and every individual who is a member of the old Congress shall be given ten million dollars, tax free, as a retirement bonus.

Section 4. The new Congress shall have power to enforce this article by appropriate legislation.

You may be wondering about Section 3. In fact, it is the most critical part of my proposal. You see, according to Article V, in order to amend the Constitution, the amendment has to be proposed in the first instance by "the Congress," that is, the old Congress. Uh oh!

ON BEING A KOSHER ATHEIST¹⁰

There's an old Yiddish expression: "Shver zu zein a Yid." "It's hard to be a Jew." There are two main reasons why it is hard to be a Jew. First of all, non-Jews have made it hard for a Jew to be a Jew, what with all the anti-Semitism and discrimination and stereotypes and bias and hatred and quotas and blacklists, not to mention all those pogroms and the Holocaust. All of those things throughout history have made it extremely hard for a Jew to be a Jew. But that's nothing compared to the hardship that Judaism has imposed on a Jew to be a Jew.

Although I have not counted them myself, I am told that there are 613 commandments in the Bible.

When Jews say "the Bible," we are referring to the Old Testament. When I say "Jews," I am referring to the group of people who over time have followed traditional Judaism. Of course, not all Jews have followed traditional Judaism over time. And the truth is that, since we Jews don't have a pope to tell us what traditional Judaism is, you would be hard pressed to find even two Jews who follow the same type of Judaism. In fact, I would venture to guess that the only Jews who have the exact same level of observance of Judaism are all those Jews to reject all of traditional Judaism and have the same zero level of observance. Perhaps, when I say "the Jews," what I am really referring to is what non-Jews think about Jews. Well, not all non-Jews, of course, but, well, you get the point. Maybe.

¹⁰ 2011

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Anyway, back to the Bible, where there are another 603 commandments beyond the famous Ten Commandments that most people think of when they think of commandments in the Bible. And that's just the commandments in the so-called Jewish Written Law. That doesn't even count all the interpretations and different applications and extensions and extrapolations of those 613 commandments that are contained in the so-called Oral Law of Judaism, which was finally written down starting about 1800 years ago in the 60-something volumes of the Talmud.

Most of the 613 commandments in the Bible have to do with sacrificing goats in the Temple, so they don't count. (Jews have temples, but we don't have the Temple anymore.) A lot of the remaining commandments have to do with things, like not having sex with your daughter, that most people, Jew and non-Jew alike, already follow.

After discounting the Temple commandments and the ones that everyone follows anyway, and not counting all those Jewish holidays, that basically leaves two commandments that these days distinguish observant Jews from non-Jews and non-observant Jews alike: observing the Sabbath, which Jews call Shabbat, and keeping kosher, that is, observing the Jewish dietary laws of kashrut. Observing the Sabbath is in the Ten Commandments ("Remember the Sabbath day and keep it holy.").

That's a little ambiguous. Remembering the Sabbath day should be easy, except apparently remembering whether the Sabbath day falls on Fridays (Muslims), Saturdays (Jews and Seventh Day Adventists), or Sundays (Christians except Seventh Day Adventists). (When I was in high school, I thought that I should observe the Sabbath on Friday, Saturday, and Sunday, just to be safe, but my mom wouldn't let me stay home from school every Friday.) But what does it mean to keep the Sabbath holy?

The fourth Commandment continues: "Six days you shall labor and do all your work, but the seventh day is the Sabbath of the Lord your God. In it you shall do no work: you, nor your son, nor your

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daughter, nor your manservant, nor your maidservant, nor your cattle, nor your stranger who is within your gates. For in six days the Lord made the heavens and the earth, the sea, and all that is in them, and rested the seventh day. Therefore the Lord blessed the Sabbath day and hallowed it.”

Okay, so now it's clear: observing shabbat means not working. But what is work? Traditional Jewish law identifies 39 different activities that are forbidden on shabbat as work. These include activities such as planting, plowing, reaping, gathering, grinding, kneading, cooking, shearing, laundering, dyeing, spinning, weaving, sewing, tearing, slaughtering, writing, erasing, building, extinguishing a fire, lighting a fire, and carrying in public. Some of these 39 different prohibited activities relate to work that would be needed to be performed to build the Tabernacle, the container where the Jews kept the Ten Commandments while they were wandering in the Sinai Desert for 40 years.

Somehow, these 39 different forbidden activities morphed into “Don't drive on Shabbat” and “Don't turn off the bathroom light on Shabbat” and “Don't go shopping on Shabbat” and “Don't do homework on Shabbat” and “Don't tear toilet paper on Shabbat” and “Don't turn on the television on Shabbat” and “Don't change the channel on a television that was left on on Shabbat” and “Don't even change the volume on Shabbat” and many, many more. It's hard to be a Jew.

If only the Bible had simply said: “Don't build the Tabernacle on Shabbat,” life would be a lot easier for Jews.

At her bat mitzvah, our daughter Lauren asked, during her sermon to the congregation, “What if I like to sew? What if sewing is relaxing to me? Why should that count as work that I can't do on Shabbat?” Good question.

In the Ten Commandments, remembering the Sabbath and keeping it holy comes right after not taking the name of the Lord in vain and before honoring thy father and thy mother, so it must be important.

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Keeping kosher is not in the Ten Commandments, but keeping kosher is actually based on lots of different commandments, albeit in the remaining 603.

I grew up in a kosher home.

For those unfamiliar with the Jewish laws of kashrut, that means that we had two sets of dishes: one for meat and one for dairy. According to Jewish law, Jews are not supposed to eat meat and dairy together. The origin for this law is the line in the Bible that says, “Thou shalt not seethe thy kid in its mother’s milk.” The thought was that it would not be nice for the mother goat to see her baby goat (i.e., her kid) boiled in her own milk. Presumably, it would be okay to seethe thy kid in the mother goat’s presence if it was in a nice white wine reduction with some garlic and fennel. Somehow not seething thy kid in its mother’s milk evolved into not seething thy hamburger with a slice of cheddar.

Anyway, we had two sets of dishes: milchig (Yiddish for dairy) and fleishig (Yiddish for meat). And two sets of knives, forks, and spoons, and two sets of cooking utensils, and two sets of pots and pans.

Milchig refers to any dairy product, so butter, cheese, cream, ice cream, cottage cheese, and, of course, milk counts as milchig and could only be eaten on the milchig dishes. But also anything made with a dairy product counts as milchig. So anything made with milk or butter or cheese or whey or even sodium caseinate counts as milchig and could only be eaten on milchig dishes.

Meat is meat. Beef, chicken, lamb, turkey. They all count as meat. But, for some reason, fish doesn’t count as meat. Fish is pareve.

Pareve refers to neutral foods that are neither dairy nor meat. Fruits, vegetable, nuts, grains, and fish are all pareve. They can be eaten with either dairy or meat, but not at the same time, of course. And even though fish is pareve, some Jews don’t put fish and meat together on the same plate. I think that they can eat them together, with each on its own plate, but not together from the same plate.

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Going back to meat, not all meat is kosher. Everyone knows about pork not being kosher, and most people know about shellfish not being kosher, but did you know that eagles are not kosher? Nor are horses.

For a mammal to be kosher, it must have split hooves and chew its cud. Pigs have split hooves, but they don't chew cud, so pigs aren't kosher. Horses chew cud, but they don't have split hooves; they have solid hooves, so horses aren't kosher. Camels chew cud, but they don't have split hooves; in fact, they don't have hooves at all; they have pads, so camels aren't kosher. Cows have split hooves and they chew their cud, so cows are kosher. Lucky them. So are sheep and goats and deer, because they all have split hooves and chew their cud. Chewing cud means that the animal swallows the grass that it's currently eating and then regurgitates it back into its mouth later on to re-chew and re-swallow it. Lucky us.

Even if a mammal has split hooves and chews its cud, it still has to be killed a certain way, and the carcass has to be treated a certain way for the meat from that mammal to be kosher. In particular, the mammal has to have its throat cut in a certain way for the meat to be kosher. That's why, even though deer have split hooves and chew their cud, there aren't a lot of venison dishes in Kosher cookbooks. It's really hard to sneak up on a deer to cut its throat in just the right way.

Even after the mammal has been slaughtered in just the right way, the carcass has to be treated in certain ways for the meat to be kosher. Notwithstanding what all those anti-Semites say about us killing non-Jewish children to get blood to make matzoh on Passover, blood is not kosher. So the blood has to be drained by holding the carcass upside down, and the flesh has to be salted to remove the last vestiges of blood. If you've ever eaten Jewish cooking, you're probably familiar with the seasoning called salt.

Furthermore, not every part of a kosher mammal is kosher. For example, filet mignon is not kosher even if the cow was slaughtered correctly and the carcass was treated properly, because filet mignon is

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from a part of the cow that is not kosher. I think it has something to do with the patriarch Jacob pulling his hamstring when he was wrestling with an angel of God. Thanks a lot, Jake.

For a bird to be kosher, it can't be a bird of prey, that is, it can't be a flesh-eating bird that eats other animals, at least not fish or mammals or other birds. Apparently, it's okay if the birds eats insects. So, chickens and turkeys are kosher, but not hawks and eagles. Ducks are also kosher. Lucky ducks. Like kosher mammals, kosher birds also have to be killed by slitting their throats in a special way. Perhaps that's another reason why birds of prey aren't kosher. They wouldn't put up with the whole ritual slaughter thing.

For an aquatic animal to be kosher, it has to have fins and scales. Sharks have fins, but they don't have scales, so sharks are not kosher. Eels have scales, but they don't have fins, so eels are not kosher. Tunas have fins and scales, so tunas are kosher. Lucky tunas. Kosher fish don't have to be killed in any special way for them to be kosher. They are allowed flop around in the bottom of the boat until they die of "natural causes," like trying to breathe air or getting hit over the head with a paddle. Perhaps that is why fish don't count as meat. It would be too difficult to cut their throats on a pitching and rolling boat.

Lobsters don't have fins or scales, so they aren't kosher. Neither are shrimps, crabs, oysters, clams, mussels, and scallops. It's hard to be a Jew.

Oh and by the way, insects are also not kosher. I understand, however, that there is one exception. There's some type of grasshopper mentioned in the Bible as being kosher, but we're not sure today which type that is, so, to be safe, Jews don't eat any grasshoppers. No loss there.

Like I said, I grew up in a kosher house. We didn't eat milk and meat together. No cheeseburgers, no lasagna, at least not lasagna with cheese and meat. My mom made kosher lasagna, which was really just spaghetti sauce between layers of really, really wide spaghetti noodles.

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Oh, and the spaghetti sauce was made with just beef. No pork in the spaghetti sauce. And no ham in the house. And no bacon. Instead, we ate something called beef fry, which was kosher bacon. I doubt that it was as good as bacon, but it was pretty good.

When I was growing up, we ate Hydrox cookies. Back then, Oreos were made with lard, and lard comes from pigs, and pigs are not kosher, so back then we ate Hydrox cookies because they were made with vegetable oil, not lard. I ate a lot of Hydrox cookies growing up. Sometimes, it's not so hard to be a Jew.

When I said that I grew up in a kosher home, I meant just that. Our home was kosher. When we were not in our home, we didn't keep kosher. When we went to restaurants, we ate beef, even though the cow that that beef came from was not slaughtered and processed in the kosher way. We even ate filet mignon. We ate lobster and shrimp and bacon.

My favorite teacher of all time, Ronnie Brauner, taught me that there are certain concepts in traditional Judaism for which there are no direct equivalents in our modern Western (i.e., Christian) culture, and vice versa. For example, *tzedakah* is often mistranslated as charity. The word charity comes from the Greek word *caritas* which means heart. Charity is something that is given from the heart, because the giver wants to give. But *tzedakah* comes from the Hebrew word for justice. In Judaism, *tzedakah*, giving to those less fortunate, is a requirement. It's a Jewish law. Jews are required to give *tzedakah* whether they want to or not. So, charity is really a mistranslation for the word *tzedakah*, and Ronnie Brauner taught me that the solution is to always use the Hebrew word *tzedakah* so that the difference between the two concepts is not lost.

According to Ronnie Brauner, another concept that is foreign to traditional Judaism is hypocrisy, the idea that inconsistency itself is bad, in addition to and independent of the underlying acts themselves. According to Ronnie Brauner, in Judaism, our actions are evaluated independently. In fact, another Jewish concept that has no direct

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equivalent is the word *chata*, which usually gets mistranslated as “sin.” Actually, the word *chata* comes from the Hebrew term for an archer shooting an arrow and missing the target.

If I eat a cheeseburger one day or even five days in a row and then the next day purposely choose to eat a plain hamburger in order to avoid mixing meat and milk, traditional Judaism would evaluate the five cheeseburgers as me missing the target, while the plain hamburger would be me hitting a bull’s eye that is not devalued because of my five previous misses.

So, it may seem hypocritical to non-Jews and many Jews for my family to have kept a kosher home, while eating non-kosher food in restaurants, but, from a traditional Jewish perspective, the kosher home is in and of itself a good thing, the non-kosher restaurant dining is missing the mark, and the inconsistency between the two is essentially irrelevant.

So even though my family kept a kosher home, we ate lobster and shrimp and bacon in restaurants. But not me. I never ate lobster or shrimp or bacon. But not because I was kosher. At least not originally. I didn’t eat lobster or shrimp or bacon because I was a really picky eater. According to my mom, the only thing I ever ate was peanut butter and jelly sandwiches. To this day, my mother still says, “If you see a peanut butter and jelly sandwich walking down the street, let me know, because that’s my son Stevie.” That was embarrassing enough for me when I was eight years old. Now that I am in my fifties, it is really embarrassing. “Mom,” I plead, “at least when you say it now, please don’t call me ‘Stevie.’”

Slowly, over time, I became a better eater, but, at the same time, I became more and more kosher. (The word “kosher” refers both to the food that observant Jews eat and to the observant Jews who eat that food. Thus, someone who eats only kosher food is also referred to as kosher. Perhaps that’s where the expression “You are what you eat” comes from. Or perhaps not.) Anyway, by the time my eating habits had expanded enough to where I might have ventured into lobster and

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shrimp and maybe even bacon, my level of religious observance had increased to where my practice of keeping kosher more strictly prevented that from happening.

At my most observant, when I was in my twenties, I kept strict kosher in the house and almost as strict kosher out of the house. In the house, I ate only kosher meat and never mixed milk and meat together. When I went out to restaurants, I would not eat meat at all. Instead I would eat only dairy or pareve foods.

Over the last thirty years, my level of observance has waned considerably. It has been a relatively slow, but gradual process. That process has coincided with my transition from someone who believed in God or at least wished he believed in God to my current status as a devout atheist.

Today, my wife and I keep what is sometimes referred to as a “kosher style” house. The meat we eat is only from kosher animals, primarily cows, chickens, and turkeys, but those animals were not slaughtered and processed according to Jewish law. We don’t have any pork products in our house. And other than the shrimp that my wife (who did not grow up in a kosher home) brings into the house now and then for her to eat, we do not have any shellfish or other non-kosher seafood in our house.

Although we don’t have two sets of dishes and two sets of silverware and two sets of utensils and two sets of pots and pans, we don’t mix meat and milk together in the same meal. (Actually, we do have two sets of dishes and two sets of silverware, but they are not for milk and for meat; they’re for regular and for company.) And, actually, I don’t mix meat and milk together in the same meal, but the rest of my family does, or at least used to until our daughter Lauren became a vegetarian. Now, by default, she is inadvertently keeping kosher and at a level much stricter than I ever did, because she never mixes meat and milk together and never eats non-kosher meat.

My current level of keeping kosher is pretty much the same, whether I am at home or at a restaurant. I don’t eat pork or shellfish or

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other non-kosher seafood. And, except for some notable exceptions, I don't eat dairy and meat together. I still don't eat cheeseburgers or drink a milkshake with my chicken fingers, but I do eat chicken tikka masala and beef enchiladas.

My brother-in-law recently asked me whether my atheism means that I am going to start to eat shellfish. While my current, drastically reduced level of observing the Jewish laws of kashrut means that I can't really say that I keep kosher anymore, there are reasons why I still don't eat shellfish and pork and why I (sometimes) don't mix milk and meat. Here are at least some of them:

(1) Discipline

Although Jews make up only about 2% of the population of the United States and a mere 0.2% of the world population, something (other than the conspiracy theories promulgated by anti-Semites) must explain the relative success that Jews have had in our modern society. As just one shining example that many Jews like to point out, at least 185 Jews and people of half or three quarters Jewish ancestry have been awarded the Nobel Prize, accounting for 22% of all individual recipients between 1901 and 2011. Those percentages are even higher, if you focus on individual categories like Physics (26%) or Medicine (27%) or Economics (41%) ("Of course," says the anti-Semite, "the Jews would do well in Economics. Economics has to do with money, right?")

I personally believe that there are two main reasons for such disproportionate levels of success: (1) the emphasis that Jews place on education and (2) the fact that it is hard to be a Jew. I believe that the discipline that it takes to be an observant Jew spills over into the discipline that it takes to be a successful physicist, doctor, or economist, not to mention a successful writer, musician, artist, businessperson, or politician.

While many Jews who have achieved and continue to achieve such disproportionate success are so-called secular Jews who follow little

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if any of the traditional Jewish laws, I'll bet that a good percentage of them, especially those in the past, were raised in families that did practice those laws when they were children, including keeping kosher.

(2) Identity

When I first stopped believing in God, I still kept kosher pretty strictly. I used to say, "Jews keep kosher because God told them to keep kosher; I keep kosher because Jews keep kosher." It was more of an ethnic tradition for me than a religious requirement.

Even at its current drastically reduced level compared to my previous strict practice, my observance of kashrut today still puts me way more observant than the vast majority of Jews. Nevertheless, I can't really say that I keep kosher anymore. Kosher style, yes, but not kosher.

But why do I even keep kosher style? In part, it still has to do with that ethnic tradition. Maintaining even my minimal level of observance probably still provides me with some amount of spiritual connection to the Jewish people as a whole.

(3) Aversion

Although I no longer cringe when our son Jack drinks a glass of milk with his hamburger, I can't bring myself to do it. And even though they are kosher, I don't eat cow lips, unless, of course, I'm eating a hot dog and don't realize that I am eating cow lips. Although everyone tells me how delicious lobster and shrimp are, at this point in my life, after purposely not eating them for over 50 years, I think of them the way I think of other foods that are not in our culture's diet. I understand that, in some countries, people do eat cow lips and roasted beetles and monkey brains, but I have no desire to eat any of them. In fact, I have an aversion to eating them. And that's pretty much the same way that I now feel about eating lobster and shrimp.

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So here I am an avowed atheist who doesn't eat pork or shellfish and who rarely mixes milk and meat all because it's not kosher. Crazy, I know. But, then again, shver zu zein a Yid - it's hard to be a Jew.

TWO HEADS ARE BETTER THAN ONE¹¹

Like many people, sometimes when I am driving home from somewhere I have been many times before, distracted by other thoughts, I become aware, as I am making a turn, that I have already made half a dozen previous turns without realizing it, as if I had been operating on auto-pilot with no awareness of making those other turns at the time that I made those turns.

Like many people, sometimes when I am showering in the morning thinking about my upcoming day, I become aware, as I am lathering my body with soap, that I have already shampooed, rinsed, conditioned, and rinsed my hair without realizing it, as if I had again been operating on auto-pilot with no awareness of washing my hair at the time that I washed my hair.

I recently took a mindfulness meditation course in which we were instructed to concentrate on our breathing at the exclusion of other thoughts. No matter how much I tried to focus on only my breathing, I just couldn't do it. I could focus on my breathing well enough, but not at the exclusion of all other thoughts. I found myself thinking of my breathing and thinking of something else at the same time as if I had two minds operating in parallel.

In theory, there are two different ways for me to arrive at the impression of thinking of two things at the same time. One way is for my brain to ping-pong back and forth between thinking about only one thing like my breathing and thinking about only some other thing. If

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that ping-ponging back and forth between thoughts of two different things, but only one thing at a time, happens fast enough, it could, in theory, generate the impression of my having two different thoughts at the exact same time. Of course, the other way to get that impression is for my brain actually to be able to generate two different thoughts at the exact same time.

I recently heard a podcast by a neurologist who discussed the differences between the left and right hemispheres of our brains; about how one hemisphere (I forget which) is good at focusing on details, while the other hemisphere (whichever one that is) is good at seeing the big picture. I don't think this was discussed in the podcast, but I suspect that one of our hemispheres, probably the one that focuses on details, is better at remembering things than the other hemisphere.

I do remember however that, during the podcast, the doctor described people who have had split-brain surgery, also known as corpus callosotomy, in which the corpus callosum, the main bond between the brain's left and right hemispheres, is surgically severed as a way of alleviating epileptic seizures. Such patients literally end up with their right hand not knowing what their left hand is doing. Apparently, one severed hemisphere controls one half of their body, while the other hemisphere controls the other half, with little or no awareness about what each other half is doing. It's as if those people have two completely different brains operating in parallel. I suspect that those individuals have two completely different consciousnesses, each knowing what it is doing while being unaware of the other.

I believe that the rest of us who have not had a corpus callosotomy and who have our corpus callosum intact also have two different brains generating two different minds in parallel, but, most of the time, thanks to our corpus callosum, our two different brains communicate with each other and coordinate our thoughts and actions to form a unitary consciousness. But, sometimes, our two different brains work in parallel with little or no communication and little or no coordination between them.

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I now believe that, when I am driving and realize that I've already made a handful of turns and when I am showering and realize that I've already completed most of my normal bathing routine, it's not that I made those turns and washed my hair without being aware of doing those things at the time that I was doing them. I now believe that, as I was doing those things, my two brains were operating in parallel: one doing the driving and washing and the other thinking about other things. It's not that I was not aware of making those turns and washing my hair at the time that I was doing those things. Rather, I was aware at the time, but, for some reason, those actions did not get recorded into my memory so that, when I subsequently become aware of where I now am in my car or in my shower routine, I don't recall having done those things and mistakenly believe that I must have done them without being aware of doing them at the time. I was aware; I just don't remember that I was aware.

WHAT LAW SCHOOL DID TO OUR MINDS¹²

(Why People Hate Lawyers, Part 1)

Professor Schill's Hypos

Professor Schill began the discussion on eminent domain in first-year Property Law class by posing three hypothetical situations. He instructed us: "Raise your hand if you feel that the government should pay compensation to the owner of the property involved."

First We Voted

The voting was practically unanimous each time. We felt that compensation was warranted in the first of the three hypos, but not in the last two.

Then We Learned

Then we started to "learn" the Law of Eminent Domain. Of course, this meant reading the court decisions in our Property Law

¹² *Penn Law Forum*, 1991

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casebook. In each opinion, the court reviewed the development of the law of government takings, explained the principle of “permanent physical occupation” that had evolved during that development, and then applied that principle to the relevant facts to reach a judgment.

As we read and discussed the cases, we learned how the law of government takings developed, we understood how the principle of permanent physical occupation had evolved, we approved of the application of the principle in each situation, and, of course, we agreed with the result in each case.

Not coincidentally, each of the so-called “hypothetical” situations posed to us by Prof. Schill was actually a summary of the facts of a real case from our casebook. After we had finished studying the opinions from the three real cases, Prof. Schill, practically beaming, reminded us of our initial voting pattern: for the three hypothetical situations previously posed to us by Prof. Schill, we had voted exactly opposite to the judgments reached by the courts in the corresponding real cases -- the judgments with which we had just agreed.

What Happened?

I remember that my first reaction was thinking how neat it was that Prof. Schill had tricked us, how he had pulled a fast one over us. He had shown us how ignorant we had been, how we had come to the “wrong conclusions” because we did not know the proper way of looking at such cases. But not anymore, now we had seen the light. We had learned the all-important rule in the law of government takings -- the principle of permanent physical occupation. Simply apply the rule to any situation. If the government taking entails a permanent physical occupation, then compensation is due. But if the occupation is not permanent or if it is not physical, then there is no compensation. Now we knew how to achieve justice in the field of eminent domain.

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Or did we?

What happened to our initial reactions, formed without the “benefit” of understanding the all-important principle of permanent physical occupation? How had our votes changed on what was the proper outcome in those hypotheticals? How did learning a general rule of law come to change our perception of justice? And most importantly, just what was law school doing to our minds?

Thinking Like A Lawyer

The answer to these questions is quite simple: Law school taught us how to think like lawyers. Just listen to our professors -- they actually bragged about it from orientation on: “We’re not here to teach you the law. We’re here to teach you to think like lawyers.”

But what does it really mean to think like a lawyer? How does it differ from how “normal” people think? And is it good?

Thinking like a lawyer means (1) analyzing each specific situation to identify its representative characteristics, (2) selecting the objective principle that is known to apply to other situations having those same characteristics, and then (3) applying that objective principle to the specific situation at hand to determine the proper outcome. Normal people don’t think like that. But lawyers do.

How It Came To Be

How did this happen? How did lawyers come to think “like lawyers”?

Back in the Dark Ages, way before the Common Law was even a twinkling in Mr. Blackstone’s eye, kings made the law. For example, if the king wanted to build a new castle on the site of some serf’s house, he just came and took it and that was that. There was nothing the poor slob could do about it.

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As you might imagine, the serfs would only tolerate this sort of behavior for just so long. So, after about twelve hundred years, they got really pissed off and demanded that, if the king took someone's property, he should at least compensate the dispossessed person for the loss. This led to a big war, in which the king was forced into retirement. Then the lawyers took over, and one of the first things they did was write the Takings Clause.

Takings Clause in Action

At first it was easy. If the government wanted your farmland to build a fort, it had to pay. If it wanted to build a road through your living room, it had to pay. Everyone was happy with the result, because everyone agreed that it was obvious that that was the right thing to do.

Then one day, a dispute arose to which the solution was not so obvious. The property owner thought a taking had occurred and wanted to be compensated, but the government didn't think it was a taking and refused to pay. So the property owner sued the government.

The lawyers examined the situation, scratched their collective heads, applied their common sense and innate senses of equity and decency, and finally, after much heart-ache and soul-wrenching, decided what was just and fair. But in doing so, they had to expend a lot of energy. They had to become emotionally involved in the dispute. They had to "get in touch with their feelings" way before the State of California was even invented. And in the end, they were exhausted. But they were also confident that they had reached the correct decision.

A Rule Is Born

Sometime later another takings dispute arose that also had no obvious solution. Just as the lawyers started rolling up their sleeves to agonize and empathize, one of the lawyers said, "Hey, wait a minute. Instead of getting all worked up about how to settle this dispute, why don't

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we examine what we did in that last takings case? Maybe we can figure out how to solve this dispute from what we did in that one. That's a whole lot easier than going through all this heart-wrenching each time.”

So the lawyers analyzed that earlier case, and other similar cases as well, to see what they had done and why. They determined what was similar and different between all the different factual scenarios, and how those similarities and differences affected the outcomes of the cases.

Then they put all this together and developed the general rule of takings: the principle of permanent physical occupation. If there was a permanent physical occupation, then there was a compensable taking. If there was not a permanent physical occupation, then there was no compensable taking.

The lawyers took their new principle and applied it to the difficult dispute at hand, and, lo and behold, out popped a solution. There was no heart-wrenching; there was no emotional anguish; there was no soul-searching. Just apply the rule to the facts and out pops the answer. What could be simpler?

The lawyers were very pleased with themselves and especially pleased with their new rule. They applied their rule to subsequent cases with increasing alacrity and confidence. When the case was easy, the rule gave the correct decision. When the case was difficult, the rule allowed the lawyers to reach a decision without having to work too hard. They didn't have to ask themselves how they “felt” -- the rule dictated what the outcome should be.

In no time at all, the rule became set in judicial concrete.

Mr. Hadochek's Case

Everything was running smoothly until Mr. Hadochek came along to muck everything up. The city of Los Angeles annexed the area in which Mr. Hadochek had a brickyard for 13 years, and then the city passed an ordinance prohibiting brickyards within city limits. Mr. Hadochek could

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no longer operate his successful brick business and, as a result, he lost \$740,000 in property value.

Everyone said, “Hey, that’s not fair. The government should pay Mr. Hadochek for his loss. It wasn’t his fault; why should he have to suffer just because the city limits have expanded.”

Everyone agreed, except, of course, the lawyers. They considered the facts of the situation and determined, quite correctly, that there was in fact no “permanent physical occupation” by the government of Mr. Hadochek’s property. Therefore, as dictated by their glorious rule, Mr. Hadochek clearly was not to be compensated.

Normal people, like Mr. Hadochek, who made decisions based on emotional considerations of justice and fairness, not on abstract principles like “permanent physical occupation,” were understandably outraged. “How could lawyers come to such an unjust, unfair, wrong, and even evil decision? How could they be so stupid?”

What these poor folks were beginning to realize was that there was something different about lawyers. They may not have recognized what it was, but they knew they didn’t like it. These people did not appreciate that lawyers think differently from normal people. They think in terms of general principles; they don’t think in terms of what is right and just and fair. Lawyers elevate rules above the equity of the solution. And when a case arises wherein application of the rule leads to an unfair result, it doesn’t matter: The rule is more important than fairness. Justice must take a back seat to expediency, consistency, and efficiency.

Hey, you don’t have to believe me, just ask the Supreme Court.

Supreme Court Agrees

Justice Stevens explained the development of decision-by-principle, its rationalization, and its result in *Arizona v. Maricopa County Medical Society*, 457 U.S. 332 (1982). Addressing the test for determining the legality of agreements that restrain trade in the antitrust context, Stevens wrote:

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“Once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason [i.e., the ‘feelings’ approach] will condemn it, it has applied a conclusive presumption [i.e., the general principle] that the restraint is unreasonable. As in every rule of general application, the match between the presumed and the actual is imperfect. For the sake of business certainty and litigation efficiency, we have tolerated the invalidation of some agreements that a full-blown inquiry might have proved to be reasonable.”

Id. at 344. As the great Justice Louis Brandeis once put it: “in most matters it is more important that the applicable rule of law be settled than that it be settled right.” *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting).

Summary

Let’s summarize, shall we. Lawyers think differently from normal people. Where normal people make decisions by what feels right, lawyers apply general rules. Even though their thinking processes differ, lawyers and normal people usually come to the same conclusion. But every once in a while, these differing approaches to problem solving lead lawyers and normal people to reach different results. And when that happens, normal people find yet another reason to dislike lawyers.

I’m not saying that thinking like a lawyer is always bad or that lawyers are necessarily wrong just because their answer differs from that of normal people. What I am saying is that all of us should, at the very least, recognize what law school did to our minds and perhaps even question the appropriateness of those changes.

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Professor Schill's Misrepresentation

It wasn't a coincidence that Prof. Schill told us in First-Year Property class to base our votes for his not-so-hypotheticals upon how we "feel." He chose his verb very carefully. He was purposely setting us up, relying on our first-year naivete, letting us continue to believe for just a little while longer that how we "feel" is at all relevant to the law.

CONFESSIONS OF A LIBERAL ZIONIST¹³

I am a knee-jerk liberal. I am in favor of women's reproductive rights, in favor of universal healthcare, in favor of gun control, in favor of protecting the environment, in favor of the decriminalization of marijuana, in favor of consumer protectionism, in favor of gay marriage, in favor of immigration, in favor of a livable minimum wage, in favor of sanctuary cities, in favor of civil rights and equal rights, in favor of a path to citizenship for all undocumented immigrants, not just DACA participants. I am against Donald Trump's Wall, against the deregulation of the banks, against defunding Planned Parenthood, against the death penalty, against the privatization of schools and prisons. I believe that Black lives matter, too. You name a liberal or progressive cause, and I'm almost certain to be in favor of it. I wear the badge of "knee-jerk liberal" with pride.

Like every good knee-jerk liberal, my natural inclinations are with the underdog. Liberals favor migrant farm workers over corporate farmers, minimum-wage workers over Wall Street bankers, immigrants over protectionists, the polluted over the polluters, the disenfranchised over the disenfranchisers. The weak over the strong. In other words, David over Goliath.

I am also an ardent Zionist. I believe that the Jewish people have the right to a homeland and that that homeland is the modern state of Israel. As a Zionist, I am pro-Israel. That doesn't mean that I

¹³ This essay first appeared in 2018 in the *Jewish Exponent*, the weekly newspaper of the Philadelphia Jewish community, back when they would still publish my essays.

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automatically agree with every policy of the Israeli government, but it does mean that I support Israel in its struggle for existence against its enemies.

Before March 26, 1979, it was much easier to be both a knee-jerk liberal and an ardent Zionist. From the founding of the modern state of Israel on May 14, 1948 until March 26, 1979, Israel was the underdog. Before March 26, 1979, the Mideast Crisis looked like this:



Before March 26, 1979, it was little Israel against the vast and powerful Arab world, including its immediate neighbors Egypt, Jordan, Syria, and Lebanon as well as Iraq and Saudi Arabia and Yemen and Libya and Tunisia and Algeria and Morocco and on and on. Israel was David, and Goliath was the entire Arab world.

I was born in the late 1950s and grew up in the 60s and 70s. I remember my jubilation after the Six Day War in 1967 as well as my fear during the Yom Kippur War in 1973. In those days, it was relatively easy for a knee-jerk liberal to be an ardent Zionist. Any good liberal could be on Israel's side because Israel was the underdog, and liberals love underdogs.

All of that changed on March 26, 1979, when Israel signed its peace treaty with Egypt, the most populous and most powerful Arab

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country. Without Egypt, there was no way that Syria, Jordan, and Lebanon and the rest of the Arab world were going to threaten Israel's existence.

Since March 26, 1979, the Mideast Crisis has looked like this:



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On March 26, 1979, Israel went from being David to being Goliath, and the Palestinians became the new David.

Some knee-jerk liberals who became ardent Zionists before March 26, 1979 stayed true to their Zionism and became less liberal. That partially explains the increase in the number of Jewish Republicans over the last few decades.

Other knee-jerk liberals who became ardent Zionists before March 26, 1979 stayed true to their liberalism and became less Zionist.

But there are still some of us who have struggled to stay true to both our knee-jerk liberalism and our ardent Zionism. And, frankly, it hasn't been easy.

To the ardent Zionist in me, they are housing projects in liberated Judea and Samaria. To the knee-jerk liberal in me, they are illegal settlements in the occupied West Bank.

To the ardent Zionist in me, Israel withdrew its army and forcibly evacuated Jewish settlers from the Gaza Strip in 2005. To the knee-jerk liberal in me, Gaza is still effectively if not physically occupied (by Israel and Egypt).

To the ardent Zionist in me, Jerusalem is the eternal and undivided capital of the Jewish people. To the knee-jerk liberal in me, East Jerusalem should be the capital of a Palestinian Arab country or at least maintained as an international city.

To the ardent Zionist in me, the Law of Return, which grants substantially every Jew the right to citizenship in the State of Israel, is after all what Zionism is all about. To the knee-jerk Liberal in me, it is a discriminatory policy.

The latest challenge for us liberal Zionists is intersectionality: the growing alliance between traditional liberal groups whose core issues have nothing to do with the Mideast crisis and anti-Zionists. Anti-Zionists have done a masterful job co-opting and, frankly, duping many of my fellow knee-jerk liberals.

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As a knee-jerk liberal, I have been no fan of conservative political adviser Frank Luntz, the coiner of the term “death tax” to incite ignorant people against estate taxes and the term “climate change” to tranquilize the ill-informed about global warming.

But, as an ardent Zionist, I have a new-found appreciation for Frank Luntz, who explained to a crowd of Zionists at a recent Zionist Organization of America event that the way to counter the anti-Israel boycott, divest, and sanction (BDS) movement is to talk the language of liberals. Don’t call them anti-Semites. Those that are anti-Semites are probably irredeemable. But many BDS supporters are not. Many of them are just my fellow confused knee-jerk liberals who need to be educated about Israel being the only country in the Middle East that protects free speech and religious pluralism and ethnic pluralism and gay rights and women’s rights. With that information, maybe more of my fellow knee-jerk liberals will understand and appreciate that knee-jerk liberalism and ardent Zionism are not incompatible after all.

WE HAVE MET THE ENEMY AND IT IS “WE”¹⁴

There is a problem in the English language with the word “we.” The problem is that the word “we” has two different meanings. No, I’m not referring to the “royal we” and the “regular (subjugated?) we”; I’m referring to the “inclusive we” and the “exclusive we.” Perhaps a story will help illustrate these two different meanings.

Last week, my wife and I and our daughter were visiting my wife’s parents for a few days. One night I had a dream that my wife and I and our daughter were going on a vacation to Denmark. The next morning, apparently by coincidence (although you can’t be too certain with a mother-in-law), my mother-in-law happened to mention something about Denmark. I said, “That’s funny, last night I dreamed that we were going to Denmark for vacation.” “Oh,” replied my mother-in-law excitedly, “when are we going?”

You see, my mother-in-law had assumed that I was using the “inclusive we” -- the one that includes, within the meaning of the first person plural pronoun “we,” the person or persons whom the speaker is addressing, when, in fact, I was using the “exclusive we” -- the one that does not include within the meaning of the first person plural pronoun “we” the person or persons whom the speaker is addressing. In other words, my mother-in-law mistakenly thought she was invited to join my wife and me and our daughter on our vacation to Denmark.

¹⁴ 1997

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Now, don't get me wrong, I love my mother-in-law and everything, but, you know, ... Besides, I'm only using that story to illustrate the two different meanings of the word "we." Honest.

That "dream sequence" was actually the second time in the last few weeks that I recognized that there were problems in the English language with the first person plural pronouns "we" and "us" and the first person plural possessive pronoun "our." At work recently, I was preparing a letter to a client. The letter began something like this: "In light of our telephone conversation of earlier today, I am writing to document our understanding of your instructions." Now, the first time that the word "our" appeared in that sentence, it was meant to be the "inclusive our" since I was referring to the three-way telephone conversation that I had had earlier that day with my colleague and the client to whom I was writing. But the second time that the word "our" appeared in that sentence, the meaning was intended to be the "exclusive our" since I was referring to the understanding of only my colleague and me, and to not that of the client. The sentence just seemed awkward to me.

That was when I began to realize that it sure would avoid a lot of awkwardness and misunderstanding if the English language had different words to express these two different concepts.

Some foreign languages have different words to express different meanings for which, in English, we have only one word. For example, I know, because my sister used to live in Pakistan, that Urdu has two different words for "aunt": one word for your mom's sister and a different word for your dad's sister. Now, unless your mother and your father both happen to have sisters with the same first name, I don't think having to use the same word for your mom's sister and for your dad's sister is that big of a deal.

Soon after the encounter with my mother-in-law, I began to wonder if there were any foreign languages that have two different words to express the two different first person plural concepts. Now, other than English, I really have any appreciable familiarity with only

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French and Hebrew, and I'm pretty sure that neither of those languages has one word for the "inclusive we" and a different word for the "exclusive we." But what about other languages? Most importantly, as far as my mother-in-law is concerned, what I really need to know is whether there are two such words in Danish.

RANDOM REFLECTIONS OF A PSEUDO- PATENT LAWYER¹⁵

It was my third day as a summer clerk at a small but well-established Philadelphia law firm dealing exclusively in matters of intellectual property. That's what we call patents, copyrights, and trademarks these days. I was sitting at my desk doing legitimate work: reviewing the results of a patent search.

When a client wants to patent his or her invention, the law firm sends a description of the invention down to Washington to a patent agent, who runs over to the Patent Office and makes copies of all the old patents that are relevant to the patentability of the new invention. That's a patent search.

The agent then sends the stack of copies of patents back to us, where someone has to sit down and determine which of the patents really are relevant and how they are relevant and whether or not the "prior art" "teaches" our client's invention. That's reviewing a patent search.

So, anyway, it was my third day at work, and I was reviewing a patent search for one of the partners, trying to determine whether our client's doohickey was "useful, novel, and nonobvious to a person skilled in the art" in light of the gizmos and thingamabobs described in the prior patents.

¹⁵ *Penn Law Forum*, 1989

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There I was, hunched over a desk strewn with papers, reviewing away, when one of the other partners struck his head in my office. I looked up.

He said, “Are you busy?”

I looked down at the piles of papers on my desk and then back up to him. “No,” I replied, trying not to sound convincing.

“We need someone to go over to the Courthouse to get some forms right away.”

My first thoughts were, “Yeah? So why are you telling me this? Why don’t you ask one of the secretaries? Do you want *me* to ask one of the secretaries?”

I just stared at him. I used to have this great look, where I tilted my head down and looked at someone over the top of my glasses.” It had “You’ve got to be kidding” written all over it. Unfortunately, I lost that look when I started wearing contacts, so I had to be content with just staring at him.

“I think it would be good for you to see the Courthouse. It’s important to get to know where it is. You go down Market to Sixth, through the glass doors, into the lobby, through the metal detectors, make a left, and go up the...”

“Escalator?” I interrupted.

“Oh, you’ve been to the Courthouse before? Well, have you been to the Clerk’s Office?”

“Yes.” I’ve actually been to the Courthouse only twice in my life: once for oral argument, and once to go to a hearing on the Eastern Airlines strike that Prof. Gorman recommended to our Labor Law class. On that second occasion, we got lost and stumbled quite accidentally upon the Clerk’s Office where we got directions. But I wasn’t going to explain that to this partner.

“Oh, well, we need the forms anyway.”

I left right away, walked the five blocks down to the Courthouse, got the forms from the Clerk’s Office (it was even the same guy who had

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helped us before), and returned straight to the partner's office with the forms.

“Oh, you've got the forms already?”

“Yeah. I ran both ways.”

“You did?”

“No.”

“Well, it turns out we don't need them after all. But I'm sure we'll use them in the future. Thanks.”

What a jerk.

The week before work started I went clothes shopping with my mom. The store was having a sale on short-sleeved dress shirts. My mom asked if it was okay to wear short-sleeved dress shirts in the office. Is said, “Sure, why not? It's summertime, isn't it?”

I bought nine nice new short-sleeved dress shirts for work. Guess who was the only one in the office wearing short-sleeved dress shirts this summer?

Jim Kurkowski '90, who had worked at the same firm the summer before, told me about the time they took him to lunch at the Union League, and he didn't have a jacket to wear. So I kept two jackets in my office all summer long: a blue one and a brown one. No matter what I was wearing, I would be ready. They took me to lunch about 10 times last summer, three times to the Union League. I always had a jacket to wear. Thanks, Jim.

At 4:45 on the Friday of my first week at work, I was sitting in the office of yet another partner. He was explaining a project he wanted me to do. He looked at his watch and was startled to see how late it was. He asked me if I had a train to catch. I told him I did, but that it didn't really matter; I could take a later one.

“No, you'll make it,” he said. And continued, “Now, I don't want you to take this home to work on over the weekend.”

“Okay.”

“No, I mean it. I don't want you to work on this over the weekend.”

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“Okay,” I repeated, trying to reassure him that I was fully prepared to take his advice.

“Because some firms expect their summer clerks to work weekends and to stay late at night, but we don’t do that here.”

“I know,” I said. “That’s why I’m here.”

And it was, too. I can’t imagine a more pleasant way to try your hand at patent law. Small firm, nice people, relaxed atmosphere, good work, both interesting and diverse, not just all library research.

I even got to visit a client once by myself. I wore my best suit. Big deal, it also happens to be my only suit, but that’s another story.

My assignment was to learn everything there was to know about their invention in one day, so that we could draft their patent application.

I drove right past the factory. It looked like a reconverted transmission repair shop. It was hot, noisy, and dusty, with workers running around in t-shirts. The president of the company was wearing jeans. I was wearing my best suit. Did I feel stupid or what?

Here’s this dumb kid pretending to be a lawyer, coming to the rescue. Thank god, I left my briefcase at home. That would have been just too embarrassing to endure.

I learned a lot this summer. Did you know that there is an international schedule of classes for trademarks that divides goods and services into 42 different categories? Before this summer, I didn’t either.

For example, Category 13 groups together firearms, ammunition and projectiles, explosives, and fireworks. Makes sense, right?

Well, how about Category 1 which includes (1) chemical substances for preserving foodstuffs and (2) manures? Makes you think, huh?

My favorite is Category 5 which covers, among other things, both food for babies and preparations for destroying vermin. I wonder if W.C. Fields had a hand in making up these categories.

One day one of the partners asked me to find the exact definition of a device called a mandrel. I turned to Knight’s venerable *American Mechanical Dictionary*, a legitimate technical tome published in 1875, which defines “mandrel” thusly:

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Man'drel. 1. (Lathe.) Often incorrectly spelt mandril, which unfortunately is a short-tailed baboon with a red and blue face. The cynocephalus.a. An arbor or axis on which work is temporarily placed to be turned ...

Unfortunately?

ME? A SECULAR JEW?¹⁶

The other day, someone called me a secular Jew. “What?” I thought, “I’m not a secular Jew.”

I grew up in an observant Conservative Jewish home. We kept kosher. We went to synagogue almost every Shabbat, sometimes both Friday night and Saturday morning. I went to Hebrew School three times a week. I even went to Hebrew High School for years after my bar mitzvah. I went to Camp Ramah for three years as a camper and then worked there for another six years. When I went to college, I kept even stricter kosher and was shomer shabbat (sabbath observant). More than one person predicted that someday I would be a rabbi.

How can I be a secular Jew? To me, “secular Jew” has always been a pejorative term.

In the last 40 years or so, much has changed. I am still a member of a Conservative synagogue, but I spend more time playing on the synagogue softball team than I do praying at the synagogue. My home is what delis like to call “Jewish style.” No pork, no seafood (at least not for me), and only a modest degree of mixing meat and dairy. I am not a rabbi, but I am both a vice chair of the regional board and an associate national commissioner of the Anti-Defamation League.

And just what is a secular Jew anyway?

Some people, for whom the term “secular Jew” is probably also pejorative, conflate being a secular Jew with being a cultural Jew. Judaism, as Mordechai Kaplan tells us, is a civilization. Civilizations have cultures. The culture of Judaism involves keeping kosher and going to synagogue

¹⁶ *Jewish Exponent*, 2019

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and observing 611 other commandments. The culture of Judaism is not eating bagels and belonging to a Jewish country club. Every observant Jew is a cultural Jew. It's a misleading term.

According to someone on the Internet named “ mama pajama ,” a secular Jew is a person born to Jewish parents who does not observe the religious customs of Judaism, but has not separated him/herself from the Jewish people by becoming apostate to Judaism in adherence to another religion.”

My parents were both Jewish. I still keep a degree of kosher, but barely. I still don't eat pork or seafood, even outside the house. For the most part, I don't mix meat and dairy. I won't eat a cheeseburger or drink a glass of milk with my (unkosher) corned beef special, but chicken enchiladas and chicken tikka masala are apparently okay. My shabbat observance is essentially nil, other than infrequently attending services for bar and bat mizvahs of friends and relatives.

I have not joined another religion, but I could be accused of becoming apostate to Judaism. I don't believe that God spoke to Abraham in Ur, and I don't believe that Moses received the Torah from God at Mt. Sinai. Heck, I don't even believe that there is a God.

It's been decades since I kept kosher because I believe that God wants me to keep kosher. I have long told people that Jews keep kosher because God said to keep kosher and that I keep kosher because Jews keep kosher. My current kosher observance, dwindling though it may be, is in fact more “cultural” than it is “religious.”

So, here I am today, the atheist son of Jewish parents who keeps a modicum of cultural kosher. I'm a member of a Conservative synagogue, but go there only a handful of times a year. I'm an active ADL board member and an ardent Zionist, but I haven't been to Israel in the last thirty-five years. If that makes me a secular Jew, then so be it.

A DEMOCRAT'S VIEW OF NATURE AND NURTURE¹⁷

I finally figured out the difference between Democrats and Republicans. But, first, I need to talk about heredity and environment. We are all born with potential ranges of what we can accomplish or become in life. Some people's ranges may be wider than others. Some people's ranges probably start after others' have already ended. What happens to us in life, what others do to us, and what we do to ourselves determine where we eventually end up along our potential ranges. The potential range is heredity's contribution; where we end up on that range is determined by our environment.

Let's take pole-vaulting as an example. When I was in high school, I was on the track team. To say that I was not very good at pole-vaulting is like saying Ronald Reagan had a slight memory problem. To put it in perspective, suffice it to say that my more successful pole-vault attempts would just barely vie for today's world-record high jumps. Now, I am sure that I never reached my maximum potential as a pole-vaulter, but I am equally sure that, no matter how much training and exercise I could have done, or steroids I could have ingested, I still would not have been able to clear 15 feet, let alone compete in the Olympics. In other words, no matter how much environment I "got," it would not have overcome my deficiencies in heredity.

The problem in life is that we just do not know how extensive our potential ranges really are. I know that there is a limit to what even the best athlete can accomplish. I realize that fifty years ago no one believed

¹⁷ *Penn Law Forum*, 1989

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that 20 feet would ever be within the reach of the world's best pole-vaulter. However, I am willing to say that no man or woman will ever pole-vault 473 feet. Somewhere between 20 feet and 473 feet, there is a limit to what a pole-vaulter can achieve. So, too, there are limits to everything that Man can do.

Let's talk about intelligence. Just like jumping ability, every human is born with a potential range of intelligence. Each person's environment determines where on the range of intelligence he or she will end up. Here, the environment is not physical exercise, but mental exercise. Having good teachers, good parents, good schools, good friends, or even good television shows are all vitally important in determining where on his or her potential range of intelligence a person will end up.

I hate to break the news to you, but not all people are born with the exact same potential range of intelligence, any more than they are born with the exact same potential range for pole-vaulting. I do not care what anybody says, there are people on this planet who will never understand Einstein's general theory of relativity no matter how much schooling and extra tutoring they receive. Me, for example. And yet there are people who do. Einstein, for example.

While we all have different innate limits to our personal ranges of intelligence, the best this world could ever be will be reached when everyone reaches the upper limit of his or her own intelligence range. All we need is a better environment. A lot better.

Now let me tell you how Democrats and Republicans are alike. Both Democrats and Republicans agree that all men (and women) are NOT created equal. Sure, it sounds good to state the opposite if you are severing your ties to some colonial oppressor, but they really did not believe it back then any more than we do today. Some men are born with potential ranges of jumping ability higher than other men. Some women are born with potential ranges of intelligence higher than other women. In fact, some women are even born with potential ranges of

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intelligence higher than other men, hard as it is for some of us of the jumpier sex to admit.

What this means is that, even if we were doing a better job of providing better environments, people would still end up at different points along Man's range of jumping ability, along Man's range of intelligence, along Man's range of economic well-being, along Man's range of subsistence, and along Man's range of general quality of life.

Now finally for the difference between Democrats and Republicans. Democrats recognize that some people will end up better off than other people and that other people will actually end up worse off than what is necessary for a healthy, happy life. And Democrats say, "Wait a minute. That is not right. That is not just or fair."

And Democrats decide to do something for these people who have not fared well in our competitive capitalist society. Democrats invest money in schools and education to help each person strive for his or her maximum potential. In the meantime, Democrats set up programs to feed and shelter the poor, to care for the aged and sick, to help those who have been left behind.

Republicans, on the other hand, recognize that some people will end up better off than other people and that other people will actually end up worse off than what is necessary for a healthy, happy life. And Republicans say, "Fuck'em. They lose."

DRESSED TO BILL¹⁸

(Why People Hate Lawyers, Part 2)

When I was but a summer clerk at a small Philly law firm, a friend of mine from high school happened to work in the same building as an associate at another firm. We made plans to meet one day for lunch. It was a typical July afternoon in Philadelphia -- really hot and really humid. (I don't recall whether it was really hazy or not.) When we met in the lobby to walk to Sansom Street for some Chinese noodles, he was wearing his suit jacket.

"Rob," I said, "why are you wearing your jacket? It must be 100 degrees outside."

"Oh," he replied in utter seriousness, "I would never leave the office without my jacket."

* * * * *

In my previous life (that is, before I became a lawyer), I was an engineer. I worked at General Electric where all the engineers wore (at least) a shirt and tie to work. Except me. I prided myself in never wearing a tie. (Actually, I wore a tie to work four times in my six years at GE. The first time, it was this really ugly tie that my dad got from some pharmaceutical company. It was a wide maroon cloth tie with yellow caduceus symbols and the Hippocratic oath written in yellow in the

¹⁸ 1994

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background. The second time, it was one of those “fish” ties -- I think it was a trout. The third time, it was a nice thin white silk tie with likenesses of Moe, Larry, and Curly printed in black. The fourth time, I had to give a presentation to about 300 NASA engineers. That time it was a dark green cloth tie with pictures of that bronze fountain sculpture in Brussels of the little boy peeing.)

I insisted that I was going to be judged by the quality of my engineering work and not by my attire.

One year, my annual performance review was practically glowing in every category, except that my boss said I needed to work on my “professionalism.” I went to talk to him about it, because I was really concerned and confused. Had one of our NASA customers complained about the quality of my work? Or my demeanor? No, he said, he thought I should wear a tie.

When I decided to go to law school, people would come up to me and ask, “How are you going to be a lawyer? You have to wear a suit and tie to work.” I had no answer.

* * * * *

I used to have two goals in life. One was never to read the Wall Street Journal and the other was never to own a suit. In my mind, they represented everything evil in this world.

When I was a second-year law student at the age of 33, I bought my first suit. For job interviews. The year before that, when I was a summer clerk at that small Philly law firm, I had two sports jackets that I left in my office: a blue one and a brown one. Whenever I needed a jacket (which was only when one of the partners took me to lunch), I had one available that would match whatever I was wearing that day.

Before I started that job, I went clothing shopping with my mom. As I was picking out short-sleeved shirts, she asked me whether it would be okay to wear short sleeves at the law firm. I said, “Mom, it’s summer.

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Of course, I'm going to wear short sleeves. What kind of question is that?" What kind, indeed.

I now own six suits. I wear a tie to work (almost) every day. And when I do, I only wear long-sleeved shirts. Even in July. (I have, however, never yet read the *Wall Street Journal*.)

* * * * *

As an outside patent attorney, I do about 90 percent of my work for a large West Coast computer chip company. The first time I went to Oregon to meet with some of the engineers to prepare some patent applications, I wore a suit and tie. That was the last time I wore even a tie -- let alone a suit -- for such a visit. I asked one of the in-house attorneys, who by the way was wearing a flannel shirt and khakis at the time, if it was okay if I did not wear a tie when I visited. He said, "I don't care what the fuck you wear, as long as you do a good job." My kind of guy.

On a recent trip, one of the engineers with whom I have become friendly confided in me that, when someone wears a suit and tie to visit them, they consider it to be an actual insult. Not just silly. Not just out of place. But an actual insult. As it was, he told me, the nice slacks and button-down shirt that I was wearing was bordering on rude.

So, here I sit in my office in Philly, typing away on my computer just like I do (almost) every day, wearing a tie, long sleeves, and suit pants. My coat is hanging on the back of my door, where it has hung for the last few weeks. (More on that later.) I never see clients in my office. But when I do see clients, it's on the West Coast, and I make damn sure I don't wear a suit and tie.

* * * * *

A few weeks ago, in the middle of (yet another) Philadelphia heat wave, I decided to leave all of my suit jackets at work. What the hell, each day I had been carrying a jacket to work (do you know what the Market-

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Frankford El is like in July?), hanging it up for the day, and carrying it home at night. So now I have all my suit jackets on hangers at work, where they have been untouched for about three weeks. (I figure that if someone dies and I need a suit, I live close enough to work to stop by on the way to the funeral.) I'm even thinking of leaving my jackets at work all year round and just wearing an overcoat when the weather turns cold.

* * * * *

The only time I don't wear a tie to work is on "dress-down Fridays." (I would add, when I come into the office on weekends, too, but there have been so few of them, they don't really count.) Now, there is something very insulting about the concept of "dress-down Fridays." It's like, "Here, we'll throw the peons a bone and let them come to work in comfortable clothing for a change. But only on Fridays. And only between July 1 and Labor Day." Of course, if we have to go to court or if we have a meeting with a client, we must wear a suit and tie. Well, I never to go to court, and the only clients I ever see won't talk to me if I wear a suit and tie.

So, during the summer, on Mondays through Thursdays, I wear a suit and tie to work. I sit at my terminal and compose patent applications and responses to patent office actions. Every once in a while, I discuss some issue or other with another member of the patent department, who is also wearing a suit and tie. On dress-down Fridays, however, I wear shorts, sneakers, and a polo shirt. I sit at my terminal and compose patent applications and responses to patent office actions. Every once in a while, I discuss some issue or other with another member of the patent department, who is also wearing shorts, sneakers, and a polo shirt. Go figure.

Once I had thought of wearing a tuxedo to work on a dress-down Friday. Just to be obnoxious. But you know what? I hate wearing a tuxedo, and I like wearing comfortable clothing, so why torture myself?

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Sometimes, when I am heading out to lunch on a warm day, I have a slight urge to grab my jacket. It's a feeling of being incomplete, that something is not quite right, when I leave the office in just my shirt sleeves. This is a feeling that I am consciously trying to resist by purposely forcing myself to leave my jacket behind. I figure that, if I nip it in the bud, I can prevent myself from turning into someone who would never leave the office without his jacket like my old high-school friend Rob. I'm not sure I can make it. Pray for me.

A MEANINGFUL YOM KIPPUR¹⁹

A few days before Yom Kippur this year, I sent an email message to a client of mine who happens to be an Orthodox Jew. Notwithstanding the fact that I was sending my business-related message to his work email address, I ended my email with “Happy new year and have an easy fast.”²⁰ Eugene started his reply with “Happy new year and have a meaningful Yom Kippur.”

I try every year to have a meaningful Yom Kippur, but I rarely succeed. It’s hard to have a meaningful Yom Kippur in particular while struggling generally to discover a meaningful Judaism. As a former shomer shabbos (i.e., sabbath observing), kosher Jew turned devout atheist, I have been trying in recent years to figure out what about Judaism for me is the baby and what is the bathwater. As more and more time goes by, more and more appears to be bathwater, and less and less baby.

I always fast on Yom Kippur, although, in recent years, I have been joining my family at our friends’ house for a “break fast” celebration that is at least an early-bird special if not a late lunch.

¹⁹ *Jewish Exponent*, 2013

²⁰ Rosh Hashanah is the Jewish New Year. Eight days later is Yom Kippur. On Yom Kippur, observant Jews fast for at least 25 hours from sundown the day before Yom Kippur until it is dark enough to see three stars after sundown on the day of Yom Kippur. (Technically, Jewish days start at sundown, not at midnight.) These days not-so-observant Jews, if they even fast at all, make it until about mid-afternoon. In any case, during the days leading up to Yom Kippur, it is traditional to wish fellow Jews an easy fast, that is, a fast without too much discomfort from not eating or drinking.

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I always go to Kol Nidre services on Erev Yom Kippur²¹, and I always go to services Yom Kippur morning. I used to return to synagogue in the afternoon and stay until the bitter end, joining my family at our friends' house after the blowing of the shofar²² and just in time for them to be finishing up their dessert. Happily they always saved me a big plate of food: bagel and lox, smoked fish, dairy kugel, and a tall glass of orange juice.

The first year that I skipped the Mincha and Neilah services²³ and instead went in the late afternoon with my wife and kids to our friends' house, I let them all eat while I waited until after the time that I thought the shofar was being blown before joining in. The next year, I think I waited at least until sunset. In recent years, I have been eating with all of them, hours before the official end of the holiday. This year, I at least waited to be at the end of the buffet line.

Some argue that the Jewish holidays, including Yom Kippur, are about family. But, for me, Yom Kippur has always been more about introspection and self-reflection, not family.

In addition to attending Yom Kippur services, I usually try to find something meaningful to do during the time that I am not in synagogue. (This year, that included starting to write this essay.) I don't do work, and I usually try not to watch television, although this year, I came home early from Kol Nidre services and ended up watching Tootsie and Animal House with my wife. I'm not sure about Animal House, but there are a few moments in Tootsie that could qualify as meaningful, and I'm not just talking about every scene in which Jessica Lange appears.

I usually try to read something meaningful – and Jewish – on Yom Kippur.

²¹ The evening religious service just after sunset that is technically the beginning of Yom Kippur. *Erev* means evening in Hebrew. *Kol Nidre* means all vows. It's a long story.

²² A ram's horn that is traditionally blown at the end of Yom Kippur.

²³ The last – and longest – religious services on Yom Kippur.

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Last night, I took a copy of Maimonides' Guide to the Perplexed with me to read during the Kol Nidre service. That is the first time that I have ever read anything by the Rambam²⁴, one of the most revered scholars in all of Jewish history. Although I read only about 15 pages, I actually laughed out loud (not a typical sound heard during the Kol Nidre service) at some of the ridiculous things he wrote 900 years ago. For example, Maimonides said that he is "surprised" that Abraham's Sabean neighbors could believe "ridiculous stories" like that Adam was a human born of a father and a mother and had come to Babylon from India, bringing with him "fantastical things," such as a golden tree that grew leaves and branches, and a fresh leaf of a fire-proof tree, "since any student of natural science knows [such stories] contradict the laws of nature." This from a man who presumably believed that Adam was made from a handful of dust and whose wife Eve spoke with a snake, just to mention two of the myriad "fantastical things" in our Five Books of Moses. Let's just say that the Rambam is now a little less revered by me.

I paused now and then during my reading of Maimonides to listen whenever our synagogue's new head rabbi spoke. During his sermon, he told a meaningful story about his own rabbi crossing out the word "impossible" from his dictionary, and about his own aversion to the word "never."

This morning, I spent an hour or so finally finishing Christopher Hitchens's memoir Hitch 22, which turned out to be very meaningful and unexpectedly very Jewish. After finishing Hitch 22, I immediately started reading Bernard Malamud's The Fixer. I had seen the movie about 40 years ago and always wanted to read the book. Based on my memory of the movie and the blurb on the back of the book, I expect it to be meaningful.

At services this morning, the rabbi gave a moving and meaningful sermon, urging all of us to do whatever we can to see to it that Syria's recent use of poison gas against its own citizens is not ignored. As usual,

²⁴ Rambam was Maimonides's nickname, like mine was Mendy.

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I found the Yizkor²⁵ service to be meaningful, reflecting on the lives and deaths of my father and my father-in-law, my favorite aunt and uncle, my nephew who died way way way too young, the millions of victims of the Shoah, and of course my own mortality.

After returning from services, my daughter Lauren asked me to go for a walk at the local nature preserve where she and her friend worked this past summer. In addition to her camera, she brought her bird guidebook and the copy of Ewell Gibbons's Stalking the Wild Asparagus that I recently bought for her and which she is currently ingesting with much gusto. As meaningful as our walk was, what was even more meaningful was that she had asked me to go with her.

But I have to say that what most made this Yom Kippur meaningful to me was when Eugene responded to my wish for him to “have an easy fast,” by urging me to “have a meaningful yom kippur.” I was taken aback by Eugene’s message. Here, I had extended to him a very shallow wish – that he not get too hungry or thirsty during Yom Kippur. And he had replied with a much more substantive wish – that my Yom Kippur be meaningful. I don’t know where this Yom Kippur ranks in meaningfulness, but it must be up there near the top.

I am still struggling to find meaning for me in Judaism, and I might ultimately fail, but Eugene’s admonition gives me a little more motivation to keep looking.

²⁵ Memorial service in honor of deceased relatives.

TEACHER ESSAY²⁶

When I was 10 or 11 years old, my Hebrew School teacher, Mr. Moskowitz, told us that, according to the Talmud, if a building is on fire and you can save only one person, you should save your teacher before saving your father. According to the Talmud, explained Mr. Moskowitz, your father's job was completed when he brought you into this world, but your teacher's job is never over.

I remember my classmates and me arguing with Mr. Moskowitz. No, we shouted, we would save our fathers before saving our teachers. Our fathers were our fathers. How could we not save them? Perhaps Mr. Moskowitz was simply hedging his bets; greasing the skids in case there was a fire at our Synagogue someday, so that he would get saved. The Talmud after all was written by teachers, not fathers, right?

Besides, we argued, we had learned more in our lives from our fathers than we had from our teachers. Perhaps the Talmudic principle made sense back in the olden days when fathers shipped their sons off to learn with the rabbis, thereby abdicating any further child-rearing duties. But that wasn't true when we were growing up, when our fathers were both our procreators and our most important teachers.

I now see that this was not a fair argument. If our fathers were also our most important teachers, then we could save our fathers without violating the Talmud.

My father died in the fall of 2001 at the age of 80. A few months later, Stephen Jay Gould died at the age of 60.

²⁶ 2002

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I doubt if many people ever loved their father more than I did mine, and I don't know if my sadness about the death of Stephen Jay Gould is actually a manifestation of my sadness over losing my dad, but I have been very upset ever since learning of Stephen Jay Gould's death.

My dad was my father from my birth in 1957 until his death in 2001. Like most sons, I grew up learning from my father. For my dad, it was more teaching by example than explicit lecturing. My siblings and I learned about life by watching my father (and frankly probably more so, my mother) live.

Also, like most sons, I reached a point in my life where I thought I was smarter than my father. Maybe not wiser, but undoubtedly smarter.

At some point in my life, my father lost his position as my most important teacher. Don't ask me exactly when that happened. Perhaps it was when I went away to college. Perhaps it was when I got my first full-time job after graduate school. Perhaps it was when I finally got married and started raising my own family.

With the possible exception of William Murray, who taught me patent law and therefore was arguably -- at least in an economic sense - - my most important teacher ever, Stephen Jay Gould has been my most important teacher for at least the last twenty years or so. My wife has clearly had the greatest effect on my life since I met her over a dozen years ago, but I'm not sure that she qualifies as a teacher.

I have had a number of great teachers in my life: Mrs. Zimmerman, my third grade teacher; Morton Moskowitz, my aforementioned Hebrew School teacher; Bert Hornback and Tom Storer, my English and Math professors at Michigan; Seth Kreimer and Robert Gorman at Penn Law School; and Ronnie Brauner, my Judaica teacher at Camp Ramah and probably the greatest teacher I have ever had. Stephen Jay Gould was the only one of my great teachers from whom I did not learn in a classroom setting.

I did meet the man once, however. It was sometime in the 1980s. Stephen Jay Gould came to town to give a late afternoon lecture at the

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University of Pennsylvania. I went to the lecture with my then girlfriend and a copy of one of his essay collections.

After the lecture, I approached the lectern, where Professor Gould was gathering together his things. Everyone else was filing out of the lecture hall for the reception in the adjoining room, and I recall that there were only Professor Gould, my girlfriend, and I remaining in the auditorium.

I asked Professor Gould if he would autograph my copy of his book. He demurred, arguing that, if he started autographing books, he'd never get out of there. I looked around the room and confirmed that no one else was even in the room, let alone a horde of other sycophants with books in hand. I then asked him if I could treat him to dinner. He begged off explaining that he had to catch an early train back to Boston.

My girlfriend was incensed at his arrogance and insensitivity in brushing me off so abruptly. I was fairly oblivious to such notions. Needless to say, Stephen Jay Gould remained and still remains one of my heroes. (For what it's worth, my other great hero today is Howard Stern.)

I wrote Stephen Jay Gould a letter once. I had some questions about evolution to ask him. For example, I wanted to know how paleontologists could determine that two different sets of co-located fossils belonged to two different species, rather than simply to males and females of a single species, when so many animals today have such profound differences between the sexes. Would the fossilized bones of today's male and female walrus be interpreted as belonging to two different species?

And speaking of species, I had many questions about defining different species based on their inability to mate. Should we then consider Chihuahuas and St. Bernards to be members of different species? And how does anyone know whether so many different species of beetles (over half a million?) actually exist? Has anyone tried putting all the different possible combinations (over 10^{11} !) together to see if they will mate?

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I also had a “Gouldian” observation that I wanted to share with him. To me, a “Gouldian” observation is one that provides a scientific explanation for an everyday occurrence that we typically take for granted. My personal “Gouldian” observation related to why we bend our arms when we run.²⁷

I wrote the letter, but I didn’t know how to send it to him. I remember unsuccessfully searching Harvard’s website for his email address. I remember communicating with one of Harvard’s librarians to get an address, but without any luck.

I finally mailed the letter, probably addressed to “Stephen Jay Gould, Geology Department, Harvard University, Boston, Massachusetts,” but I have no idea whether he ever received it, let alone if he ever read it. I do know that I never received a response from him.

You name it, during the last two years of his life, my dad had it: diminished speech and motor skills from a stroke suffered a few years earlier, heart disease, alternating high blood pressure and low blood pressure (depending on which medication was out of balance), gout, thyroid cancer, bowel problems, diabetes, and all the lovely complications that accompany that particular disease. Over the last few years of his life, he was in and out of the hospital literally dozens of times.

Notwithstanding the fact that -- or perhaps because -- he had been a physician for over 45 years, my father hated being a hospital patient. By the end, his quality of life was pretty low. Too weak to walk very far, he was often wheelchair-ridden. Poking himself with a needle every hour or so to check his blood sugar. Not able to eat whatever he wanted, after having practically lived his life for food. Constantly in distress from constipation, possibly resulting from decades of laxative abuse that left his bowels completely atrophied.

²⁷ For the answer, see the Intermission in my book [Shallow Draughts: Faith in the Absences of Free Will](#) available at www.amazon.com.

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When my dad died, the coroner listed the cause of death as massive failure of bodily organs, or something to that effect. My personal belief is that he actually died of an overdose of morphine administered by the staff at the hospice where he spent the last uncomfortable week of his life. I have no problem with such a conclusion.

My dad lived a full life and 80 seems to be an acceptable age to die these days. From what little I know, Stephen Jay Gould appears to have lived life fully, but, by dying at age 60, he did not live a full life. I'm sure he would have continued to write books for me to read for another two decades had he had the chance.

When I learn about accomplished people who died “prematurely,” I, like most people, wonder about the loss to the world. I think about the symphonies Mozart never wrote. As a Jew, I think about the lost accomplishments by the victims of the Holocaust that the world will never know. For every Jerzy Kozinski or Abe Foxman who somehow managed to survive, how much richer would the world be if not for the loss of six million other Jews.

It reminds me of a teacher (I can't remember which one) who said that we don't miss the symphonies that Mozart didn't write any more than we miss the symphonies of “Dusselderfer,” who died in infancy but would have been an even greater composer had he lived.

I have read most of Stephen Jay Gould's books (I'm in the middle of one right now as I write this essay), but admittedly not all. Most, if not all, of his “accessible” books specifically written for public consumption, but not many of his more technical works.

I have a 1433-page tome on my desk entitled “The Structure of Evolutionary Theory” by Stephen Jay Gould. I wonder whether Stephen Jay Gould rushed to compete this magnum opus, knowing that he was dying of cancer.

If I never finish reading this book (let alone start) can I rightfully claim to have suffered any loss from Stephen Jay Gould's death at such an early age? Even more than continuing to read his books though, I

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always harbored the fantasy and even expectation that someday I would be able to ask him my questions, to learn from him directly. Perhaps in person; perhaps by some other mode of communication. I'll never be able to do that now.

If I transport myself back to the fall of 2001 and place myself outside of a burning hospital in which my dad and Stephen Jay Gould were both being treated, with my dad, who brought me into this life, who had long since stopped being my most important teacher, suffering all his terrible medical complications, and with Stephen Jay Gould, who had replaced my father as my most important teacher and who had so much more to teach me, being treated for cancer, perhaps then the Talmudic teaching would be appropriate, and perhaps I should choose my teacher over my father. But, sitting here writing this essay two years later, I'm still pretty sure that's not what I would have done.

MEMORANDUM

April 1, 1995

TO: ALL ATTORNEYS

FROM: EXECUTIVE COMMITTEE

RE: END OF DAYLIGHT SAVINGS TIME

As you all know, this weekend marks the end of Daylight Savings Time. Following the traditional guidelines of “Spring Forward, Fall Back,” most of the United States will be setting their clocks ahead one hour early Sunday morning. But not here at the firm of Schnader, Harrison, Segal & Lewis.

Rather than lose an hour of sleep on Saturday night, the Executive committee has decided to initiate a plan whereby the transition from Daylight Savings Time to Eastern Standard Time is implemented gradually.

To that end, on Monday, April 3, for the first 6 hours that each Schnader lawyer bills to fee time, each 6 minute “Schnader” will only be 5 minutes long. That is, after working five minutes for a client, you should move your clock forward one minute and bill one “Schnader.” As a result, for each 50 minutes that you actually work, you will be moving your clock forward 10 minutes. After 6 such “hours,” you will have sprung forward one complete hour.

The Executive Committee believes that this will provide a smooth transition back to Eastern Standard Time without having to suffer the deleterious effects of an abrupt change from 2:00 am to 3:00 am on early Sunday morning.

ANTI-ZIONISM AND ANTI-SEMITISM²⁸

I have an old friend who believes that Israel/Palestine should be one democratic state that does not discriminate on the basis of religion or race. My old friend, who is Jewish, is a self-declared anti-Zionist. My old friend is not an anti-Semite.

According to the Anti-Defamation League, anti-Semitism²⁹ is belief or behavior hostile toward Jews just because they are Jewish. The ADL defines anti-Zionism³⁰ as a prejudice against the Jewish movement for self-determination and the right of the Jewish people to a homeland in the State of Israel.

Based on these definitions, is an anti-Zionist necessarily an anti-Semite? I don't think so.

Don't get me wrong; there are plenty of anti-Zionists who are also anti-Semites. In fact, I would venture to guess that most anti-Semites are also anti-Zionists, although there are probably some anti-Semites who wish all Jews would leave their countries and move to Israel. I'm not sure that that makes those people Zionists however.

But is someone an anti-Semite just because he or she is an anti-Zionist?

²⁸ 2019

²⁹ Or, as it is now called by the ADL, "antisemitism."

³⁰ antizionism?

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The definition of anti-Semitism is pretty clear, but the definition of anti-Zionism has some ambiguities and maybe even some circularities, because Zionism itself has some ambiguities and circularities. What does it mean for the Jewish people to have a right to a homeland in the State of Israel?

Who are the Jewish people? Are they individuals having a common religion, race, ethnicity, or nationality? And who decides?

What kind of right are we talking about? Legal? Ethical? Historical? Religious?

What does homeland mean? Is it exclusive or can/should/must it be shared with non-Jews?

Where and what is the State of Israel? Biblical Judea and Samaria? 1948-1967 boundaries? Post-1967 boundaries?

I consider myself to be a Zionist. I believe that the Jewish people do have a right to a homeland in the State of Israel.

As for the Jewish people, I believe that being Jewish is more about sharing a common nationality. Those who call themselves Jews are just too diverse to be considered as having a common religion, race, or ethnicity.

As for the right of the Jewish people being religious, as a devout atheist, I would have to discount any conversations Abraham said he had with the Creator of the Universe. I'd say the Jewish people's right is more legal and historical than ethical.

I believe that the Jewish homeland should be shared as long as it does not jeopardize the safety of its Jewish residents.

As for boundaries, I believe in a Three-State Solution: Israel, West Bank, and Gaza, with the West Bank and Gaza ruled by their respective Palestinian majorities.

But arguments can be made that the Jewish people's right to a homeland in the State of Israel is no greater than and possibly even less than the Palestinian people's right to a homeland in the State of Israel, whether that right is legal, ethical, historical, or religious. There are plenty of reasons why someone might believe that the Jewish people do

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not have a right to a homeland in the State of Israel without that person being hostile toward Jews just because they are Jewish. One can even be hostile towards the State of Israel without being hostile towards Jews just because they are Jewish.

My old (Jewish) friend believes in a One-State Solution, where Israel/Palestine should be one democratic state that does not discriminate on the basis of religion or race. I would not argue that that is what “should be” in an ideal world. But we do not live in an ideal world. We live in the real world where there are far too many real anti-Semites among the Palestinians to believe that Jews would be free to survive in such a “democratic” state. All you need to do is take a survey of the existing Arab countries to see how many of them respect and protect the rights of Jewish (and other non-Muslim) minorities.

But just because my old friend is a naive anti-Zionist, that does not make him an anti-Semite.

Anti-Semitism is not a term that should be bandied about loosely. It should be reserved only for clear cases of per-se anti-Jewish bias and discrimination. Otherwise, the term will lose its import, and individuals will not be concerned about being labeled as anti-Semites. Lord knows there are enough people in this world who are proud to be called anti-Semites.

Before we designate all anti-Zionists as anti-Semites, or even one anti-Zionist as an anti-Semite, we better make sure that the epithet is appropriate.

WHY THE RICH SHOULD PAY HIGHER TAXES³¹

Today I am a successful patent attorney. The head of a thriving intellectual property boutique law firm in Philadelphia. I got where I am today as a result of a commitment to education and hard work ... and luck.

I spent five years studying physics at the University of Michigan and another two years at the University of Pennsylvania studying electrical engineering. After working as an aerospace engineer at GE for six years, I went back to Penn to study law for three more years. I then worked as an associate in the IP department of the Philadelphia law firm of Schnader Harrison Segal and Lewis and then another two years at the small Philly patent firm of Weiser and Associates, before starting my own firm in 1999 with one associate, three secretaries, and one great client Lucent Technologies, one of the spinoffs from AT&T's Bell Labs. Today, fifteen years later, our firm has two other partners, seven associates, an administrative staff of about a dozen, and many great clients, including Alcatel-Lucent as well as a small number of companies that were once part of Lucent.

All of that success is the result of a commitment to education and hard work ... and luck.

I was lucky to be born into a loving family with a stay-at-home mother and a father who was a successful physician. I was lucky to live in an upper-middle-class neighborhood with good schools and no crime.

³¹ 2014

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Not only was I was lucky to be born with a good home under my feet, I was also lucky to be born with a good head on my shoulders.

And I was lucky to be born in a country that allows people who are committed to education and hard work to be successful.

Requiring the rich to pay higher tax rates to provide social services to help those with less wealth is a form of redistribution of wealth. So what? Redistribution of wealth does not necessarily mean equalization of wealth. Except for Marxist daydreamers, no one who advocates for a higher tax rate for the rich is arguing that everyone should have the same amount of wealth, just that those who have been lucky enough to succeed in this life should have a little less so that those who have been unlucky can have a little more. Don't worry, the rich will still be rich. Is a two-billionaire who has to give half of his wealth in taxes no longer rich because he is now only a one-billionaire? Really?

People who today have a good fortune as a result of their past good fortune should share their good fortune with the less fortunate who have less fortune.

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MEMORANDUM³²

TO: ALL LAWYERS

FROM: EXECUTIVE COMMITTEE

RE: FAKE EXECUTIVE COMMITTEE MEMOS

On August 18, a memo purported to have been issued by the Executive Committee and entitled “Lawyers for Rent” was circulated in the Philadelphia office. The Executive Committee wants everyone to know that it did not issue this memo. Rather, the Executive Committee has learned from its sources that the memo, which was issued by person or persons other than the Executive Committee, was intended to be humorous. As such, it falls into what is colloquially referred to as a “gag” or “joke” memo.

On September 2, another one of these gag memos claiming to be from the Executive Committee was circulated in the Philadelphia office. Here, too, the Executive Committee has been informed that the intent was humor. As with the August 18 memo, the Executive Committee wants to make it perfectly clear that this latter memo, which was entitled “Security Card 3.1,” was in fact neither issued nor countenanced by the Executive Committee.

The Executive Committee recently held an emergency meeting to address this recent spate of gag memos, at which the following resolution was adopted:

³² 1994

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WHEREAS, *the practice of law is not without its frustrations;*

AND WHEREAS, *there appears to be a need among some Schnader personnel to vent some of these frustrations by drafting and circulating so-called gag memos;*

AND WHEREAS, *these gag memos constitute a costly waste of paper;*

AND WHEREAS, *the Firm has just invested a whole lot of money in a computer system with EMail capabilities;*

AND WHEREAS, *sending an EMail message does not by itself waste any paper;*

AND WHEREAS, *if you try to send an EMail message purporting to be from the Executive Committee, everyone will figure out who it's really from from the "From:" line;*

AND WHEREAS, *the Executive Committee is not without its own sense of humor;*

BE IT RESOLVED THAT:

The IT department is hereby instructed and authorized to create a special account with the login ID "EXECUTIVE COMMITTEE" and the password "FUNNY," which can be used by anyone to create and distribute gag memos anonymously and electronically via EMail.

Unfortunately, as with the previous "hard copy" gag memos, there will be no way to ensure that the electronic gag memos will in fact be humorous.

WHY WE SHOULD BDS BDS³³

INTRODUCTION: We Jews need a new argument against the BDS movement,³⁴ one that does not mention anti-Semitism. We need to acknowledge the suffering of those Palestinian Arabs who are caught in the middle of the Israeli-Arab conflict, and we need to stop calling well-meaning people who want to end that suffering anti-Semites. We simply can't get away with the subtle argument that the BDS movement itself is anti-Semitic even though some of its members and proponents might not be anti-Semitic without those people thinking that we are calling them anti-Semites as well. Otherwise, we will continue to lose the PR battle for figurative hearts and minds and even more tragically the ultimate real-world battle for literal hearts and minds. I suggest something like the following:

Why We Should All Boycott, Divest From, and Sanction the BDS Movement

There are 22 Arab countries in the world: Egypt, Sudan, Algeria, Morocco, Iraq, Saudi Arabia, Yemen, Syria, Tunisia, Somalia, Libya, Jordan, United Arab Emirates, Lebanon, Kuwait, Mauritania, Oman, Bahrain, Comoros, Qatar, Djibouti, and Brunei. If you count Gaza, that

³³ 2013

³⁴ The Boycott, Divest, and Sanction (BDS) movement is a movement to boycott, divest from, and sanction the state of Israel because of its policies towards Palestinian Arabs.

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makes 23. In addition, there are another 28 non-Arab countries with Muslim majorities: Indonesia, Pakistan, Nigeria, Bangladesh, Iran, Turkey, Afghanistan, Malaysia, Uzbekistan, Kazakhstan, Niger, Burkina Faso, Mali, Senegal, Guinea, Azerbaijan, Tajikistan, Sierra Leone, Kyrgyzstan, Turkmenistan, Chad, Albania, Kosovo, The Gambia, Western Sahara, Maldives, Turkish Republic of Northern Cyprus, and Mayotte. Of those 50 Muslim-majority countries, 24 are either Islamic Republics or have Islam as the state religion.

In a world with 22 Arab countries and another 28 non-Arab, Muslim-majority countries, it is only fair that there be one little Jewish country in the world.

The problem, of course, is that the location where Jews have their Jewish country just happens to be a location where too many Arabs in particular and too many Muslims in general don't want there to be a Jewish country. In fact, it is a location where too many Arabs and Muslims don't want there to be even any Jews.

For about 400 years before World War I, the territory corresponding to today's Israel, the West Bank, and the Gaza Strip was part of the Ottoman Empire, based in what is Turkey today. Between World War I and World War II, that territory was a British protectorate called Palestine. After World War II, in 1947, the United Nations adopted a partition plan to divide Palestine into a Jewish state and an Arab state, where the Arab state included today's West Bank and the Gaza Strip.

In 1948, when the Jewish residents declared the Jewish portion of Palestine to be the independent state of Israel, the Arab armies of Egypt, Jordan, Syria, Lebanon, and Iraq attacked. As a result of that War for Independence, the state of Israel was born with what are referred to today as the pre-1967 borders. In fact, the so-called "pre-1967 borders" were really just the cease-fire lines from the end of the 1948 Israeli War for Independence.

Note that, before 1948, there were Arab Palestinians and Jewish Palestinians. After the Israeli War for Independence, the Jews living in

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the new state of Israel became Jewish Israeli citizens, and the Arabs living in that same new state of Israel became Arab Israeli citizens.

With the exception of a brief period during 1956-1957,³⁵ from 1948 until 1967, the Gaza Strip was part of Egypt, the West Bank was part of Jordan, and the Golan Heights were part of Syria.

Significantly, between 1948 and 1967, Jordan did not create a Palestinian-Arab state in the West Bank, and Egypt did not create a Palestinian-Arab state in the Gaza Strip. Between 1948 and 1967, there was no movement to boycott, divest from, and sanction Jordan and Egypt to end their “occupations” of the West Bank and the Gaza Strip and to establish a Palestinian-Arab state in those areas.

On June 6, 1967, after the Arab armies of Egypt, Jordan, and Syria threatened to invade Israel, Israel launched a pre-emptive strike. During the next five days, during what is today known as the Six Day War, Israel captured the Gaza Strip and the Sinai Peninsula from Egypt, the West Bank from Jordan, and the Golan Heights from Syria.

Prior to June 1967, there was no “West Bank” per se. The region that we refer to today as the West Bank was simply part of Jordan. With the exception of Arab-Palestinians who came as refugees from areas that became part of the state of Israel and who were not accepted as citizens of Jordan, the Arab-Palestinians who lived on the west bank of the Jordan River prior to 1967 were simply Jordanian citizens, just like those Arab-Palestinians who lived as Jordanian citizens on the east bank of the Jordan River in what is still Jordan. The region only became known as the West Bank after Israel captured that land during the Six Day War.

Jordan, by the way, has a 70% Palestinian-Arab majority that is ruled by King Abdullah II, whose non-Palestinian-Arab Hashemite royal family originally came from Saudi Arabia. Why doesn't anyone ever complain about the “apartheid” state of Jordan?

³⁵ In 1956, Israel captured the Sinai Peninsula from Egypt with the help of France and Great Britain after Egypt nationalized the Suez Canal. In 1957, Israel withdrew from the Sinai Peninsula at the insistence of the United States and the Soviet Union.

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When Egypt signed its historic peace treaty with Israel in 1979, Israel returned the Sinai Peninsula to Egypt. Egypt was not interested in getting back the Gaza Strip. When Jordan signed its own peace treaty with Israel in 1994, Jordan was not interested in getting back the West Bank.

Today,³⁶ about 6 million Jews and about 1.6 million Arabs live in pre-1967 Israel. In the West Bank, there are about 2.3 million Arabs and about 250,000 Jews. In addition, there are about 1.6 million Arabs in the Gaza Strip.

The Boycott, Divestment, and Sanctions (BDS) movement is a movement of Arab-Palestinians and their supporters, including Christians and Jews. The self-proclaimed goals of the BDS movement against the state of Israel are:

- “1. Ending Israel’s occupation and colonization of all Arab lands occupied in June 1967 and dismantling the Wall;
2. Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and
3. Respecting, protecting, and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194.”

To achieve these three goals, the BDS movement is working to convince others to (i) boycott Israeli products and businesses, (ii) divest from non-Israeli companies that do business with Israel, and (iii) sanction Israel by refusing to allow Israeli academics from participating in international conferences, by pressuring entertainers not to perform in Israel, etc.

As to BDS Goal #1, as described previously, the Arab lands captured by Israel during the Six-Day War in June 1967 include today’s West Bank, the Gaza Strip, the Sinai Peninsula, and the Golan Heights.

³⁶ Or at least in 2013 when this essay was written.

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In 1979, as part of the peace treaty with Egypt, Israel returned to Egypt the entire Sinai Peninsula, a region three times as large as the entire state of pre-1967 Israel and with proven oil reserves. Israel has demonstrated its willingness to trade so-called “Arab lands” captured during the Six-Day War in return for peace. Israel has even previously engaged in negotiations with Syria to return the Golan Heights in exchange for peace.

In 2005, Israel unilaterally withdrew its army and forcibly removed all 8,000 of the Israeli Jews living in the Gaza Strip. Today, the Gaza Strip is ruled by Hamas, a terrorist organization whose charter explicitly calls for the obliteration or dissolution of the state of Israel. One might argue that Israel, along with Egypt, still controls the Gaza Strip through their control over the borders of the Gaza Strip, but the fact remains that the Hamas rulers of the Gaza Strip have launched and allowed others to launch thousands upon thousands of rockets into the state of Israel since 2007.

There is little reason to suspect that the same would not happen today if Israel were to withdraw from the West Bank, where Hamas has a significant following. One of the reasons why the Palestinian Authority has not allowed any elections in the West Bank since 2006 is that they are afraid that Hamas would win as it did during elections in the Gaza Strip in 2007.

Nevertheless, the official policy of the government of Israel is to achieve a negotiated settlement that would result in a so-called “two-state” solution with the Jewish state of Israel and an Arab state of Palestine in the West Bank and the Gaza Strip. Most Israeli Jews are in favor of this two-state solution as long as they can be guaranteed that the Jewish state of Israel will be able to live in peace and harmony with its Arab-Palestinian neighbors. Clearly, there is reluctance on the part of the current government of Israel to have a Palestinian state in the West Bank. Can you honestly blame them for that reluctance?

The so-called Wall, which in reality is a multi-layered fence system for 95% of its total length, has successfully helped to reduce terrorist

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attacks from the West Bank into pre-1967 Israel. Between 2000 and July 2003, there were 73 Arab-Palestinian suicide bombings that killed 293 Israelis, both Jews and Arabs, and injured over 1,900. From August 2003 through the end of 2006, there were only 12 such attacks, which still killed 64 Israeli Jews and Arabs and wounded 445. In 2010, the number of fatalities from terror attacks from the West Bank was less than 10.

There is no doubt that the barrier creates hardships to many Arab-Palestinians, and those hardships should be reduced when practical and, in fact, those hardships have been reduced in certain instances by moving the location of the barrier, but the barrier also continues to help to prevent the hardships of injury and death of many Israeli Jews and Israeli Arabs alike.

As to BDS Goal #2, out of a total population of about 8 million, about 1.6 million citizens of pre-1967 Israel are Arabs, the adults of whom are eligible to vote in Israeli elections. There are currently 12 Israeli Arabs in the 120-member Knesset, Israel's parliament. It is simply not true that the Arab-Palestinian citizens of Israel do not have "fundamental rights."

Significantly, one of the fundamental rights enjoyed by the Arab citizens of Israel is the right to leave Israel and move to the West Bank or the Gaza Strip or any of the 22 other Arab countries in the world. And yet the 1.6 million Arab citizens of Israel have chosen to remain as Arab citizens of Israel. Presumably they do so because they do in fact enjoy "fundamental rights."

The 2.3 million Arab-Palestinian inhabitants of the West Bank are not citizens of Israel. It is true that they do not enjoy all of the rights and privileges enjoyed by the 8 million Jewish, Arab, and other citizens of Israel. Here, too, however, one of the rights and privileges that the 2.3 million Arabs living in the West Bank do enjoy is the right to move to one of the 22 other Arab countries in the world. And yet they too have chosen to remain as Arab-Palestinian non-Israeli citizens of the West Bank.

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As to BDS Goal #3, in 1948, when the state of Israel was founded, about 700,000 Arab-Palestinians who previously lived in land that became the pre-1967 state of Israel became refugees in neighboring Arab countries. In 1967, when Israel captured the West Bank, the Gaza Strip, and the Golan Heights, 300,000 Arab-Palestinians left those territories. In both instances, instead of being absorbed into the populations of neighboring Arab countries, the Arab-Palestinians were kept in squalid refugee camps by their Arab brothers to be used as geopolitical pawns in the Arab struggle against the Jewish state of Israel. It is estimated that there are now about 5 million Arab-Palestinians who either became refugees in 1948 or 1967 or are descended from those refugees.

If Israel were to allow some or all of those refugees and their descendants to return to pre-1967 Israel, Israel would cease to be a Jewish state. As an alternative to that self-destruction, Israel is willing to negotiate reparations to Arab-Palestinian refugees and their descendants in return for their abandonment of their so-called right of return. And while reparations for Arab-Palestinian refugees are being discussed, so should reparations to the 800,000 to 1,000,000 Jews who left, fled, or were exiled from Arab and Muslim countries since 1948 and their millions of descendants.

Another possible answer to the Israel-Palestine problem is a “one-state” solution in which Jews and Arabs live in peace and harmony and equality in a secular democracy that includes pre-1967 Israel, the West Bank, and the Gaza Strip. The world has many earnest and well-meaning people who believe that we should be working towards achieving that one-state solution.

But the world also has Ahmadinejad, Al Qaeda, and the Taliban, not to mention Hezbollah, Hamas, and the Muslim Brotherhood.³⁷ And Palestinian Islamic Jihad. And the Popular Front for the Liberation of Palestine. And the Al-Aqsa Martyrs Brigade. And Popular Resistance

³⁷ And not to mention Isis, which did not even exist when this essay was written in 2013.

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Committees. And the Democratic Front for the Liberation of Palestine. And the Popular Front for the Liberation of Palestine - General Command. All of whom are committed to the destruction of not just the state of Israel, but also of the Jews who live in the state of Israel.

Many supporters and even some leaders of the BDS movement against Israel are in favor of a “one-state” solution in which “Greater Israel” (i.e., pre-1967 Israel, the West Bank, and the Gaza Strip) would be a secular democracy in which Jews and Arabs would co-exist in peace and harmony and equality. Many supporters of a “one-state” solution are well-meaning Christians, Jews, and Muslims.

Unfortunately, that vision is a pipe-dream, a pure fantasy. It is not a coincidence that Jews and Arabs do not co-exist in peace and harmony and equality in any of the world’s 22 existing Arab countries. In fact, even Shi’ite Muslims and Sunni Muslims do not co-exist in peace and harmony and equality in any of the world’s existing Arab countries. Why on earth should anyone reasonably expect that Jews and Arabs would be able to live in peace and harmony and equality in a one-state Greater Israel? Because some well-meaning Arab-Palestinians in the BDS Movement say so?

Ask the Coptic Christian minority of Egypt whether they live in peace and harmony and equality with the Egyptian Muslim majority. Ask the Maronite Christian minority of Lebanon whether they live in peace and harmony and equality with the Lebanese Muslim majority. Ask the Chaldean Christian minority of Iraq whether they live in peace and harmony and equality with the Iraqi Muslim majority. Ask the Kurdish minorities of Turkey, Iraq, and Syria whether they live in peace and harmony and equality with the Turkish, Iraqi, and Syrian Muslim Arab majorities. And so on and so on, for most if not all of the 22 Arab countries in the world.³⁸

According to Islam, Christians and Jews are dhimmis, second-class citizens who have fewer rights and privileges than Muslims in Islamic republics.

³⁸ And I had never even heard of Yazidis when I wrote this essay in 2013.

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While the BDS movement undoubtedly has earnest and well-meaning supporters, there are undoubtedly others who use the goal of secular democracy as a smokescreen to hide their ultimate goal of a Judenrein Greater Israel, a Palestine free of Jews. Why should it be that 8,000 Jews had to leave Gaza before Israel withdrew its army? Why couldn't those 8,000 Jews have continued to live in peace and harmony and equality with 1.6 million Arab-Palestinians in a Palestinian-majority Gaza? Why should it be that 250,000 Jews would have to leave the West Bank if and when control would be turned over to the Arab-Palestinians in a two-state solution? Why couldn't those 250,000 Jews continue to live in peace and harmony and equality as "Jewish-Palestinians" with the 2.3 million Arab-Palestinians in a secular, democratic Palestinian-majority West Bank?

The fact is that the ultimate goal of many people behind the BDS movement is to undermine the legitimacy of the Israel as a Jewish national state. If Jews are just a religious group and not a national group, then the argument can be made that Jews per se are not entitled to the land of Israel. Zionism is the Jewish national movement that says that the Jewish people is entitled to a Jewish national state in the land of Israel. If Jews are just members of a religion, like Christians and Muslims, and not members of a national group, like Italians and Egyptians, then the argument is that Jews are not any more entitled to the land of Israel than are the Muslims or Christians who live in that area. But Jews are not just members of a religion. In fact, the majority of Jews living in the state of Israel, let alone the rest of the world, do not practice or believe in most of the religious laws and doctrines of Judaism.

So, Israel today is in an extremely difficult situation with only bad alternatives from which to choose. It's goal is to continue to be a secure, democratic, Jewish state that lives in peace and harmony with its Arab neighbors. If it absorbs the West Bank and makes all of its Arab-Palestinian inhabitants Israeli citizens or if it allows the 5 million descendants of Arab-Palestinian refugees to return to pre-1967 Israel, it will cease to be a Jewish state. If it continues to control the West Bank

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in its current status, it will cease to be a democratic state. If it allows a Palestinian state in the West Bank that ends up being ruled by Hamas much like Gaza today, it will cease to be a secure state.

The Arab-Palestinians do deserve to have a country of their own. Even though one could argue that the Arab-Palestinians already have a country of their own called Jordan, the fact is that there are still 2.3 million Arab-Palestinians in the West Bank who do not want to be part of Jordan. They want their own country of Palestine.

Arab-Palestinians have the right to have their own Arab-Palestinian state, but that right does not give them the right to destroy the Jewish-Palestinian state of Israel, either militarily or even just demographically.

CHEERIOS³⁹

Here is my recipe for a delicious Cheerios (original flavor only) breakfast:

(1) Using a tablespoon, carefully place 1/4 teaspoon of sugar into a dry cereal bowl having a pattern or other design on its inner side walls;

(2) Using the tablespoon, select and remove any brown clumps of sugar resulting from the jerk who previously stuck his or her wet coffee spoon into the sugar bowl;

(3) Using the back of the tablespoon as a pestle and the bowl as a mortar, crush any resulting white sugar lumps resulting from living in an oppressively humid climate;

(4) Add 2% milk up to Bullwinkle's nose (or other suitable design indicia, depending on your particular cereal bowl). If necessary, whole milk may be substituted for 2% milk, but not skim milk. NEVER attempt this recipe using skim milk;

(5) Using the tablespoon, gently stir the milk counterclockwise (clockwise if you are left-handed) until all of the sugar is dissolved, as indicated by the absence of gritty resistance as you slide the back of the tablespoon over the bottom of the bowl;

(6) Pour in a single helping of Cheerios corresponding to no more than as much cereal as will result in the last spoonful still being sufficiently crunchy. This step may take years of practice to perfect.

³⁹ 2013

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(7) Using the tablespoon, immediately eat the cereal in the bowl. It is critical to begin eating the cereal right away lest sogginess set in causing you to have to start the entire process over again. Be careful not to take too much milk with each spoonful.

(8) Repeat steps (6) and (7) until all of the milk in the bowl is gone. If appropriate and necessary, after step (5) but before initiating the first instance of step (6), take a Lactaid pill.

(9) If, after step (8), you are still hungry, then you did something terribly wrong. Tomorrow, either use a larger bowl or take less milk per spoonful.

LOOKING FOR MR. GOOD-FIRM, PART II⁴⁰

In the Fall of 1992, as I was just starting my legal career, this august journal⁴¹ published an article I had written a couple of years earlier when I was a law student, entitled “Looking for Mr. Good-Firm,” in which I described my personal holy grail: the perfect law firm in which to work.⁴² “All I want,” I wrote back then, “is a job as a lawyer that lets me do good law, gives me courtroom experience quickly, doesn’t require me to work long hours, and pays well. Is that too much to ask?” Finally today, eight years after I first wrote that article, I am happy to announce that I have found what I was looking for: the perfect law firm in which to work.

A Job That Would Let Me Do Good Law

I started my full-time professional legal career as an associate at a large general-practice law firm in Philadelphia, assigned to its intellectual property law department.⁴³ As I explained in my earlier article, patent law,

⁴⁰ *The Philadelphia Lawyer*, 1999

⁴¹ That's the kind of thing you have to say in order to get articles published in *The Philadelphia Lawyer* these days.

⁴² Those few of you who do not keep a complete library of past issues of *The Philadelphia Lawyer* may want to contact the Philadelphia Bar Association to order back issues. If that doesn't work, I think my mom might still have a few extra copies.

⁴³ The term “intellectual property” was problematic for at least one senior partner in the litigation department, who confided in me at a reception given by the firm to welcome us new associates to the firm, “I hate that name. Does that mean that what I do is not ‘intellectual?’” Naturally, I felt very welcome at the firm.

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especially the patent prosecution law that I now practice,⁴⁴ is neither “good” law nor “bad” law, it’s really just “neutral” law. Good law, on the one hand, is doing something good for humanity, like suing polluters; on the other hand, bad law is doing something bad for humanity, like defending polluters. Patent prosecution law, on the “third” hand, is neutral law. All I’m doing is helping a bunch of engineers and scientists protect their inventions. It’s not exactly Mother Teresa, but it’s not Al Capone either.⁴⁵

A Job That Would Give Me Courtroom Experience Quickly

When I started my legal career, I didn’t know whether or not I wanted to be a courtroom lawyer,⁴⁶ but I did know that I wanted a job that would give me courtroom experience quickly so that I could figure out whether or not I wanted to be a courtroom lawyer. As a new associate, I participated in the firm’s admirable pro bono program, through which I was assigned to represent a plumber who was being sued by a neighbor for whom he had done some work. The neighbor claimed that my client failed to perform all of the alleged responsibilities required under their oral contract.⁴⁷ I liked my client, and I was convinced that he was right, that

⁴⁴ There are two types of patent law, as anyone who has ever asked me what I do for a living already knows: “There’s boring patent law and then there’s really boring patent law. I do really boring patent law and I love it.” Boring patent law is patent litigation; really boring patent law is patent prosecution, which is Patentese for helping inventors get patents for their inventions. My job as a patent prosecutor is to translate from Engineeringese, a language unfamiliar to most lawyers, into Patentese, an obscure dialect of Legalese.

⁴⁵ Or, if you prefer a lawyerish analogy, it’s not exactly Thurgood Marshall, but it’s not Johnny Cochrane either.

⁴⁶ I use the term “courtroom lawyer” instead of “litigator” to be more accurate. All litigators are lawyers, but not all lawyers are litigators. So, too, all courtroom lawyers are litigators, but not all litigators are courtroom lawyers. I specifically wanted courtroom experience early, not just litigation experience.

⁴⁷ This is just a test to see if you are bothering to read the footnotes. Since this is the closest I’m going to get to writing a law review article, you’ll just have to put up with

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she -- the neighbor -- was lying, that he should win, and that she should lose. Unfortunately, the arbitrators in the Philadelphia Court of Common Pleas,⁴⁸ applying their version of Solomonic justice, decided to split the difference, which meant my client had to return half the money the plaintiff had already given him.

During that time, I was also the junior associate assigned to a litigation team defending another law firm accused of committing patent malpractice. The charges were ludicrous, and the plaintiffs' attorneys were assholes. Unfortunately, the jurors, applying their version of demonic justice, awarded the plaintiffs millions of dollars, of which the plaintiffs' asshole lawyers undoubtedly received at least a third.

It was then that, despite having spent my entire life up till then (and, truth be told, since then as well) being argumentative, I realized, for the first time, that I liked meaningless argument, not meaningful argument. I like arguing for the sake of arguing, not when it carries real consequences. When someone's money or even liberty is at stake, that's too much pressure for me. I never learned the lesson that I am sure most if not all litigators learn: how to avoid getting emotionally involved in clients' cases. I hate injustice and, if injustice is going to be done, then I'd rather not have to watch.

I got all the litigation experience I needed fairly quickly in my career, and now all I do is help people get patents. I never go to court; I never file motions; I never take depositions; I never even prepare interrogatories. For those of you who do go to court and file motions and take depositions and prepare interrogatories, who regard those of us who do not as not being real lawyers, let me just say that I admit it. I'm not a real lawyer. Patent prosecution law is the dermatology of the legal profession. If you don't know what I mean, the next time you're hanging

these footnotes. Don't you just hate having to flip back and forth to and from the end of the article? It's bad enough having to look at the bottom of the same page to read footnotes, but, at this august journal, they wouldn't even let me do that.

⁴⁸ Not the Court of Common "Please" as I once learned a little too late the hard way.

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around the emergency room doing client development, ask a cardio-thoracic surgeon what she thinks of dermatologists.

A Job That Doesn't Require Me To Work Long Hours

As an associate in that large general-practice law firm, I was required to log 1800 billable hours each year. My first full year as an associate, I billed 2100 hours. Of course, I was also doing mostly litigation work at that time. My second year, I billed just over 2000 hours as my litigation load began to be replaced by patent prosecution work. By the fourth year, my workload was exclusively patent prosecution, the billable hour requirement at my firm had been raised to 1850 hours, and I barely made it.

The main reason why my hours decreased as my workload shifted from litigation to patent prosecution is the simple fact that it is just plain harder to rack up hours practicing patent prosecution than it is doing litigation. As an associate doing litigation work, I was assigned to a single case. When I got to work in the morning, I started billing time to that case and, except for those days when we didn't have "working lunches," I stopped billing time to that case when I left work in the evening.

Patent prosecution work is a completely different beast. As an associate, I worked on 10-15 different patent applications in a single day. For some of those matters, the work in any given day might have involved dictating a single short letter to a client or fielding a brief telephone call from an examiner at the patent office. When I went to the bathroom or stopped to chat with a colleague about last night's ball game, I didn't charge that time to a client.

Moreover, patent prosecution work can be mentally exhausting. I'm not talking about the kind of exhausting that comes from sitting in a library reading case after case or paging through volumes of discovery documents looking for an incriminating letter. That's called "boring," not "exhausting." I'm talking about the kind of exhausting that comes from trying to compose a document that explains a difficult engineering concept

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that you don't really completely understand yourself to a patent examiner, who -- if you are lucky -- speaks English better than Charo. Try doing that for 9 hours a day, day in and day out, and we'll talk.

Oh, yes, there's one other reason why my hours decreased as my workload shifted from litigation to patent prosecution. I did not lie when filling out my time sheets.

Never mind that the firm kept raising the billable hour requirement, the bottom line was that, as my workload shifted from litigation to patent prosecution, I was having to work longer and longer hours just to log the same number of billable hours, let alone trying to rack up more.

In the six years that I was an associate working in that large general-practice law firm, a knot of Gordian proportions grew in the pit of my stomach. Every waking moment and even some sleeping ones were accompanied by a specific conscious awareness that time was divided into billable minutes and non-billable minutes. Billed minutes that counted toward my annual bogey, and unbilled minutes that were wasted. Wasted minutes like time spent eating, or socializing, or walking to work instead of taking the bus or subway. Sure I ate, sure I socialized, but the knot was there, keeping me from really relaxing and enjoying myself. Even now, as I write these words, I can remember what that knot felt like, preventing me from either taking a deep breath or letting one all the way out.

When I left that large general-practice law firm as a sixth-year associate to work at a small IP boutique firm, where my compensation was based on a formula directly related to how much money I generated for the firm without a specific billable hour requirement, the knot in my stomach unraveled. For the first time in my legal career, I walked to and from work.

A Job That Pays Well

When I was looking for my first job out of law school, I considered going to a small IP boutique law firm. Instead, I decided to start my career

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at that large general-practice law firm. I figured back then that, if necessary, it would be easier to move laterally from a large law firm to a small law firm than the other way around. Since I wasn't sure whether I would be happier at a large law firm or a small law firm, I thought the prudent thing to do was to start my career at a large law firm and, if things worked out, well then, great, I would stay there. If things did not work out, then I could always try life at a small law firm.

Oh, yeah, I almost forgot to mention: the large law firm was paying a better salary than the small law firm. We've all been following the news about Philly law firms anteing up to compete with New York and DC for top-notch law school graduates. Just seven years ago, first-year associates at the top Philadelphia firms were being paid \$62,000. Today, that number is 37% larger.⁴⁹ Either way, it's a lot of money for someone whose only skill is knowing how to draw with a Hi-Liter®⁵⁰ marker without going outside the lines.

Mr. Good-Firm

Well, as I mentioned at the start of this article, I have found the perfect firm in which to work. No, I'm not talking about that large general-practice law firm I started with out of law school. I'm not even talking about that small IP boutique law firm I moved to as a six-year associate. No, I'm talking about the law firm I started earlier this year -- Mendelsohn & Associates, P.C.⁵¹

⁴⁹ That's \$85,000 for the statistically challenged.

⁵⁰ As an experienced intellectual property lawyer, I now have the additional skill of knowing how to use "®" when writing "Hi-Liter."

⁵¹ To be more accurate as well as grammatically correct, at the beginning of this article, I shouldn't have said that I "found" the perfect firm in which to work; I should have said that I "founded" the perfect firm in which to work.

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Here at Mendelsohn & Associates, P.C., we⁵² do a lot of patent prosecution work, a smattering of trademark prosecution work⁵³, and not much else. Most of our work is fixed-fee work, and each and every associate is paid according to a formula that is based on the dollars billed for his work, plus an additional bonus for work from new clients brought to the firm by the associate. The associate's percentage even increases after a certain total revenue is reached. Most importantly, there are no billable hour requirements. As long as an associate is covering his share of the overhead expenses, he or she gets to decide how hard to work. The more work, the more money. All carrot, no stick. I had a similar deal myself at that small IP boutique firm that I joined when I left the big general-practice law firm and my salary more than doubled.

Every day at Mendelsohn & Associates is “dress-down Friday.” I have a suit hanging in our coat rack in case I need to go to a patent bar association meeting and pretend I'm a real lawyer. I never go to court and my clients won't respect me if I visit them wearing a suit.

Associates work when and where they want. I'm never there on weekends, so I wouldn't even know whether they were or not. I work at home at least once a week. There is no specified limit for vacation time. As long as deadlines are met, I don't care how much vacation is taken.

Almost all the work we do is for fixed fees, so, most of the time, I don't even keep track of the time I spend. No timesheets; no knots in stomach.

Our clients are inventors, who almost by definition are of above average intelligence. At the very least, they are inventive.

⁵² When my sole associate suggested that, to be more accurate as well as grammatically correct, I shouldn't say “Mendelsohn & Associates”; I should say “Mendelsohn & The Associate.” I told him to mind his own business and get back to work.

⁵³ If patent lawyers are the dermatologists of the legal profession, then trademark lawyers must be the proctologists. Even patent lawyers snicker at trademark lawyers.

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It's all *ex parte* work, so we never have to deal with “opposing counsel.”⁵⁴ The examiners at the patent office act as judges determining the patentability of our clients' inventions, except that, unlike judges, most examiners are reasonable people. They are just engineers and scientists themselves who are simply trying to do the right thing.

The shortest deadline dictated by the patent office is two months and most deadlines are three months, and even then, if you need to, you can buy as many as three or four additional months in which to respond. It's a little easier to have a life when the biggest emergency is figuring out how to squeeze in a day's worth of work over the next fiscal quarter to meet that deadline imposed by the patent office.

For the time being, we are subletting office space from another law firm, but they have another empty office, so, if you too want to work at the perfect firm, call now, while the room is still available.

⁵⁴

I.e., see above asshole lawyers.

BENJAMINS⁵⁵

On February 10, 2019, Congresswoman Ilhan Omar suggested that Israel's allies in American politics were motivated by money rather than principle, tweeting "It's all about the Benjamins baby," referring, of course, to all those \$100 bills with Benjamin Franklin's face on them in particular and to money in general. And also (I just learned) in reference to a Puff Daddy song from 1997(!) entitled "It's All About the Benjamins" and whose third line is "It's all about the benjamins baby."

Do wealthy individual Jewish Americans on the Right, such as Sheldon Adelson, use their benjamins to try to influence American policies? Of course, they do.

Do wealthy individual Jewish Americans on the Left, such as George Soros, use their benjamins to try to influence American policies? Of course, they do.

Do wealthy individual non-Jewish Americans on the Right, such as the Koch brothers, use their benjamins to try to influence American policies? Of course, they do.

Do wealthy individual Jewish and non-Jewish Americans on the Left, such as the so-called Hollywood elite, use their benjamins to try to influence American policies? Of course, they do.

Does the wealthy National Rifle Association use its benjamins to try to influence American policies? Of course, it does.

Does the wealthy National Education Association use its benjamins to try to influence American policies? Of course, it does.

⁵⁵ 2019

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Just like the wealthy American Bar Association and the wealthy tobacco industry and the wealthy American Medical Association and the wealthy pharmaceutical industry and the wealthy United Auto Workers and on and on.

The problem is not with wealthy individuals, corporations, and associations who are willing to donate their benjamins to try to influence American policies. The problem is with our individual policymakers who are ready, willing, and able to accept those benjamins. And as long as the ability to receive those benjamins exists, there will be individual policymakers who are ready and willing to accept them.

The solution, of course, is to change the system so that wealthy individuals, corporations, and associations are unable to donate their benjamins and our policymakers are unable to accept those benjamins. The problem, of course, is that the people who can change the system are the very policymakers who are benefiting from all those benjamins.

A COMMUTER'S GUIDE TO ELEVATOR ETIQUETTE⁵⁶

I spent this last summer working at the corner of 11th and Market in One Reading Center, also known as the ARA Building. The 31 floors of the building are serviced by two elevator banks of 6 elevators each. The first bank provides access to Floors 1 through 15; the second, Floors 16 through 31. In the course of riding up and down between the lobby and the 26th floor at least four times each day, five days a week, for three months, I began to realize that there are rules about riding in elevators, or at least about riding in elevators in the ARA Building.

Of course, some of the rules are what you would expect: no smoking, no loud music, let people off before getting on. If you don't mind, I'd like to tell you the rest of the rules.

When you stand in an elevator you must face forward; it is very rude to stand sideways and absolutely impertinent to stand facing into the elevator, especially if you are in the row closest to the door.

Speaking of rows, the ARA elevators hold a maximum of 12 people who must be arranged in three rows of four people each. If you are going to be the thirteenth person, you must wait for the next available elevator.

Talking in an elevator before 10 am is most improper, other than to say "excuse me." The only exception is on Friday morning, but even then the conversation must be limited to discussions of the weather forecast for the weekend.

⁵⁶ 1989

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Eye contact is strictly forbidden. You may look at the floor or the floor numbers above the door. You are allowed, however, to glance over to the buttons to see how many are lit to determine how many stops there are before your exit.

While we're talking about those buttons -- as you enter the elevator, you must select your floor by striking the appropriate button. It is extremely rude to call out your floor for others to select for you.

After selecting your floor, you must proceed towards the back of the elevator, filling in the rows as described earlier. Never step to the side of the front row; this will restrict subsequent riders in their ability to select the floor of their choice.

If you happen to select the wrong floor by accident or even change your mind after the ride has begun, that's too bad; you must get off the elevator on the floor you selected, unless you can successfully place the blame on someone else.

The minimum number of floors while going up is two; the minimum for descending is three. This means that if you only want to go up one floor, or down one or two, then you must take the stairs. Local elevator use during the rush-hour periods between 8:30 am and 9:15 am and between 4:45 pm and 5:30 pm is verboten. You must either travel all the way down and then go back up to the floor you want, or you must wait until some other time of day.

If someone is running to catch the elevator, only those people in the front row, that is, the row closest to the door, are allowed to assist that person by depressing the "door open" button or tripping the automatic door opening device on the door itself (either the light beam or the pressure indicator of the door gasket). If you are in the second or, God forbid, the third row, you are not allowed to try to stop the elevator to help anyone else, even if that person happens to be your maternal grandmother.

Naturally, it goes without saying that no one may ever depress the emergency call button or flip the emergency stop switch. It would be better for everyone in the elevator to plummet to their deaths than for

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someone to depress the emergency call button or flip the emergency stop switch.

That's all for now. Enjoy the ride.

IDENTIFYING ANTI-SEMITISM⁵⁷

In a televised interview with Larry King in April 1996, world-renowned actor Marlon Brando said, “Hollywood is run by Jews; it is owned by Jews.”

Please raise your hand if you think that Marlon Brando’s statement was anti-Semitic.

Okay, now raise your hand if you think that Marlon Brando was an anti-Semite.

Please raise your hand if you think that the statement is true, that Hollywood is owned and run by Jews.

Does your belief about whether the statement is true or not affect whether or not the statement is anti-Semitic and about whether or not Marlon Brando was an anti-Semite?

Anti-Semitism is hatred of Jews. The term “anti-Semitism” was coined in 1873 by Wilhelm Marr, a Jew-hating German journalist who wanted to legitimize his hatred of Jews by giving it a euphemistic, scientific-sounding name.

How can you tell when a statement about Jews is anti-Semitic? If the statement is false, is it necessarily anti-Semitic? If the statement is true, it is necessarily not anti-Semitic?

If the statement “Hollywood is owned and run by Jews” is not true, can we safely assume that it is anti-Semitic? In other words, if Jews do not own and run Hollywood, then can we assume that the statement “Hollywood is owned and run by Jews” is anti-Semitic?

⁵⁷ 2011

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If, however, Jews do own and run Hollywood, then can we safely assume that the statement “Hollywood is owned and run by Jews” is not anti-Semitic?

Given the weight that the terms “anti-Semite” and “anti-Semitic” carry these days, it is very important for those terms to be applied accurately and appropriately. Like Chicken Little and his falling sky, we Jews lose credibility with our non-Jewish neighbors when we apply those terms loosely and inappropriately. Like the boy who cried “Wolf”, who will believe us when actual anti-Semitism raises its ugly head.

Is being anti-Semitic like Supreme Court Justice Potter Stewart’s definition of hard-core pornography: something that you can’t define but you know it when you see it? I don’t think so.

There are at (at least) four ways in which the statement “Hollywood is owned and run by Jews” can be anti-Semitic.

The first way is if Hollywood is not owned and run by individuals who are Jews. In that case, the statement is false and is therefore arguably anti-Semitic per se.

If Hollywood is owned and run by individuals who are Jews, can we then safely assume that the statement “Hollywood is owned and run by Jews” is not anti-Semitic? No.

Even if Hollywood is owned and run by individuals who are Jews, then the statement “Hollywood is owned and run by Jews” can still be anti-Semitic, if, for example, the statement really means that Hollywood is owned and run by the Jews, where the term “the Jews” assumes and implies that the Jewish individuals who own and run Hollywood are acting in consort as a Jewish cabal to control Hollywood to achieve some nefarious Jewish agenda. This is a second way in which the statement “Hollywood is owned and run by Jews” can be anti-Semitic.

A third way in which the statement “Hollywood is owned and run by Jews” can be anti-Semitic is when the speaker really means “Hollywood should not be owned and run by Jews.” In this case, the statement “Hollywood is owned and run by Jews” can be anti-Semitic whether or not the Jews do in fact own and run Hollywood.

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A fourth way in which the statement “Hollywood is owned and run by Jews” can be anti-Semitic is when the person who made the statement hates Jews and makes the statement to disparage Jews. Here, too, the statement can be anti-Semitic whether or not the statement is true.

Let’s examine each of these four different ways in which the statement “Hollywood is owned and run by Jews” can be anti-Semitic to see if we can determine whether or not Marlon Brando’s statement was in fact anti-Semitic.

Is Hollywood Owned and Run By Individuals Who Are Jews?

There are now over seven billion (7,000,000,000) people in the world. No one knows for sure, but it is estimated that there are no more than fifteen million (15,000,000) Jews in the world. Thus, no more than about 0.2% of the world’s population are Jews. In other words, on average, for every 500 people in the world, only one is a Jew; the other 499 are non-Jews.

Even in the United States, which, after Israel, has the second largest population of Jews in the world, there are no more than six million Jews out of a total population of about 300 million people. That means that, in the United States, on average, out of every 50 people, only one of them is a Jew, and the other 49 are non-Jews.

It is quite an understatement to say that Jews take great pride in the fact that, in many areas of life, Jews have had and continue to have an effect on modern Western civilization that is incredibly statistically disproportionate. (I am using the term “disproportionate” to indicate that the effect that Jews have is much greater than the small proportion of Jews in our society. It is not intended to imply any value judgment as to whether that relative difference is good or bad.) Jews have written many books and articles and now websites about the disproportionate success their fellow Jews have had in science, in medicine, in law, in literature, in art, in music, in business, in politics, and, yes, even in Hollywood.

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Of course, many people, including plenty of Jews, also make fun of the alleged lack of success that Jews have had in other areas of our society, most notably in professional sports.

(By the way, I suspect that that assumed lack of success by Jews in professional sports is actually not true. I haven't done the statistical analysis, but, given that only one out of every 50 Americans is a Jew, I would venture to guess that about one out of every 50 professional athletes is a Jew. Since there are about 50 baseball players for every two teams, I would venture to guess that, if anything, Jews have been and still are over-represented in professional baseball, with more than one Jew for every two professional teams. This over-representation in baseball might even compensate for Jews being under-represented in some other professional sports such as football (one Jew per professional football team of about 50 players being proportionate to the Jewish population in America) and basketball (one Jew for every four professional basketball teams of about 12 players each being proportionate).

I suspect that the canard about Jews and professional sports has more to do with the relative lack of success that Jews have had in professional sports when compared to their incredibly disproportionate success in so many other areas of modern life, than to any absolute lack of success in sports. When Jews make up such a large percentage of doctors and lawyers and scientists, it is easy to assume that their much smaller percentage of professional athletes is disproportionately low, even if it is in fact not true. Moreover, as more and more Jewish mothers and fathers allow their Jewish sons and daughters to spend the minimum of 10,000 hours of practice that it takes to become a professional athlete, I suspect that the percentages of Jews in professional sports will only increase over time.)

Although Jews make up only 0.2% of the world's population, according to one website I found (http://www.jinfo.org/Nobel_Prizes.html), at least 185 Jews and people of half or three-quarters Jewish ancestry have been awarded the Nobel Prize, accounting for 22% of all individual recipients between 1901 and 2011. Those percentages are

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even higher, if you focus on individual categories like Physics (26%) or Medicine (27%) or Economics (41%) (“Of course,” says the anti-Semite, “the Jews would do well in Economics. Economics has to do with money, right?”)

Although Jews make up less than 2% of the population of the United States, in recent years, about 10% of the Senators in the U.S. Senate have been Jews and about 6% of Representatives in the U.S. House of Representatives have been Jews.

Jews take great pride in listing their fellow Jews who helped to create what we know and refer to as “Hollywood.”

(When anti-Semites say “Hollywood is owned and run by Jews,” they are not simply referring to a particular neighborhood in Los Angeles; they are using the term “Hollywood” to represent the entire U.S. entertainment industry (including, these days, television in addition to movies), wherever, in the U.S., that industry happens to be located, including, of course, the neighborhood in Los Angeles called Hollywood, but no doubt also including the infamous “Jew York,” which of course is, according to the anti-Semites, also (i) the home of the control by Jews of “Wall Street,” another term representing more than just a particular geographic location, and (ii) the home as well of the control by Jews of “the media,” which, these days, overlaps with “Hollywood.”)

If you do a Google search on Jews and Hollywood, you will find any number of websites identifying Jews past and present involved in Hollywood. Some of these websites are by anti-Semites complaining about the disproportionate influence of Jews in Hollywood; the rest of the websites are by Jews bragging about the disproportionate influence of Jews in Hollywood.

Here are some Jews who helped to create Hollywood: Adolph Zukor (Paramount), Jesse Lasky (Paramount), Carl Laemmle (Universal), William Fox (20th Century Fox), Louis B. Mayer (MGM), Samuel Goldwyn (MGM), Harry and Jack Warner (Warner Brothers), and Harry Cohn (Columbia).

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Here are some Jews who have recently been influential in Hollywood: Peter Chernin (President of News Corp.), Brad Grey (Chairman of Paramount Pictures), Robert Iger, Chief Executive of Walt Disney Co.), Michael Lynton (Chairman of Sony Pictures), Barry Meyer (Chairman of Warner Bros.), Leslie Moonves (Chief Executive of CBS Corp.), Harry Sloan (Chairman of MGM), Jeff Zucker (Chief Executive of NBC Universal), Charlie Collier (President of AMC), Alan Rosenberg (President of the Screen Actors Guild), Ari Emanuel (entertainment super-agent), and Stephen Spielberg (director),

Of course, Jewish influence in Hollywood is not absolute. There have been many non-Jews who have also been and still are influential in Hollywood. People like Darryl F. Zanuck, Walt Disney, Ron Howard, Oprah Winfrey, James Cameron, and, of course, the famous and infamous Mel Gibson. Ask yourself this question: If Jews really exercised complete control over Hollywood, would Mel Gibson still be making movies?

The fact is that, compared with their small fraction of the U.S. population, Jews are disproportionately influential in Hollywood, just as they are disproportionately represented in Congress and on Wall Street and on lists of Nobel Prize winners. But disproportionate representation is not necessarily the same thing as owning and running. Just because Jews are disproportionately represented in the Senate (i.e., 10 Senators instead of only 2 Senators, which would match the Jewish population), that certainly does not mean that Jews control the Senate.

Then again 10% is not the same thing as well over 50%. If well over 50% of the individuals who “own and run” Hollywood are Jews, is it true that Hollywood is owned and run by Jews?

Let’s assume, for the sake of argument, that over 50% of the individuals who “own and run” Hollywood are Jews; is that the same thing as saying that Hollywood is owned and run by the Jews?

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Is Hollywood Owned and Run by “The Jews”?

Even if the statement “Hollywood is owned and run by Jews” were true, the statement could still be anti-Semitic if the statement really means that Hollywood is owned and run by the Jews. Saying that Hollywood is owned and run by “Jews” can have a different meaning from the statement that Hollywood is owned and run by “the Jews.”

Saying that Hollywood is owned and run by “Jews” can simply mean that Hollywood is owned and run by individuals who just happen to be Jewish. On the other hand, saying that Hollywood is owned and run by “the Jews” implies that those individual Jews are working in consort to achieve some nefarious Jewish agenda.

How do we explain the disproportionate success that Jews have had in so many areas of modern life? Why is it that so many Jews have won Nobel Prizes? Why is it that so many senators and representatives are Jewish? Why is it that Jews are so overly represented on Wall Street and in Hollywood compared to their relatively small fraction of the U.S. population?

Is it because there is a Jewish conspiracy? No. It is because Jews study hard and Jews work hard. Whatever success Jews have had in this world has come in spite of anti-Semitism, in spite of persecution against Jews, in spite of prejudice against Jews, in spite of quotas and blacklists against Jews.

But how can you prove a negative? How can you prove that there is no Jewish conspiracy? I can offer to take a lie-detector test. After all, I am⁵⁸ a 54-year-old Jew who has a successful career as a patent lawyer, but, more importantly, I am on the Executive Committee of the Board of the local branch of the Anti-Defamation League, in which I am also an Associate National Commissioner. If I haven’t been let in on the conspiracy yet, then who would be?

Of course, an anti-Semite would argue that, as a Jew, I am a natural-born liar who can “beat” a lie-detector test. Like I said, it’s very hard to

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prove a negative. Conspiracy theorists will never accept that there simply is no Jewish conspiracy.

In reality, there are a lot of successful Jews who succeeded by studying hard and working hard. Of course, there are plenty of unsuccessful Jews as well, but no Jew is going to write a book or set up a website bragging about unsuccessful Jews. And no anti-Semite is going to write a book or set up a website complaining about unsuccessful Jews.

It is easier for people who do not study hard and do not work hard to believe that Jewish success is the result of some secret conspiracy rather than due to Jews' historic emphasis on education and hard work. And for those people who do study hard and do work hard and still have not succeeded, it is easier to believe that their lack of success is the fault of others, and who better to blame than the Jews, the eternal "other."

There is another way that the statement "Hollywood is owned and run by Jews" can be true and be anti-Semitic and that is when the statement really means "Hollywood should not be owned and run by Jews."

Does Marlon Brando's Statement Really Mean that Jews Should Not Own and Run Hollywood

Even if the statement "Hollywood is owned and run by Jews" were true, the statement could still be anti-Semitic if the statement really means that Hollywood should not be owned and run by Jews, that there is something inherently wrong with Jews owning and running Hollywood.

Assuming that it is true that Jews are disproportionately represented in Hollywood, why shouldn't they be? In a free society, why shouldn't Jews own and run Hollywood? If Jews created Hollywood, why shouldn't Jews own and run Hollywood?

Right now, African-Americans are disproportionately represented in professional basketball and football and probably in baseball as well (although less so today in the case of baseball than in the recent past). Is there anything wrong with that disproportionate representation? There are some Black educators and sociologists who are not happy with the

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emphasis placed on professional sports as the exclusive and substantially unattainable goal of so many African-American youths, but, as long as Blacks are better at basketball and football and baseball, why shouldn't they be disproportionately represented there? As long as their success is not the result of some discrimination or bias against others, then why shouldn't they succeed?

Am I proud of the fact that so many Jews have been so influential throughout the history of Hollywood? Yes. Am I happy with the effect that Hollywood is having on American society and culture today? Not necessarily. Am I happy that Jews are contributing to what I consider to be certain negative influences that Hollywood has today on our society? No. But, more importantly, I wish that all people, whether Jewish or not, who have influence in Hollywood would use that influence to do a better job.

Jews often evaluate the successes and failures of their fellow Jews in terms of the effect and impact those Jewish successes and failures have on Jews as a whole. "Is it good for the Jews or is it bad for the Jews?" they ask themselves. "Is it good for the Jews that Sandy Koufax is Jewish?" Of course, it is. "Is it bad for the Jews that Bernie Madoff is Jewish?" Of course, it is.

Whether it is good for the Jews that Jews exercise so much influence in Hollywood is a separate topic for another day. But it is different for a Jew to argue that Jews should not exercise so much influence in Hollywood than it is for a non-Jew to do so, just like the "N" word may be okay for an African-American to use, but not non-African-Americans.

That may seem like a double standard, but it is really a matter of context and intent and that leads us to the fourth and last way in which statements like "Hollywood is owned and run by Jews" can be anti-Semitic even if they are true.

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Even a True Statement can be Anti-Semitic

Even when a statement is true, it can still be anti-Semitic. Natan Sharansky has identified the three “D”s that can be used to “distinguish legitimate criticism of Israel from anti-Semitism”: demonization, double standards, and delegitimization. According to Sharansky:

“The first “D” is the test of demonization. When the Jewish state is being demonized; when Israel’s actions are blown out of all sensible proportion; when comparisons are made between Israelis and Nazis and between Palestinian refugee camps and Auschwitz - this is anti-Semitism, not legitimate criticism of Israel.

“The second “D” is the test of double standards. When criticism of Israel is applied selectively; when Israel is singled out by the United Nations for human rights abuses while the behavior of known and major abusers, such as China, Iran, Cuba, and Syria, is ignored; when Israel’s Magen David Adom, alone among the world’s ambulance services, is denied admission to the International Red Cross - this is anti-Semitism.

“The third “D” is the test of delegitimization: when Israel’s fundamental right to exist is denied - alone among all peoples in the world - this too is anti-Semitism.”

Even if the statement “Hollywood is owned and run by Jews” were true, it can still be anti-Semitic. Applying Sharansky’s 3D test to Jews in general, if the purpose of making the statement is to demonize Jews or if that type of statement is applied only to Jews as a double standard or if the statement is made to delegitimize Jews, then the statement can be anti-Semitic, even if the statement is true.

It’s one thing for a Jew to proudly boast of how many Jews are influential in Hollywood; it’s quite another thing for a Jew-hater like Louis Farrakhan to say that “The Jewish people ... are the masters of Hollywood.” (Speech at Mosque Maryam, Chicago, 3/7/10)

If the statement “Hollywood is owned and run by Jews” were made by a Jew who was proudly boasting of the success of Jews in our modern society, would that statement be anti-Semitic?

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Here is the full quote by Marlon Brando in his interview with Larry King:

“Hollywood is run by Jews; it is owned by Jews, and they should have a greater sensitivity about the issue of -- of people who are suffering. Because they’ve exploited -- we have seen the -- we have seen the Nigger and Greaseball, we’ve seen the Chink, we’ve seen the slit-eyed dangerous Jap, we have seen the wily Filipino, we’ve seen everything but we never saw the Kike. Because they knew perfectly well, that that is where you draw the wagons around.”

What exactly was Marlon Brando trying to say? The Hollywood that he saw was a Hollywood that depicted Blacks as Niggers, Italians as Greaseballs, Asians as Chinks and Japs, but not Jews as Kikes. Given that Jews have historically been the victims of so much hate and prejudice, Jews of all people, according to Marlon Brando, should not help perpetuate negative stereotypes against others, especially when they exempt their fellow Jews from similar portrayals.

Was Marlon Brando’s assessment of Hollywood correct? I don’t know, but he might have had a point. For what it’s worth, I personally think that the Hollywood of today is different from the Hollywood of only 15 years ago that Marlon Brando was talking about. Anybody who has watched the 2008 movie *Tropic Thunder* or the television show *Entourage* will be able to see Jews portrayed as Kikes.

Was Marlon Brando suggesting that the individual Jews who owned and ran Hollywood back then were acting in consort as a Jewish cabal to control Hollywood to achieve some nefarious Jewish agenda? Does it matter that, earlier in that interview with Larry King, Brando explicitly stated that he was “very goddamn angry at some of the Jews” in Hollywood and that he did not say that he was very goddamn angry at “the Jews”?

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Was Marlon Brando really suggesting that Jews should not own and run Hollywood? I don't think so. I think that he was saying that the Jews who own Hollywood should do a better job running Hollywood.

Was Marlon Brando an anti-Semite who's statement about Jews owning and running Hollywood was intended to demonize and delegitimize the Jewish people?

If his statement were made in a sermon during Shabbat services by a Jewish rabbi, complaining about the way in which some of his or her fellow Jews exert their influence in Hollywood and exhorting them to do better for the good of society, would that statement be anti-Semitic? If so, were Jeremiah and Isaiah anti-Semites for exhorting their fellow Jews to be better people?

Has anyone changed his or her mind about whether Marlon Brando's statement about Hollywood being owned and run by Jews was anti-Semitic? Or about whether Marlon Brando himself was an anti-Semite?

Obviously, I don't have all the answers to these questions, but I do believe that they are important questions to ask and to discuss so that we can all do our best to avoid being compared to Chicken Little and that boy who cried "Wolf!"

PITH

To death and taxes, add debugging.

Marx said, “Religion is the opiate of the masses.”

I used to say, “Thank God for opiated masses. Who wants a bunch of un-opiated masses running around loose.”⁵⁹

Republicans and Democrats both try to scare their constituents.

- Republicans try to scare their constituents by telling lies about Democrats.
- Democrats try to scare their constituents by telling truths about Republicans.

Philosophers are just lazy scientists. Physical and social scientists propose theories about the real world and then perform experiments to determine whether or not their theories are true. Philosophers just make shit up. Philosophers are like theoretical physicists, but without all the math.

An atheist is a person who has spent a lot of time thinking about the existence of God.

A theist is a person who has spent little if any time thinking about the non-existence of God.

Thinking leads to atheism.

⁵⁹ Since Oklahoma City and 9/11, I don't say that anymore.

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It is not that atheists have evidence for God's non-existence;
We simply have insufficient evidence for God's existence.

Atheism is the new gay marriage.

Hearing is believing more than seeing is believing.

We can do what we want; we just can't choose what we want.

Of the things that we believe that we have the ability to do, we always try to do what we want.

Corollary: Anytime we do (or don't do) anything, it is because we wanted to do (or not do) that thing.

Shame is what you feel if you have just the wrong amount of guilt. Those who have too little guilt, feel no shame after doing what they should not do. Those who have too much guilt, feel no shame because they do not do what they should not do. Only those who have just the wrong amount of guilt do what they should not do and then feel shame.

TO CLAIM OR NOT TO CLAIM, THAT IS SAID QUESTION⁶⁰

“There are some good reasons why your clients should patent their inventions, but there are even more good reasons why they should not.”

Perhaps the best reason for your clients to patent their inventions is that they can make millions and millions of dollars by enforcing those patents against those who make, use, or sell products embodying those inventions.

Assume, for example, that your client invented intermittent windshield wipers. You might think that that would certainly be a great invention for your client to patent, right? With such a patent, your client could collect millions and millions of dollars in royalty payments by enforcing that patent against automobile manufacturers.

But you would be wrong. Intermittent windshield wipers were patented (U.S. Patent No. 3,351,836) in 1967 by Robert Kearns of Detroit, Michigan, who made millions and millions of dollars in royalty payments by enforcing his patent against automobile manufacturers. The rule is that only the first inventor of an invention is entitled to get a patent on that invention, and your client wasn't the first inventor; Robert Kearns was.

⁶⁰ 2010

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*“Coming up with an invention that is patentable is hard enough.
Coming up with an invention that is both patentable and marketable is almost
impossible.”*

I know what you are thinking. You’re thinking that intermittent windshield wipers was just an example selected and used to make a point. And you would be right. It was an example selected and used to make a point. And that point is that it is extremely unlikely to come up with a patentable invention that is worth even twenty dollars in royalty payments, let alone millions and millions of dollars in royalty payments. For example, somebody already invented intermittent windshield wipers.

Take the woman who called me from Ohio about 10 years ago to tell me that she had just invented the combined carbon monoxide detector / automatic garage door opener. Get it? When the combined detector/opener detects a high level of carbon monoxide in the garage, it automatically opens the garage door, thereby reducing the carbon monoxide level and presumably causing the person who was trying to kill himself to swallow a lot of pills instead.

While I was on the phone with my prospective new client from Ohio, I logged onto the patent office website (www.uspto.gov) and did a key-word search on “automatic garage door opener” and “carbon monoxide.” Sure enough, in 1980, Edward Kelly of Trenton, New Jersey, patented the combined carbon monoxide detector / automatic garage door opener (U.S. Patent No. 4,197,675). “Then why can’t I buy one?” the woman lamented.

That’s the point; patentability and marketability are two very different things. Just because an invention is patentable, that doesn’t mean that it is also marketable.

On April 15, 1980, Edward Kelly was able to get a patent on the combined carbon monoxide detector / automatic garage door opener, but that doesn’t mean that he was able to get anyone to buy a combined carbon monoxide detector / automatic garage door opener. At least, the woman from Ohio that I spoke to ten years ago couldn’t find one when she looked

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for one in her local hardware store. Apparently, people don't want their garage doors flying open in the middle of the night just because concentrations of an odorless, colorless, deadly gas have reached fatal levels.

From what I've seen over almost 20 years as a patent attorney, for every invention like the intermittent windshield wiper worth millions of dollars, I'll bet that there are hundreds if not thousands of inventions like the combined carbon monoxide detector /automatic garage door opener that aren't worth even twenty dollars.

As my old colleague Steve Petersen used to say to prospective new clients: "There are professional engineers and scientists who spend their entire careers working in this technology area. The chances that you have come up with something that they have not already thought of and tried to patent are pretty remote."

*"You don't need a patent to go into business;
you get a patent to keep other people from going into your business."*

Patents provide exclusive rights. In other words, a patent gives you the right to exclude others from practicing your invention. Ironically, having a patent does not necessarily mean that you have the right to practice your own invention.

The following is the situation I always use with clients who are new to the exciting world of patents. Assume, I say to them, that you were the first person to invent the automobile. You could get a patent on all motorized vehicles. Assume further that, one year later, I invent automatic transmission, which is a patentable improvement over the standard transmission that you had in your automobile. I could then get a patent on all motorized vehicles with automatic transmissions.

In that case, you can make automobiles with standard transmissions, but you can't make automobiles with automatic transmissions without permission from me because I have the patent on all motorized vehicles with automatic transmissions. But wait, I can't make

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automobiles with automatic transmissions without permission from you because you have the patent on all motorized vehicles. Aren't patents fun?

Of course, you can't get a patent on all motorized vehicles, and I can't get a patent on all motorized vehicles with automatic transmissions, because these things were invented many decades ago. I just selected and used those inventions as examples to make a point, and the point is that getting a patent will not guarantee that your client can practice his or her own invention.

"If you want real value for your hard-earned money, take the \$15,000 you were going to spend getting a patent, go to Atlantic City, put it on red, and spin the wheel. Your chances of making any money will be far greater than with a patent."

I've said this to prospective clients many times, usually prefaced by the phrase "I don't mean to sound flip, but ..."

Most of the patent applications that we file at our firm are for a handful of corporations who understand the probabilities and statistics associated with the patent process. They file hundreds of patent applications every year knowing full well that only a very few are going to be worth anything. The problem is that they don't know ahead of time which ones are going to be the valuable ones. If they did, then they would just file those very few patent applications and save the rest of the money they spend on all those other worthless patent applications for something important, like executive bonuses and congressional lobbying.

The individual client with a single idea is facing the same odds and likely even worse odds, because that individual is likely not a professional engineer or scientist who has spent his or her entire career working in that technology area. If the chances of an issued patent being worth anything is 1%, then, for every hundred patents that one of our corporate clients gets, on average, one of them will be worth something. But if your client is an individual who files only one patent application, then it is almost certain (to within an error of 1%) that that patent will be worthless.

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“The USPTO does a lousy job.”

The U.S. patent office rejects some patent applications that should be allowed, and they also allow lots of patent applications that should be rejected. You can spend tens of thousands of dollars to get an issued U.S. patent that is worthless, not just because the invention is not marketable, but also because the patent itself is of dubious validity.

As I explained previously, in 1980, Edward Kelly of Trenton, New Jersey, patented the combined carbon monoxide detector / automatic garage door opener (U.S. Patent No. 4,197,675). In 1982, Richard Martin of West Bloomfield, Michigan, also patented the combined carbon monoxide detector / automatic garage door opener (U.S. Patent No. 4,338,526). So did Dean Duhamel of Roseville, Michigan (U.S. Patent No. 4,360,801) and Shigeru Matsuoka of Tokyo, Japan (U.S. Patent No. 4,365,250), both in 1982. In 1989, John Vole of Vernon Hills, Illinois, also patented the combined carbon dioxide detector / automatic garage door opener (U.S. Patent No. 4,819,551). As did Richard Murphy of Oaklawn, Illinois, in 1996 (U.S. Patent No. 5,576,739) and Thomas Dzurko of Strongsville, Ohio, in 2007 (U.S. Patent No. 7,183,933). Most recently, in 2009, Thomas John of Roslyn, New York, patented the combined carbon dioxide detector / automatic garage door opener (U.S. Patent No. 7,602,283). It's possible that I may have missed a few others in there. It's also possible that someone will again patent the combined carbon dioxide detector / automatic garage door opener in 2011.

Let's assume that combined carbon dioxide detectors / automatic garage door openers become the next greatest fad in America, and dozens of companies start making and selling them. Thomas John, our most-recent inventor of the combined detector / opener, wants to recoup some of the thousands of dollars he just spent getting his patent. He has an issued U.S. patent that covers combined carbon dioxide detectors / automatic garage door openers, right? Unfortunately, so did over half a dozen others before him. Remember, only the first inventor is entitled to the patent. The subsequent inventors may have succeeded in getting

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patents from the USPTO, but that doesn't mean that they were entitled to them. Nor does it mean that a court will uphold their issued but dubiously valid patents.

“Broad patents are probably invalid, and valid patents are probably narrow.”

There's a famous (and probably inaccurate) story that, in 1899, the head of the patent office concluded that “Everything that can be invented has been invented.” Whether the story is true or not, clearly there have been a few inventions made since 1899, including the intermittent windshield wiper and the combined carbon dioxide detector / automatic garage door opener.

Every week, the U.S. Patent and Trademark Office (USPTO) publishes the Official Gazette listing the 4,000-5,000 patents that issued just that week. For example, on March 16, 2010, the patent office issued exactly 4,400 patents. Although I have not done an exhaustive (or even any) analysis of those 4,400 patents, I would hazard to guess that most of them are very narrow in scope and those few that are broad in scope are probably invalid.

I lied earlier when I said that the combined carbon dioxide detector / automatic garage door opener had been patented eight different times. The truth is that the combined carbon dioxide detector / automatic garage door opener *per se* was patented only once and that was back in 1980 by Edward Kelly. The seven other subsequent inventors patented improvements to Edward Kelly's generic combined detector / opener. They were not entitled to patent the combined detector / opener *per se* because that had already been patented.

For example, the patent of Thomas John (U.S. Patent No. 7,602,283), our most-recent inventor of the combined carbon dioxide detector / automatic garage door opener, has three independent claims. The first independent claim (claim 1) requires the combined detector / opener to detect the position of a vehicle and to calculate whether the

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vehicle is moving towards the garage. Frankly, I don't even understand that invention.

The second independent claim (claim 18) requires the combined detector / opener to include a handheld device that is used to close the garage door after the combined detector / opener has automatically opened the door.

The third independent claim (claim 22) requires the combined detector / opener to include an underground wire that extends underneath all vehicle entrances and exits.

It may very well be true that Thomas John's patent is valid and enforceable. Unfortunately, it is also true that the scope of Thomas John's patent is quite narrow and therefore easy to design around by changing the product enough to avoid infringing the patent. If you want to make, use, or sell combined detector / openers that do not infringe Thomas John's patent then make sure that your combined detector / openers do not calculate whether a vehicle is moving towards the garage, do not include a handheld device, and do not include an underground wire.

Not only does Thomas John have a patent that covers a product that apparently no one is interested in buying, but the scope of protection provided by that patent is so narrow that it would be very easy for someone to design around his patent to build other types of combined detectors / openers that no one is interested in buying.

"If your client is interested in getting a narrow patent that covers a product that no one wants to buy and is easy to design around, then, by all means, your client should get a patent."

One of the very first patent applications I ever worked on was for a nurse who invented a drug drawer tray to store the various drugs and paraphernalia used by an anesthesiologist during surgery. Unfortunately, hers was not the first drug drawer tray. The good news is that I was able to get her a patent (U.S. Patent No. 5,257,693); the bad news is that her patent was limited to covering drug drawer trays that, among other

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limitations, had exactly four magnetic feet that prevent the tray from sliding around inside a metal drawer. If someone were to make, use, or sell drug drawer trays that were otherwise identical to hers, but had three magnetic feet or five magnetic feet, it may well be that they would succeed in designing around her patent.

I explained all of this to my client, and that she was likely not going to be able to get millions and millions of dollars, or even twenty dollars, in royalty payments, but she still wanted to get a patent ... so that she could proudly hang a copy of her issued patent on her wall at home. Now, that's a good reason to get a patent!

BIO: Steve Mendelsohn is a patent prosecution attorney whose entire practice and therefore subsistence is predicated on the desire of individuals and companies to patent their inventions. He can't for the life of him figure out why he would submit such an article for publication. He is hoping that readers will be sufficiently impressed by his apparent integrity to convince their clients to use his services. Steve can be reached at steve@mendelip.com for free consultations in return for complimentary rounds of golf.

CONFESSIONS OF A BEARING WITNESS WITNESS⁶¹

I was born in 1957 and grew up in a suburb of Reading, PA, at the tail end of the cold war. Everything back then was (and probably still is today) about alliances. I remember losing an argument with my neighbor about World War II. I couldn't believe that Japan and Germany had been our enemies, and the Soviet Union and China had been our allies.

In my upper-middle-class neighborhood, all of the Catholic kids went to Catholic School, and the rest of us – the Jews and the Protestants – went to the public elementary school. I grew up in the 1960s assuming that the Protestants were our allies against the Catholics. Of course, I also grew up in those Cold War days assuming that Germany and Japan were our allies against the Soviet Union in World War II. What did I know?

When I was in high school, I had a history teacher who taught us that, other than the printing press, the Crusades were the best thing to come out of medieval Europe. When we got to World War II, she never mentioned anything about the Holocaust.

I did manage eventually to learn about the Holocaust and even later about the true nature of the Crusades and how deadly tragic they were, not just for Muslims in the Middle East, but for Jews, both in Europe and in the Middle East. I had also learned about the almost

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2,000 years of persecution of Jews at the hands of the European Christian majority, both Protestants and Catholics. I may have heard about something called *Nostra Aetate*,⁶² but I probably had no idea what it was.

That was basically my level of knowledge when I first became involved in the ADL's Bearing Witness program. When I was asked to give the "official" ADL welcome to the Bearing Witness participants that first year, I explained to them that, from my personal perspective, the purpose of the Bearing Witness program was to make sure that fewer people learn to hate Jews. Learning about the Holocaust is all well and good, but only if it makes it less likely for another one to occur in the future.

I was soon pleasantly surprised to learn that none of those 30 or so Catholic School teachers, most of whom were in their 30s, 40s, and 50s, had been taught to hate Jews.

Over the past 10 years, in our ADL region alone, almost 300 Catholic middle school and high school teachers have participated in the Bearing Witness program. Nationwide, the number is over 2,000. Our regional program brings Catholic-school educators to Daylesford Abbey in Paoli for four days, where they learn about Judaism, the history of Catholic-Jewish relations, Christian anti-Judaism, and the Holocaust. The program also includes a visit to a local synagogue, where participants experience a model Shabbat dinner and learn what Israel means to the Jewish people. Another component of the program is a trip to Washington, DC, to visit the United States Holocaust Memorial Museum and learn about contemporary anti-Semitism at the ADL's DC office.

Our regional Bearing Witness program also involves two follow-up events: one in the fall and one in the spring. At the fall event, the teachers are presented with *Echoes and Reflections*, an award-winning

⁶² Pope Paul VI's 1965 Declaration on the Relation of the Church with Non-Christian Religions that, among many other admirable statements, stipulated that Jews are to be held neither collectively nor personally responsible for the crucifixion of Jesus.

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Holocaust-education resource created by ADL, Yad Vashem, and the USC Shoah Foundation for teachers of middle and high school students. At the spring event, teachers return and share with their colleagues how they have incorporated what they learned at Bearing Witness into their own classrooms.

There is also a Bearing Witness Advanced program, in which a select number of Bearing Witness graduates from across the nation travel to Israel, where they visit Yad Vashem, tour holy sites like the Church of the Holy Sepulcher and the Western Wall, and learn about everyday life in the State of Israel. Each year, multiple Bearing Witness alumni from our region have been accepted into this program.

As with other ADL grass-roots programs like No Place for Hate® and Confronting Anti-Semitism, it is very hard to quantify the impact that the Bearing Witness program has had. We can specify that exactly 292 Catholic school educators from our region have participated in the program and estimate that each of those teachers brings the lessons and knowledge that they have acquired to about 150 students each year. Unfortunately, without performing extensive surveys comparing the attitudes of Catholics taught by past Bearing Witness participants with those taught by non-participants, or maybe even better, with those taught by teachers before they participated in Bearing Witness, it is impossible to know what impact the Bearing Witness program has had. One thing that I can say with certainty is that it has inspired me to be a more-active supporter of the ADL.

As a frequent eyewitness to the Bearing Witness program, I have been flabbergasted (and I don't use that term lightly) to learn about the incredible progress made in the state of Catholic-Jewish relations over the past 50 years since Nostra Aetate and the remarkable advances made by Pope John Paul II and now Pope Francis. I can honestly say that today the Jewish people have no better ally than the Catholic Church, and the Bearing Witness program is helping to ensure that the progress made in the past half century continues on into the future.

AN IMMODEST PROPOSAL⁶³

Fortunately, the English words for left and right begin with different letters, so that we can efficiently write “L” as a shorthand for “left” and “R” as a shorthand for “right”. As such, when we write, for example, the combination for a school locker, we can efficiently write “L-36, R-14, and L-25” instead of “Left-36, Right-14, and Left-25”.

Imagine a world in which the English words for left and right were “reft” and “right”. In that case, we would have to write “Re-36, Ri-14, and Re-25” to express that same locker combination. That’s still more efficient than “Reft-36, Right-14, and Reft-25”, but not as efficient as “L-36, R-14, and L-25”.

It’s also lucky that the English words for up and down begin with different letters, so that we can efficiently write “U” as a shorthand for “up” and “D” as a shorthand for “down”. And similarly for the English words for the colors of the rainbow: red, orange, yellow, green, blue, indigo, and violet, which enables the mnemonic “Roy G. Biv” to help us remember the colors of the rainbow and their order. If yellow was called “reellow” and indigo was called “ondigo”, then the resulting mnemonic “Ror G. Bov” would not be quite so helpful.

When I was in college, I took a class called “Dinosaurs and other Famous Fossil Failures.” (Never mind the fact that dinosaurs were anything but failures. I didn’t name the course; I only took it.) In order to remember the different pre-historic time periods, I came up with the mnemonic: “Curse our stupid dinosaurs, my pen popped the jerry can” for “Cambrian, Ordovician, Silurian, Devonian, Mississippian,

⁶³ 2020

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Pennsylvanian, Permian, Triassic, Jurassic, Cretaceous.” (Over forty years later, I’m proud to admit that I wrote the previous sentence without looking anything up.) The first problem back then was coming up with the mnemonic. The other problems were remembering that the first “P” stood for Pennsylvanian and the second “P” stood for Permian, and that the first “C” stood for Cambrian and the second “C” stood for “Cretaceous”. Life would have been better if the word for “Cambrian” were “Gambrian” and the word for “Pennsylvanian” were “Bennsylvanian”. I still would have had the problem of coming up with a mnemonic, but at least I wouldn’t have had those other problems.

Now, if my only complaint were that “Pennsylvanian” and “Permian” begin with the same letter “P” and that “Cambrian” and “Cretaceous” begin with the same letter “C”, I probably wouldn’t be writing this immodest proposal. But I have bigger and more relevant fish to fry.

There are seven days of the week: Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, and Sunday. Monday was named for the moon, Tuesday for the Germanic god Tiu, Wednesday for the Germanic god Woden, Thursday for the Norse god Thor, Friday for the Norse goddess Frigg, Saturday for the Roman god Saturn, and Sunday for the sun.

What a terrible set of names! Never mind that they come from all over the place with little rhyme or reason. The bigger problem is that two of them start with the same letter “S” and two of them start with the same letter “T”. As a result, we have to use two letters each to represent four of the seven days of the week: “Su” for Sunday, “Tu” for Tuesday, “Th” for Thursday, and “Sa” for Saturday. What a waste! To be fair to Monday, Wednesday, and Friday, we usually end up representing the seven days of the week as “Mo Tu We Th Fr Sa Su”. At best, we can write “M Tu W Th F Sa Su”. Just terrible!

The first part of this immodest proposal is that we have to re-name two of the days of the week. I say that we change the name of Tuesday to “Duesday” and Sunday to “Zunday.” Duesday sounds like Tuesday if you

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have a cold, and Zunday sounds like Sunday even if you don't have a cold. That way we can efficiently represent the seven days of the week with only seven letters: "M D W T F S Z". What a great idea!

And if you think, as I do, that the seven days of the week are bad, the twelve months of the year are even worse! January is named for the Roman god Janus, February for the Roman festival of purification Februa, March for the Roman god Mars, April from the Latin word aperire, meaning "to open" (just like flowers do in the spring), May for the Greek goddess Maia, June for the Roman goddess Juno, July for the Roman general Julius Caesar, August for the Roman emperor Augustus Caesar, and September, October, November, and December, respectively, for the Latin words for the numbers seven, eight, nine, and ten.

The first problem is that September, after the Latin sept for seven, is the ninth month of the year, not the seventh month of the year! Are you kidding me? And October, November, and December are not the eighth, ninth, and tenth months of the year; they are the tenth, eleventh, and twelfth months of the year. Really?!

Why? Because we used to have only ten months of the year and then we figured out that we needed two more months but instead of tacking the two new months onto the end of the year, someone had the bright idea of adding the months of July and August right in the middle of the year. That's how the seventh month of the year September became the ninth month of the year September. Ridiculous!

But that's not the worst thing about the names of the twelve months of the year. The worst thing is that some idiot decided to call two of the months March and May, another two April and August, and another three January, June, and July. Furthermore, not only do March and May both begin with same letter "M", but they both begin with the same two letters: "Ma". And similarly for June and July, which both begin with the same two letters "Ju".

It's bad enough that the best we can do is abbreviate January with the two letters "Ja", April with "Ap", and August with "Au". Even worse is that we have to use three letters each to represent March, May, June, and

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July: “Mar” for March, “May” for May (not much of an abbreviation, is it), “Jun” for June, and “Jul” for July. As a result, at best, we have to represent the twelve months of the year using 23 letters: “Ja F Mar Ap May Jun Jul Au S O N D”. Appalling! And yet we don’t even do that. What we typically end up doing is use three letters for each month: “Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec” – a whopping 36 letters to represent only 12 months!

The second part of this immodest proposal is that, like the days of the week, we must re-name the months of the year. I’m okay with January, February, March, and April. They can stay. But October should be re-named December since October is the tenth month of the year, not the eighth month of the year, and “dec” comes from the Latin word for ten. Likewise, for analogous reasons, November should be re-named “Elevenber” and December should be re-named “Twelvenber”.

Next, we have to change May to avoid using the same first two letters as March, and August to avoid using the same first letter as April, and, of course, we have to do something with June and July. I suggest “Nay” for May, “Ogust” for August, “Gune” (with a soft “G”) for June, and “Zuly” for July.

With these changes, we can optimize our efficiency and represent the twelve months of the year with only twelve letters: J F M A N G Z O S D E T for January, February, March, April, Nay, Gune, Zuly, Ogust, September, December, Elevenber, and Twelvenber. What another great idea!

Oh, and one last change: September should be renamed “Stevember”. After me. That’s the really immodest part of this proposal.

DEAR BOB⁶⁴

(Why People Hate Lawyers, Part 3)

The year was 1981. I was working on an engineering degree at the University of Pennsylvania and living in Grad Towers, in a “suite” consisting of two bedrooms and a shared bathroom. Bob, a Wharton student, lived in the other bedroom. Now neither of us was particularly neat or tidy, but one day, for some unknown reason, I decided to clean the bathroom. It had been a few months since it had been cleaned, probably because it had been a few months since Bob and I had moved into Grad Towers.

It took me about an hour to clean the toilet, shower, and sink of the little bathroom that separated our two only slightly larger dorm rooms. When I was done, the bathroom practically sparkled. Or at least it sparkled compared to what it had looked like an hour before.

As I walked back to the dorm later that day after classes, I wondered whether Bob had been there to notice what I had done -- that I had cleaned our bathroom. He was not there when I arrived, but I could see that he had been there from the glob of toothpaste which then graced the otherwise pristine porcelain of our sink.

My initial reaction was outrage. Here I had spent my good time to clean the bathroom which we shared and not only did Bob obviously not appreciate my effort, but he had actually already begun to mess the place

⁶⁴ 1995

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up again. He didn't even have the decency to try to keep the sink clean for just a little while.

These feelings of outrage were followed almost immediately by a voice of reason and calm. "Wait a minute," I said to myself. "What am I getting so upset about? So what if there is a glob of toothpaste in the sink. There had been globs of toothpaste in the sink for months and they hadn't bothered me. So what if I had spent an hour of my time -- it was only time. It's not like I would have done something other than watch a Bonanza re-run anyway. After all, who am I to get so upset? My time is not so important."

* * * *

Today I am an associate in a large Philadelphia law firm. My time gets billed out at over \$150 per hour. I've heard that there are senior partners who charge over \$300 for each hour worked and that those rates can multiply for time spent in court.

Assume, for the sake of argument, that you are a lawyer who charges clients the nice round figure of \$252 for every hour of work. That's equivalent to four dollars and twenty cents for each minute, which comes to seven cents for every second. At that rate, you would charge a client a quarter just to read this sentence, and over forty cents if, like mine, your lips are moving.

Lawyers get paid according to how much they work. The more hours they work, the more money they earn. When you get paid by the hour, you end up thinking about time in terms of money. It's no longer a ten-minute coffee break; it's forty-two bucks. It's not an afternoon of golf; it's one thousand two hundred and sixty big ones. And it's not two weeks at the shore; it's twenty thousand, one hundred, and sixty smackers.

Choices tend to get made in terms of money. I could sit by the fire and enjoy a good novel for the next two hours before going to sleep, or I could work on the Jones case and earn five hundred and four dollars.

It's bad enough when you are the one making the choice as to how you spend your time. If you decide to take a long lunch or an extended

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vacation, it's your choice to forego the opportunity to earn more money. However, when the choice is imposed upon you by others, watch out.

"I can't help on the clothing drive for the homeless. I could be earning seven hundred and fifty-six dollars during those three hours. Here's a hundred dollars for a tax-deductible contribution. Don't waste my valuable time with this anymore. I am a very important person."

"What do you mean I have to wait five minutes to get my shirts from the dry cleaner while the attendant looks for the clothes of the idiot in front of me who has lost his ticket? People pay me twenty-one dollars for five minutes of my time. My time is important. I'm expected in court. I am a very important person."

And while some people may get pissed off at the moron who forgot his laundry ticket, everybody hates the pompous jerk who rants about his self-importance. People who take themselves too seriously are invariably pompous, conceited, boring, and oppressive. We all hate people who are pompous, conceited, boring, and oppressive. Even pompous, conceited, boring, and oppressive people hate other people who are pompous, conceited, boring, and oppressive.

So, there you have it. Lawyers get paid lots of money by the hour. People who get paid lots of money by the hour think their time is valuable. People who think their time is valuable think that they are important. People who think that they are important take themselves too seriously. People who take themselves too seriously are pompous, conceited, boring, and oppressive. People hate people who are pompous, conceited, boring, and oppressive. Therefore, people hate lawyers.

* * * *

Dear Bob,

You owe me one half of my hour's worth of bathroom-cleaning time. At my current billing rate, that comes to over seventy-five dollars, plus interest compounded from 1981. And if you don't pay up, I'll sue your ass.

Sincerely yours,
Your old roommate Steve

KINDRED SPIRITS⁶⁵

History has winners and history has losers.

In fourteen hundred ninety-two, Columbus sailed the ocean blue and the indigenous Native Americans became losers in history, while the “winning” European settlers continued their recent streak of historical good fortune, that is, if you ignore hundreds of years of internecine religious wars.

A thousand years before Columbus brought Europeans to the New World, the Germanic Angles and Saxons from “the continent” became winners in history as they moved into the British Isles at the expense of the indigenous “losing” Celts. Those “winning” Anglo-Saxons themselves became losers in history in 1066 thanks to William the Conqueror and his “winning” Normans from France. In 1950, the “winning” Chinese invaded, and the indigenous Tibetan people became losers in history. In 2014, the “winning” Russians invaded Crimea, and the indigenous Ukrainian people became losers in history. History is replete with winners and losers.

None of this is intended to suggest or imply that history’s winners are “right” and history’s losers are “wrong.” Might does not make right, even though, more often than not, the winners do get to write their own history. Nor does this imply that we should not fight for right while events are current and before they become history. Nevertheless, in hindsight and independent of right and wrong, it is clear that history has winners and history has losers.

⁶⁵ 2019

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Over the last 3,500 years or so, the Jewish people have been both winners and losers in history. After hundreds of years of bondage in Egypt and thanks to Moses and Joshua, the “losing” Israelite slaves became winners in history for the first time at the expense of the indigenous “losing” Canaanites. A few hundred years after that, the Jewish people again became losers in history when the “winning” Babylonians destroyed Solomon’s Temple in Jerusalem and forced much of the by-then-indigenous Jewish population into exile by the shores of Babylon, thus creating the first Jewish diaspora. Only sixty years later, the Babylonians became losers in history at the hand of the “winning” Cyrus the Great of Persia, who allowed the Jewish exiles to return to their ancient homelands of Judea and Samaria.

The Jews reclaimed their homeland, only to become losers in history for a third time, this time at the hands of the “winning” Romans in the year 70 CE. Once again, the Temple in Jerusalem, this time Herod’s Temple, was destroyed and most (but not all) of the Jews were again forced into exile, beginning the second Jewish diaspora, which lasted for almost two thousand years.

In the meantime, with the birth of Islam in the Seventh Century, Mohammed and his followers from the Arabian Peninsula became winners in history as they spread their religion – and themselves – throughout the Middle East and North Africa at the expense of many “losing” indigenous peoples, including those Jews who remained in ancient Palestine. The descendants of those Arabian conquerors include today’s Palestinians.

The second Jewish diaspora officially ended in 1948, when European and North African Jews, the descendants of those Roman-exiled Judeans, founded the modern state of Israel and again became winners in history. At that moment, the by-now-indigenous Palestinian residents of that same land became losers in history and have stayed losers in history for the last 70 years and counting.

So the Jews were driven from their ancestral land not just once, but twice over the last 2,500 years only to return as winners in history.

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A stiff-necked people, indeed. It is a rare occurrence in human history for losers in history who have been driven from their ancestral land to later return as winners. Rare, but not unprecedented.

Five hundred years ago and for the subsequent three hundred years, indigenous West Africans became losers in history as millions of men, women, and children were kidnapped and sold into slavery by the “winning” Europeans and Euro-Americans.

In the early 1800s, after hundreds of years of bondage in the New World, a movement was launched for African-Americans to return “home” to Africa. For the next few decades, thousands of freeborn and emancipated African-Americans, the descendants of those kidnapped West Africans, moved “back” to West Africa and, in 1847, founded the modern state of Liberia, thereby becoming winners in history. At that moment, the indigenous Kpelle, Bassa, Gio, Kru, Grebo, and Mandingo peoples of West Africa became losers in history and stayed losers in history until very recently. By the way, many of those “losing” indigenous peoples had themselves previously come as “winning” conquerors from other areas of Africa at the expense of the then-indigenous residents of West Africa. In 2003, after almost 13 years of two horrific civil wars that resulted in an estimated 550,000 to 920,000 deaths, roughly 20 times the estimated 35,000 Palestinians who have died at the hands of Israelis in the last 70 years (versus 16,000 Jewish deaths), the “winning” descendants of those repatriated African-Americans and the “losing” indigenous peoples from the lands that became Liberia both became winners in history when they agreed to a power-sharing arrangement that, with good will and hard work, will hopefully allow them all to coexist peacefully into the future.

That history has winners and losers is a fact. Whether history’s winners and losers should be so is a very different question. Whether it was right or wrong for the Germanic Angles and Saxons to have come to the British Isles in the Fifth Century at the expense of the indigenous Celts, the fact is that today there are tens of millions of Anglo-Saxon descendants living in Great Britain. Whether it was right or wrong for

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other Anglo-Saxon descendants along with other Europeans to have come to the New World at the expense of the indigenous Native Americans, the fact is that today there are hundreds of millions of European descendants living in North and South America. Whether it was right or wrong for Jewish descendants of those Roman-exiled Judeans to have moved to the Middle East at the expense of the indigenous Palestinian Arabs, the fact is that today there are millions of Jews living in Israel. The question is what to do about it.

One growingly popular approach to “solving” the conflict between the Jews and the Arabs in the Middle East is the BDS Movement, which espouses boycotting, divesting from, and sanctioning Israel, Israeli companies, Israeli institutions, and Israelis to pressure the Israeli government to “do the right thing”, much like the Anti-Apartheid Movement of the 1970s and 1980s was designed to pressure the South African government to “do the right thing.”

In South Africa, doing the right thing meant converting a White-ruled country with Black “homelands” into a single, pluralistic democracy that respects the rights of both the majority (in this case, the Blacks) and the minority (the Whites). Although the BDS Movement professes to be fighting for the rights of Palestinian Arabs in the West Bank and Gaza, the truth is that the ultimate goal of the founders and leaders of the BDS Movement is a One-State Solution, that is, converting Israel and the Palestinian territories into a single, pluralistic democracy. The problem is that the One-State Solution will simply not work in the Middle East. At least, it won’t work for the over seven million Israeli Jews living in the Middle East.

The idea of a One-State Solution in which all of today’s Israeli Jews and all of today’s Palestinian Arabs live in one big happy pluralistic democracy that respects the rights of all inhabitants is just foolhardy and naive. For better or worse, and at the moment it is worse, there are simply too many Palestinian Arabs who will not agree to coexist peacefully with Jews, and, tragically, there are a number of Israeli Jews who will not agree to coexist peacefully with Arabs. Note that, within

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Israel proper today, seven million Jewish citizens of Israel do peacefully coexist with one million Arab citizens of Israel, albeit not perfectly. But, given demographic realities, a One-State Solution would soon result in an Arab majority and a mortally endangered Jewish minority.

There is a reason why Israel had to evacuate, and in many cases forcibly evacuate, all of the Jewish residents when Israel returned the Sinai Peninsula to Egypt in 1979 and again when Israel unilaterally withdrew from Gaza in 2005. Those Jews would simply not have been allowed to survive by their Muslim Arab neighbors.

Of the 22 Muslim Arab-majority countries in the world today, 23 if you count Palestine, and 24 if you count Hamas-run Gaza separately from the West Bank, and, notwithstanding the so-called Arab Spring, exactly none of those two dozen or so countries could be fairly characterized as being a pluralistic democracy that provides equal rights to its non-Muslim Arab citizens. Just ask the Christian Copts in Egypt or the Yazidis in Syria or the Kurds in Iraq.

When Israel was founded in 1948, the Muslim Arab world expelled hundreds of thousands of its Jewish citizens, roughly the same number as the number of Palestinians who became refugees from Israel in the same time period. Most of those Jewish refugees soon became citizens of the new state of Israel, while Israel's Arab neighbors of Lebanon, Syria, Jordan, and Egypt forced those Palestinian refugees to languish in squalid, impoverished refugee camps, refusing to allow their fellow Muslim Arabs to become citizens in those Muslim Arab countries. Today, after centuries of living substantially peaceably, albeit as second-class citizens, in Muslim Arab lands, there are virtually no Jews living in any Muslim Arab country. In 1948, an estimated 856,000 Jews lived in the Muslim Arab world. Today, that number is around 4,000.

The real problem with today's Boycott, Divest, and Sanction Movement against Israel is not that it promotes the use of these different tactics to pressure Israel to stop building new settlements in the West Bank or to treat the Palestinians in the West Bank better or even to get Israel to withdraw from the West Bank. The real problem is that, like

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the Anti-Apartheid Movement that led to the official end of apartheid in South Africa in 1994, the ultimate goal of many people in the anti-Israel BDS Movement is a One-State Solution, just like it was in South Africa. But unlike the situation in South Africa, the result in the Middle East would not be a single country of two different peoples living together in a pluralistic democracy. It could be a democracy, but it would not be pluralistic. It is a fantasy to argue that a One-State Solution would solve the problems of the Middle East, unless your definition of a solution is the death or expulsion of seven million Israeli Jews.

For many reasons, a “power-sharing” arrangement like the arrangements in Liberia and South Africa is simply not realistic between Israelis and Palestinians. Such a One-State Solution could be pluralistic, but it would not be a democracy. A growing number of Israeli Jews also favor a One-State Solution in which Israel permanently annexes the West Bank and its millions of indigenous Palestinian Arabs. Such a One-State Solution could be pluralistic, but it would not be a democracy.

Unlike in Liberia and South Africa, a One-State Solution is just not viable in the Middle East of today. But a Two-State Solution (or, even better, a Three-State Solution with three distinct countries in Israel, the West Bank, and Gaza) could work. It will, however, require many Israelis to give up their dream of a “greater Israel” that includes the West Bank, and it will require many Palestinians to give up their dream of a “greater Palestine” that includes all of Israel. Only then will the Israelis and the Palestinians both be able to become winners in history.

THANK GOD⁶⁶

I am a devout atheist. I used to be a theist, perhaps not a devout theist, but a theist nonetheless.

I became a theist at a very young age as a result of people whom I trusted telling me that God exists and convincing me that the existence of God was necessary to explain the world around us. Over time, my belief in the existence of God became less and less necessary to explain the world around us.

And now I am a devout atheist. I fervently and wholeheartedly believe that God does not exist. I don't know that God does not exist, but I certainly believe that God does not exist.

I do not believe that there is a God who created our world, and I do not believe that there is a God who assists in running our world.

As a devout atheist, I do not believe in miracles. I do not believe in the occurrence of otherwise inexplicable events resulting from the suspension of natural law, events that run counter to our understanding of the laws of science, that can be explained only by invoking the existence of God.

I do, however, believe in the existence of limitations in our understanding of the laws of science. But I also believe in science itself and I believe in the advance of science, the fact that, over time, our understanding of the laws of science has grown and will continue to grow.

⁶⁶ 2020, *Free Inquiry*

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When Einstein suggested that moving clocks run slower than static clocks and that moving rulers are shorter than static rulers, he was not talking about miracles; he was talking about the advance of science.

And just because we cannot explain something today, that does not mean that that something is a miracle and must therefore be the handiwork of God. It just means that we haven't figured it out yet. Our ancestors who didn't understand the science of thunder who concluded that only God could be responsible for such an occurrence were wrong. We now know that thunder is not a miracle. And our ancestors (and too many of their living descendants) who concluded that only God could be responsible for the exquisite variety of life on Earth were wrong. We now know, thanks to Darwin, that that variety is not a miracle. It's truly amazing, but it's not a miracle.

Furthermore and significantly, I am quite content with my atheism. I am comfortable with my belief that miracles do not happen and that God does not exist. I have come to accept my mortality and the inevitable non-existence of my consciousness. I'm not happy about it, but it doesn't keep me awake at night anymore.

One of the implications of my disbelief in the existence of God and miracles and my belief in the sufficiency of science and natural law is my belief in probability and statistics. I believe that, in an (honest) coin toss, the probability of heads is 50%. And I believe that the more times someone flips a coin, the more unlikely it is that the coin will keep coming up heads in a row. The probability of someone flipping heads two times in a row is 25%. The probability of someone flipping heads three times in a row is 12.5%. And the probability of someone flipping heads fifty times in a row is less than 0.00000000000001%.

If someone were to flip a coin and get heads six times in a row, I would not conclude that that was a miracle and that God must surely exist. I would appreciate the unlikelihood (less than 2% chance) and rarity of such an occurrence, but it would not make me a theist again. But the more heads in a row, the harder it is to explain such occurrences as being the result of natural law. And if someone were to flip a coin

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and get heads 50 times in a row, that would seriously threaten the current devoutness of my atheism. Maybe not six times in a row or even seven times in a row. But 50 times in a row might very well threaten my disbelief in miracles and invariably lead me back to the theism of my youth.

I am very nearsighted and I hate wearing glasses, so I wear disposable contacts every day. Every morning, one of the very first things that I do is put in a fresh pair of contacts and, every evening, one of the very last things that I do is take out those contacts and throw them away.

Under my current prescription, I wear -3.25 diopter lenses in my right eye and -2.50 diopter lenses in my left eye. Apparently, my right eye is “worse” than my left.

Like many of us, I am a creature of habit. Whenever I put in my contacts (and whenever I take out my contacts), I always start with my right eye and then I do my left eye. Always.

My disposable contacts come in blister packs of five contacts each. Whenever I am in the middle of a pair of blister packs, I keep the partial blister pack of -3.25 diopter lenses for my right eye and the partial blister pack of -2.50 diopter lenses for my left eye in my glasses case.

Since I am so nearsighted, whenever I pick up the first of the two partial blister packs, I never know whether I am picking up the -3.25 diopter lenses for my right eye or the -2.50 diopter lenses for my left eye until I bring it close enough to my face to read the label.

About a week or so ago, I started noticing that I kept picking up the -2.50 diopter lenses for my left eye first. When I realized that it was happening each and every day, I kept getting more and more amazed at the growing unlikelihood of the situation. Perhaps there was some scientific explanation for this phenomenon. Perhaps I was putting the contacts in my glasses case in the same order each evening. To test that hypothesis, I would take both packs of contacts out of my glasses case and then randomly pick up one of them, and still I kept picking up the -2.50 diopter lenses for my left eye first.

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As this continued to happen day after day for the last week or so, I began to wonder to myself how I can continue to explain this increasingly unusual occurrence as resulting from natural law and not as being due to a suspension of natural law, a miracle explicable only by virtue of the existence of God. Would this finally be the straw that breaks the camel's back of my atheism? Would this be the piece of irrefutable evidence that tips the balance scale of my beliefs from "no God" back to "yes God"?

And, then, today, it finally happened, after a growing number of consecutive days of first selecting the -2.50 diopter lenses for my left eye, I reached into my glasses case this morning and, lo and behold, picked up ... the -3.25 diopter lenses for my right eye.

Thank God.

FOUR SCORE AND SEVEN YEARS AGO, SOMETHING, SOMETHING, SOMETHING⁶⁷

When I was younger, I used to enjoy watching the TV game show Jeopardy. Back then, I could answer quite a lot of the questions correctly (or, for you Jeopardy aficionados out there, I could “question” quite a lot of the “answers” correctly). My memory isn’t as good anymore, and I don’t do so well these days playing along in the home audience. Today, when I watch Jeopardy, the challenge is to figure out, for each question, whether I used to know the answer but have now forgotten it or whether I never knew the answer at all.

When I started my law career about a dozen years ago, my memory was great. As a patent prosecution attorney, I typically have over a hundred different matters on my docket at any given time, any number of which could have been dormant for one or two years, waiting for the patent office to get around to examining them. In years past, if you gave me just a docket number, like 990.0125 or 372.6690, I could tell you right off the bat who the client was, who the inventors were, and what the invention was about, without even looking at the file.

Today, I can barely remember any matter from one week to the next. My associate Yuri will ask me a question about one of the patent applications that he is preparing, and, even though I may have read a draft of the application just two or three days earlier, my mind will draw a complete blank. “What’s the matter?” Only after he shows me the figures

⁶⁷ 2003

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and starts to remind me what the invention is about will the fog start to lift. Unfortunately, by then, I will have forgotten what his question was.

When I was in my twenties, I knew all the words to almost all the Beatles' songs, including all of Rocky Raccoon. Now, at my best, I'm lucky if I can remember the name of the fifth Beatle.

I am only 45 years old and still I am starting to forget things. That's probably about the same age that Dan Quayle was when he got into such trouble for forgetting certain things. Even when it happened, and although I am a card-carrying ACLU member and a lever-pulling Democrat, I felt that Dan Quayle had gotten a bad rap for misspelling "tomatoes." Or was it "potatoes"? In fact, if it weren't for the automatic spell-checker on the word-processing program that I am using to write this article, I would have just now screwed up one or both of those words. I thought one of them didn't have an "e," but I couldn't remember which one it was. Just to be safe, I also looked them up in the dictionary. As Dan Quayle once said, it's a terrible thing when a mind gets wasted, or something to that effect. Or was that George Bush?

I first got the idea for this article in the shower one morning. By the time I finished my shower, dried off, and ran downstairs to get a piece of paper and pencil to jot down my ideas, I had already forgotten three or four of them. Luckily, I did manage to remember to write a note about including in the article a paragraph discussing how I first thought about this article while taking a shower and then rushing to write down my ideas before I forgot all of them.

They say that there is a difference between long-term memory and short-term memory, and how older adults lose the latter while retaining the former. Not me; I don't discriminate. Not only can I not remember the name of my second-grade teacher, I also can't remember the name of the star of the movie I saw last night. And please don't ask me what the title of the movie was.

Don't get me wrong, becoming forgetful does have its advantages. I can watch last night's movie a year or so from now and enjoy it as if it were the first time. This can be especially rewarding when the movie is a

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mystery and I can impress everyone, including myself, by figuring out who done it before everyone else. On the other hand, I do hate getting halfway through a book only to remember that I already read it and didn't enjoy it then either.

I can listen to my mom tell the same stories over and over again every time we see her and think that they're brand new, apparently just like she does.

My wife tells me all the time that she had previously told me about plans that we have with friends for a Saturday evening or about a birthday party to which I must accompany our daughter or son on a Sunday afternoon. She may be right, but I will continue to deny that she ever told me. After all, she's just as likely as I am to have had a similar memory lapse, right?

Obviously, I am not talking about a debilitating memory loss such as that which accompanies Alzheimer's or some other terrible disease. Clearly tragic is Ronald Reagan's inability to remember all of the wonderful things he must have done during his eight years in the White House to deserve having an airport named after the man who fired all the traffic controllers. Not to mention the honor of having named after him the most expensive federal building ever erected in Washington, DC, which, believe it or not, houses the Environmental Protection Agency, which President Reagan tried to eliminate. Come to think about it, as a card-carrying, lever-pulling, 45-year-old, I too am having a hard time remembering what all those wonderful things were that Reagan was supposed to have done.

Memory skills simply aren't emphasized in our society today like they used to be. When our parents (and perhaps some of you more elderly readers out there) were in grade school, students used to have to memorize lots of things, including multiplication tables and The Gettysburg Address, not to mention Shakespeare and some poem about trees that people keep talking about. Nowadays, students have calculators and the Internet. Heck, with speed-dialing and PDAs, I'm lucky if I can remember our six different phone numbers.

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When I was a kid, we relied on mnemonic devices to memorize stuff. I can still remember coming up with “Curse Our Stupid Dinosaurs; My Pen Popped The Jerry Can” to help me remember the different geological ages, whatever they are. Now, I have a hard time remembering whether Channel 3 is NBC or CBS. I’ll bet David Letterman has the same problem.

In the olden days, the ability to memorize was truly a valued attribute. Even if Homer didn’t write The Iliad and The Odyssey himself, the fact is that he at least had them memorized, which is no small feat. Not only that, but he actually memorized them in a foreign language! Nowadays, I’m lucky if I can remember the entire poem about that man from Nantucket. Actually, I’m pretty sure I can recite Verses 1, 4, and 5, but I can’t seem to recall Verses 2 and 3. I think it’s something like “He said with a grin, as he wiped off his chin,” but I’m not positive.

I used to carry around little cheat sheets with the punch lines from my favorite jokes, so I could remember to tell them in order to be the life of the party. I don’t have those cheat sheets anymore, because, even with the punch lines, I was having a hard time remembering what the jokes were. Needless to say, I am no longer the life of the party.

Today, the only joke I can remember is the one about the one-armed fisherman. You know: “Did you hear about the one-armed fisherman?” (pause, then hold up one arm in front of you) “He caught a fish this big.”

The only reason I remember that joke is because I tell it to my six-year-old daughter Lauren every night as part of our bedtime ritual. I just can’t seem to remember whether it was a left-handed, one-armed fisherman or a right-handed, one-armed fisherman, but I suppose that doesn’t really matter, does it?

Although I didn’t take drugs when I was growing up, it still took me five minutes to think of Timothy Leary’s name for this article.

My memory would be better today if memory skills were more emphasized in our current culture, but, at the end of the Nineteenth Century, when they were first devising standardized intelligence tests, they

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discovered that African-Americans were better at memorizing things than European-Americans, so they (that is, the European-Americans who were devising the tests) quickly dropped that part from the tests. Otherwise, memory would be part of IQ tests, students would still be memorizing multiplication tables and The Gettysburg Address, and my memory would probably be better.

When I was in law school, the great litigator F. Lee Bailey told us that he liked to hone his memory skills by memorizing pages of the phone book. Too bad he couldn't remember not to steal his clients' money.

Why, when I was younger, I used to enjoy watching Jeopardy on television. Did I tell you about that already...?

DID YOU HEAR THE ONE ABOUT THE BORING LAWYER?⁶⁸

My father was dying, and I was writing an article about why lawyers are so boring. Other than occurring at the same time, the two things did not have much to do with one another.

I was not happy with the article. I thought some of it was okay, but there didn't seem to be enough to it, and it really wasn't complete.

At that time, the version of the article explained how I had been having a hard time coming up with a topic for a humorous article. Over the years, I had had a number of articles published in this magazine that were at least intended to be humorous and I thought it was time for me to write another one. But I couldn't think of anything funny to write. And then it hit me: perhaps the reason that I couldn't think of anything funny to write about anymore was because I just wasn't funny anymore.

For a while now, I have suspected that I have been becoming boring.

Before I became a lawyer, I used to be funny. And that was when I was an engineer -- individuals who are rarely if ever accused of being particularly funny.

Before I was a lawyer, when I would get together with friends or acquaintances, I used to have funny stories to tell. Like the time I submitted a picture of Wally Cleaver when we were asked to provide photos of ourselves for the issue of the General Electric internal newsletter that was going to be announcing our graduation from an in-house

⁶⁸ *The Philadelphia Lawyer*, 2002

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engineering training program. Prior to publication, the newsletter's editor (who had never met me in person) called me on the phone to make sure that the picture I submitted was not a picture of Bobby Darin (I assured him that it was not) and to confirm that it was an old picture (I assured him that it was). For years after, I would meet people at GE who recognized my name but not my face.

Now that I'm a patent lawyer, I don't have funny stories to tell. Now I sit around with other patent lawyers sharing war stories about incompetent patent office examiners with whom we've had to deal.

And not just funny; I used to be daring, too. When I worked at GE, I bought a can of black paint and, early one Saturday morning, painted out the freshly painted numbers in the parking lot that were intended to indicate the addition of even more reserved parking spaces, which meant that those of us who were not entitled to such reserved spots would have to park even further from the entrance each day in the "remote" lot. Obviously, whoever originally painted the numbers must have assumed that someone important had authorized them being painted over, because they were never re-painted and we plebeians were able to continue to park in those "unreserved" spots.

The most daring thing I do these days is to use a driver on a short par four with a dog-leg to try to cut the corner, when I should be laying up with an iron.

Perhaps we lawyers are dull, because our clients pay us to be dull. Art Buchwald is supposed to be funny. Eddie Murphy is supposed to be funny. But, when Art Buchwald sued Eddie Murphy for stealing his idea for the movie "Coming to America," neither of them hired funny lawyers to represent them. No one has ever written a book entitled, "The Wit and Wisdom of F. Lee Bailey." No one ever said, "That Louis D. Brandeis; what a cut-up!"

Perhaps not all types of law make one dull; maybe it's just patent law. After all, the combination of law and engineering may be just too much for any individual sense of humor to be able to withstand.

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To illustrate the lack of humor of patent lawyers, I'd like to share with you an old joke that I just made up: "How many patent lawyers does it take to change a lightbulb?" "One."

Or how about this one: "Did you hear about the patent lawyer who was really funny?" "Of course not."

"Why did the patent lawyer cross the road?" "To get to the other side."

"A priest, a rabbi, and a patent lawyer are playing golf. They come to the fifth hole, which is a short par four with a dog-leg. The priest and the rabbi lay up with an iron, but the patent lawyer tries to cut the corner with a driver."

See what I mean?

But it seems to me that this phenomenon is not limited to just patent law. Although I don't regularly hang out with any, I don't recall ever meeting any tax lawyers or estate lawyers who were particularly funny. Even the so-called entertainment lawyers are not very entertaining.

Maybe it's not being a lawyer that is making me dull. Maybe it's just that I'm getting older. After all, no matter how you look at it, Woody Allen is not as funny now as he used to be. And they say that Jerry Lewis was also once funny. At least, in France.

Maybe I'm not funny now because I'm not as sharp as I used to be. In the past, when I watched Jeopardy on TV, I could answer quite a lot of the questions. (Or, more accurately, for the Jeopardy aficionados out there, I could question quite a lot of the answers.) Today when I watch Jeopardy, being duller than I once was, the challenge is to figure out, for each question, whether I used to know the answer but have now forgotten it or whether I never knew the answer.

Maybe I'm not as funny as I used to be because I can't remember the jokes that I hear or the funny things that happen to me long enough to retell them. These days, it seems that as soon as something happens, I've completely forgotten what it was. These days, it seems that as soon as something happens, I've completely forgotten what it was.

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I am keeping computer files of the funny things that my daughter and son say so that I can remember them later. Like the time my then four-year-old daughter was describing the boat she was going to make. Before I tell that story I have to explain that, when my daughter makes a grammatical error, I gently correct her and then she usually repeats herself using the correct grammar. “I bringed it to school,” she will say. At which point, I will interrupt her with a gentle “brought” and she will correct herself “I brought it to school.” One day, she was inquiring about going on a paddle boat ride with me when she and her brother get older. She even suggested that we build the boat ourselves. “What could you build a boat out of?” she asked. “Wood,” I replied. Misinterpreting my response, she “corrected” herself: “Okay, okay, what would you build a boat out of?”

On another occasion, my daughter said something that implied that all adults have children. I explained to her that not all adults have children, that some people want children, but don’t have them, and that other people don’t want children at all. “And they have them,” she concluded.

Because my memory is now so bad, I even had to review my computer files in order to “remember” these two anecdotes about my daughter. These days, it’s even a challenge to remember such stories long enough after they happen to type them into the computer. I have to write them down immediately on a piece of paper or call my office right away to leave myself a voice message to remind me later to type them in. I can’t even tell you how many stories I have lost because I didn’t have a piece of paper or a phone available soon enough after my daughter or son said something funny. That’s not just a rhetorical expression either; I can’t tell you how many stories I have lost, because I really don’t remember them.

Or maybe it’s parenthood that’s making me boring. (I know it’s not marriage, right, dear?) Maybe having to be responsible for the life and safety of children is what is making me dull. My daughter, on the other hand, thinks that the concept of “poopy” ending up on one’s head is hilarious. She and her friend can laugh for hours just saying the word “poopy” over and over again in different contexts, like “poopy on your

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knee” or “poopy on the toaster,” each one apparently funnier than the one before.

Who knows, maybe I was always boring and I’m only now realizing it. Maybe law doesn’t make people boring; maybe only boring people become lawyers.

Or maybe I am still just as funny as I always was. Maybe the problem now is that I just don’t get my own jokes anymore.

A few months ago, I went to visit my dad in the hospital. I did not know it then, but that would be the last time I would see or speak to my dad. He would die four days later. But I didn’t know that then. All I knew then was that I was writing an article about why lawyers are so boring.

I had purposely brought my laptop with me when I drove to the hospital to visit my dad that day. You have to understand that my dad was in a lot of pain when he was dying. Unlike his son, my dad was stoic, so his pain must have been excruciating for him to groan out loud as he lay in his hospital bed.

You have to understand one other thing: my dad (and my mom) had always been my best audience. Nothing was -- and still is -- better than getting positive feedback from one of my parents. Whenever I would have an article published, I would take a copy of the magazine home and make them read it in my presence so I could bask in the glow of their enjoyment and adulation.

You have to understand one more thing: my dad, like many physicians, was not particularly fond of lawyers. When I was a teenager, after hearing about a family acquaintance who was planning to go to both medical school and law school, I asked my dad what you call someone who is both a doctor and a lawyer. “A troublemaker,” was his immediate reply. When, after working as an engineer for six years, I went to visit my parents to break the news to them that I was going to quit GE and go to law school, my dad’s immediate response was: “Why don’t you go to medical school instead?” Still, he insisted on paying my law school tuition.

Now, years later, I was visiting my dad one last time. After spending a few minutes with him in his hospital room, I explained to him

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that I was writing an article and asked if he wanted to hear it. Between groans, he said, “Sure.” I ran down to the car to retrieve my laptop. Back in his room, even as the computer was booting up, I realized that this was probably not a good idea, but I couldn’t stop myself.

As I started reading Dad the article, my guilt started to grow. Here I was, reading this supposedly humorous article about why lawyers are not funny to my dad, someone who, in the first place, always believed in the humorlessness of lawyers and who, more importantly, was lying in a hospital bed in excruciating pain.

I wanted to stop reading, but I couldn’t. It would have been too embarrassing. Both for me and for my father. If I had stopped, it would only have been because he was in too much pain for me to continue, and I didn’t want to embarrass my dad that way. So I kept reading. Even though I could see he was too uncomfortable to listen. I would pause at the parts that I thought were particularly funny to see if he was reacting, but he wasn’t. Still I read on.

When I finally finished reading the article, I quickly turned off the computer and changed the subject, returning quickly to the football game that was on the hospital TV set.

When I returned to the hospital later that afternoon with my wife, I explained to her that I had just tortured Dad by making him listen to my article. “No,” he insisted, “it was very good.”

Now, months later, being a boring lawyer with no sense of humor, I am having a hard time deciding how to characterize the image I have in my mind of me torturing my dying father by making him listen to me read this stupid article. On the one hand, it was very sad and very painful. Both for me and for my father. On the other hand, and I know that my dad would agree, it was very, very funny.

BIO: Steve Mendelsohn is a really boring patent lawyer.

CONFESSIONS OF A DUAL LOYALIST⁶⁹

According to Wikipedia, in politics, dual loyalty is loyalty to two separate interests that potentially conflict with each other. According to Wikipedia, loyalty is a strong feeling of support or allegiance.

When it comes to American and Israel, I am a dual loyalist.

I have strong feelings of support and allegiance to America, but I also have strong feelings of support if not allegiance to Israel. Since America and Israel are two different countries, there certainly exists the possibility that the interests of those two different countries could conflict with one another, leading to a ... conflict of interest.

But the allegation “American Jews have dual loyalty” is problematic for (at least) two reasons.

First of all, the allegation is directed at Jewish Americans as a whole. The allegation is not that some American Jews have dual loyalty or even that most American Jews have dual loyalty. Rather, the allegation is that “American Jews,” i.e., all American Jews, have dual loyalty. Of course, accusing American Jews as a whole of any one thing is absurd. If the diverse and fractious Jewish American population can be accurately accused of any one thing, it is the inability to accurately accuse us of any one thing.

I know for a fact that all American Jews do not have dual loyalty. I have a Jewish friend who is an anti-Zionist and does not have dual loyalty. I’m confident that there are quite a few other Jewish Americans out there who also do not have dual loyalty. But there are many of us who do.

⁶⁹ 2019

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The other problem with the allegation of dual loyalty is not just that we Jewish American have loyalty to both America and Israel. Rather, the allegation is that our loyalty to Israel supersedes our loyalty to America. That, if and when a conflict of interest arises between America and Israel, American Jews will always side with Israel over America. Or, worse, that American Jews are not dual loyalists, but rather “mono loyalists” with loyalty only toward Israel.

The term “dual loyalist” has long been used to suggest that the accused is unpatriotic. Japanese-Americans were accused of dual loyalty during World War II and rounded up into internment camps. Even John F. Kennedy was accused of being a dual loyalist who would act out of loyalty to the Pope rather than U.S. interests. Both Stalin and Hitler used dual loyalty as an excuse to murder Jews. Dual loyalty was the justification used by the Ottoman Empire to launch a genocide against its Christian Armenian population during World War I.

But what does it even mean for there to be a conflict of interest between America and Israel. Before you can determine whether a conflict of interests exists, you have to figure out what the interests are of Israel and of the United States. The allegation that the loyalty of any particular American Jew to Israel is greater than that American Jew’s loyalty to America depends on what are considered to be the conflicting interests of those two countries, which in turn depends on what are considered to be America’s interests and Israel’s interests. And who decides?

If the President of the United States wants to sell sophisticated military equipment to Saudi Arabia and the Prime Minister of Israel objects to that sale, is that a conflict of interest between America and Israel. If I lobby my congresswoman to oppose that sale, is that me being more loyal to Israel than to America?

For the vast majority of issues in this world, the interests of America and the interests of Israel are co-aligned. Both countries are pluralistic democracies that respect the rights of minorities. (Or, if you like, both countries are pluralistic democracies that don’t respect the rights of minorities.) When it comes to issues like free speech, religious freedom,

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women's rights, gay rights, economic freedom, and on and on, the interests of Israel match those of America better than the vast majority of other countries on this planet.

But some would argue that there exist serious issues for which the interests of America and the interests of Israel are not co-aligned. Let's take the issue of Jewish settlements in the West Bank. What are the interests of Israel and America with respect to those settlements and do those interests conflict?

Although many Israelis are opposed to those settlements, as long as the democratically elected Israeli government favors those settlements, then arguably promoting those settlements are one of Israel's interests.

But what is America's interest with respect to Jewish settlements in the West Bank? And who decides? I happen to be one American Jew who opposes those settlements. I know lots of other American Jews who feel the same way. But I also know American Jews who are in favor of those settlements. Although I haven't met any myself, I guess it's theoretically possible that there are even some American Jews who don't have an opinion on those settlements.

Undoubtedly, there are lots of non-Jewish Americans who also have opinions for and against those settlements and probably many who have no opinion.

So who decides what is America's interest with respect to Jewish settlements in the West Bank? Presumably, it is our democratically elected government. But that doesn't mean that I, as an individual American, have to agree with my government's position.

There have been past American Presidents who have opposed Jewish settlements in the West Bank at a time when the Israeli Prime Minister supported those settlements. To the extent that there were American Jews who supported those settlements at a time when the American President opposed them, is there really a problem with those American Jews favoring the position of the Israeli Prime Minister over the position of the American President?

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In our democracy, we have many people who feel differently about many different issues. There are advocates against gun control and advocates for gun control. There are advocates against abortion rights and advocates for abortion rights. There are apparently even advocates against Russian interference in our elections and advocates for that interference. And there are advocates against Jewish settlements in the West Bank and advocates for those settlements. As advocates for our different positions, we try to influence our government's policies accordingly. Such advocacy is as American as apple pie and football. (Sorry, baseball.)

Just because an American Jew is in favor of an issue that some other Americans disagree with, that does not mean that that American Jew is more loyal to Israel than he or she is to America. We Jewish Americans can be dual loyalists toward America and Israel just like Irish Americans can be dual loyalists toward America and Ireland, and African Americans can be dual loyalists toward America and Africa, and on and on.

NIHIL IS NOT JUST A RIVER IN EGYPT⁷⁰

“You accuse me of being a nihilist. Of course, I’m a nihilist. You say that like it’s something bad.”

When I think of nihilists, I usually think of Russian anarchists trying to overthrow the old Russian monarchy at the end of the 19th Century.

According to my ever-handy Google dictionary, an anarchist is a person who believes in or tries to bring about anarchy. (That’s not very helpful.) According to Google, anarchy is a state of disorder due to absence or nonrecognition of authority. (That’s better.) Those anarchists who were trying to throw Czar Alexander II “out of office” were not trying to replace him with someone else; they were trying to replace him with nobody.

A nihilist, meanwhile, is a person who believes that life is meaningless and rejects all religious and moral principles. It may well be that some or all of those old Russian anarchists were also nihilists, but one can be a nihilist without being an anarchist. Or, at least, one can be pretty much a nihilist without being an anarchist. Like me; I’m pretty much a nihilist, but I’m not an anarchist.

I believe that life is inherently meaningless. We were not put on this earth for any specific purpose or even for some generic purpose. Each of us is a mere quirk of nature. A pure happenstance. The result of eons of a seemingly random, unpredictable evolutionary process.

⁷⁰ 2020

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But just because our lives have no inherent meaning with no objective purpose, that doesn't mean that our lives have to be subjectively meaningless. We can make up some purpose for our lives. Or even multiple purposes for our lives. One purpose may be to lead an enjoyable life. Another purpose may be to have and raise good kids. Yet another purpose may be to be a good relative and friend to people we know. Still another purpose may be to make the world a better place, even for people we don't know. How we live our lives is dictated by our personal principles of morality.

I believe that morality is relative, not absolute. As a devout atheist, I don't believe that there is a God who once dictated or continues to dictate "religious and moral principles" that are universal and immutable. Nor do I believe that there are natural laws that dictate moral principles that are universal and immutable.

Here and now, it is immoral to sacrifice virgins. There and then, it was moral.

Here and now, it is immoral to own slaves. Here and then, it was moral.

Here and now, it is immoral to kill rape victims. There and now, it is moral.

In a given society corresponding to a particular location and a particular time, one or more members of that society determine what morality is. In some societies, it might be the king who determines what morality is. In some societies, it might be leaders of religion. In some societies, it might be the body politic.

Members who agree with the morality of their society that exists here and now believe that their morality is better than the different moralities that existed here and then and also better than the different moralities that exist there and now, not to mention those different moralities that existed there and then.

Morality evolves over time as a result of the attitudes and actions of one or more members of the society who try to convince others that the present morality is inferior to a different morality. Those members

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may include some or all of the same members who previously determined the existing morality or they may be completely different members.

So morality is relative, not absolute. It is subjective, not objective. It depends on both location and time.

But just because morality is not absolute or objective, that does not mean that morality does not exist. I have an (ever-changing) morality. I believe that certain things are good and other things are bad. I acquired my morality as a result of my genetics and my history. If either of those things were different (and, by the way, my history is always changing resulting in my ever-changing morality), then my morality could/would be different.

My morality was not created ex nihilo. My morality is the result of millions of years of hominid evolution and over six decades of Steve evolution. It is a personal morality in that it is (perhaps) unique to me, but it is also a shared morality because it has many, many features in common with millions of others who are products of similar evolutions. As my history changes, my morality can change.

Because of my existence in my society here and now, I believe that sacrificing virgins is immoral. I understand that circumstances there and then led members of that society to believe that sacrificing virgins was moral. If I had lived in that society there and then, I too might have believed that sacrificing virgins was moral. But that doesn't mean that I do not have the right to judge that society's morality.

Because of my society, I believe that owning slaves is immoral. I understand that circumstances here and then led members of that society to believe that owning slaves was moral. If I had lived in that society here and then, I too might have believed that owning slaves was moral. But that doesn't mean that I do not have the right to judge that society's morality.

Because of my society, I believe that killing rape victims is immoral. I understand that circumstances there and now lead members of that society to believe that killing rape victims is moral. If I lived in that society there and now, I too might believe that killing rape victims is

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moral. But that doesn't mean that I do not have the right to judge that society's morality.

Nor does it mean that I do not have the right to try to convince members of that existing society to change their morality. Of course, members of that existing society also have the right to judge the morality of my society. And they also have the right to try to convince me and other members of my society to change our morality. After all, that's how the moralities of societies evolve over time.

In other words, I believe that life is inherently meaningless and that there are no universal, immutable moral principles, but I do believe that life can and should have subjective meaning dictated by our relative, mutable moral principles. That's why I say that I am only "pretty much" a nihilist.

ONE JEW'S VIEW OF THE DEATH OF JESUS⁷¹

In light of the controversy surrounding Mel Gibson's movie "The Passion of The Christ," I thought now would be a good time to ask some questions that have long been bothering me about Jesus and his crucifixion.

As a typical American Jew who was born in the 1950s, most of my knowledge of Christian theology comes from having memorized every song in Jesus Christ Superstar when I was in high school. As I understand it, Christians believe that Jesus, the son of God, was born in Bethlehem in the Roman province of Judea a little over two thousand years ago. After amassing a substantial following as a political and religious reformer, Jesus was crucified at the age of 33. Three days later, he rose to heaven and will someday return to usher the world into eternal Paradise.

Ever since Jesus was crucified, Jews have been collectively accused by most Christians of committing deicide, of killing God. Based primarily on that accusation, Jews have been repeatedly persecuted by Christians. As a particular example, Passion Plays, in which the Jews are clearly blamed for Jesus's death, have a very painful history of instigating violence against Jews by Christians.

On the other hand, I understand that, for example, the Roman Catholic Church has, within the last 50 years or so, made doctrinal statements that the Jews are not to be held collectively responsible for

⁷¹ 2004

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Jesus's death. For that and for any other similar efforts, pronouncements, and teachings by Christians, I and my fellow Jews are very grateful.

Nevertheless, although I have not yet seen it, I understand that Mel Gibson's movie "The Passion of the Christ" clearly depicts Jesus's fellow Jews as being primarily responsible for his death. As a result, many Jews today are concerned that this will revive and re-invigorate age-old Christian animosity against the Jews.

Now, obviously I don't know because I wasn't around at the time, but I can believe that some of Jesus's fellow Jews two thousand years ago were happy to see him removed from the scene. After all, he was challenging the status quo and, whenever the status quo gets challenged, those whose positions are threatened by that challenge are, more often than not, opposed to that challenge. I can even believe that there might have been some corrupt Jews who had positions of power within the Roman occupation who actually conspired with the Romans to have Jesus killed. After all, one of the keys to the success of the Romans throughout their vast empire was their effective recruitment of duplicitous "locals" to act as their henchmen. At the very least, Judas was a Jew, right? So, at least one Jew shares at least some responsibility for the death of Jesus.

But here's what I don't understand:

- Under Christian theology, didn't Jesus have to die?
- Wasn't this supposed to be all part of God's plan?
- Wasn't he supposed to die for our sins?
- As such, did the individuals who were responsible for his death have a choice or did they have to kill Jesus?
- If Jesus had not been crucified, would he have eventually died of old age or would he have lived forever?
- If Jesus had not been crucified, would the world already be in eternal Paradise?
- Couldn't Jesus have stopped his crucifixion if he wanted to?
- Given that Jesus could heal the sick, turn water into wine, walk on water, and even revive the dead, couldn't he have prevented himself from being crucified if he wanted to?

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- Does that mean that he wanted to die or that he at least let himself be killed?
- If so, does that have any implication on the guilt of those “responsible” for his death?
- What does it even mean to “kill God”?
- How can God be killed?
- And, if Jesus was resurrected, isn’t he still alive?
- Even assuming for the sake of argument that some of his fellow Jews were in favor of and perhaps even contributed to Jesus’s death, why should that implicate other Jews living at that time, let alone all Jews living since then?
- If your father had murdered someone, should you be held responsible?
- Never mind your father, if your great-great-great-great-great-great-great-great-great-great-great-great-great-grandfather had murdered my great-great-great-great-great-great-great-great-great-great-great-great-great-grandfather, would that make you a murderer?
- Why is it more reasonable to blame me, a Jew living in the 21st Century, for Jesus’s death than to blame Abraham, Isaac, Jacob, Moses, and all those other Jews who happened to live before Jesus?
- In fact, if all Jews are to blame for Jesus’s death, then wouldn’t Paul and all the other Jewish disciples be liable as well?
- Wasn’t crucifixion a favored form of execution by the Romans?
- Wasn’t Jesus just one of over 200,000 Jews crucified by the Romans during their rule over Judea?
- Since certain individual Romans certainly have Jesus’s blood on their hands, why doesn’t anyone blame modern Italians for killing Jesus?
- Doesn’t that make as much sense as blaming modern Jews?

Notwithstanding all the attention currently being focused on the death of Jesus and who is responsible for that death, it seems to me that,

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for too many Christians throughout the last 2000 years, the real “crime” committed by the Jews is not that we killed Jesus, it’s that we do not believe in Jesus.

HANGING UP MY SPIKES⁷²

Today may be the last day of my softball career.

My last year playing organized baseball was in sixth grade, when I was the last man on our township travel team. There were fourth graders who got into games before me. I made the team only because my friend's dad was the coach. I couldn't hit and I couldn't field. I was afraid of grounders, so, when I did get in at the end of a blowout game, it was invariably in right field.

That summer at sleepover camp, I discovered softball and earned the nickname "Mickey Mendelsohn." They told me it was because my batting reminded them of Mickey Mantle, not Mickey Mouse.

I stunk at baseball, but not at softball. The ball was bigger and slower and easier to hit. I was still afraid of grounders, but I owned left field. I had great speed, a great glove, and a great arm. I couldn't lay out and dive for balls the way the truly great players did, but I could track down every other ball that had any chance of being caught. I used to play left field really shallow, daring hitters to try to hit the ball over my head, but I could take off and track down all but the deepest shots.

My last summer as a camper at Camp Ramah was spent fixing up an old softball field so that, during the last week of camp, our team of the oldest campers could challenge a team of counselors. We lost the game, but not until the last inning.

When I was a counselor at Ramah for six years in the late 1970s, the highlight of the week was the Shabbat afternoon staff softball game.

⁷² 2018

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As soon as religious services were over, we would rush to our bunks, grab our gloves, and run to the softball field to be sure to get into the game.

As an undergraduate during those same years, I played intermural softball along with intermural flag football, basketball, and volleyball.

During my two years in grad school, my friend Len and I used to take groups of Chinese grad students to the nearby ball field to try to teach them the American pastime.

After college, I worked at General Electric, where we had a great softball team in the internal GE league. My shining moment was when I avoided being tagged out at home by diving over the catcher! I landed on my head and only remember the play now because my friends told me about it later. I even played one year on the company travel team, albeit as the last man, but this time not because my friend's dad was the coach. No, this time, my friend was the coach.

After a three-year hiatus for law school, my softball career was resumed as a first-year associate playing on our law firm's team in the Philadelphia lawyers' co-ed softball league.

When I left that firm and eventually started my own firm in my mid-thirties, I thought that my softball playing days were over. Then, when I was 40, my soon-to-be teammate Scott started a synagogue men's club softball league on the Main Line, and my softball career was resurrected.

For the last 20 seasons, I have been playing Sunday morning softball for our synagogue team, stopping only for injury. But there were many of those. Over the last two decades, I have pulled just about every muscle and twisted just about every joint below my waist. Quads, hamstrings, glutes, you name it; I pulled it. One year, my calf muscle popped, and I mean popped with an audible sound emanating from my left calf followed by other audible sounds emanating from my mouth. Three years ago, I missed the entire season after breaking the pinky finger on my right hand trying to catch a ball. A foul ball. In a pre-season scrimmage. During an extra inning after the game had already ended.

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Two years ago, my teenage son Jack started playing on our team. There are few things better in life than playing in a men's softball league with your son.

For the last few years, I have been the oldest regular player on our team. I love being the oldest player on our team. It means that all of those other guys who are my age and some who are even younger, have long since retired.

On the other hand, my recent batting average, though respectable for major league baseball, is pretty woeful for "modified slow pitch" softball. And after decades of patrolling left field and left-center field, I have begun to volunteer to play right field.

A wise philosopher Harry Callahan once said, "Man's got to know his limitations." I gave up competitive basketball a while ago. I tried snowboarding once a few years ago. I tweaked my knee and will never do it again. And I don't ski moguls anymore either. Basketball and mogul-skiing have been replaced by rails-to-trails bicycling and golf (with a cart). But, at least, I have still been playing softball.

Still, it took me two weeks to recover from our first game this season. I'm pretty sure that my soreness was mostly from all the stretching I did right before the game in order to avoid pulling a muscle during the game. I didn't pull a muscle, but I could barely walk for days after.

Since then, every game that I have been available to play in has been rained out. As I write this essay early on this cloudy Sunday morning, I find myself hoping that it will rain again. Not because I don't enjoy playing. I still do. And I really enjoy playing with my teammates, some of whom I have been playing with for most of these last 20 years.

No, I am hoping for rain so that I don't have to play because I don't want to get hurt again. And, if I am hoping for rain so that I don't have to play, maybe today should be the last day of my softball career. Maybe next week, I'll just coach third base.

WHY AM I A JEW?⁷³

One of my good friends, who is not a Jew, but who, like me, is a self-described devout atheist, recently asked me how I can still be a Jew if I am an atheist and, if I am such a devout atheist, why I am still a Jew. This essay is directed to him.

How Can I Still Be a Jew?

You said, “you used to be theist because your mom told you to be theist.” That’s not quite correct. I was not a theist because my mom told me to be a theist. I used to be a theist because my mom told me that God exists and I believed her and people who believe that God exists are theists, so I used to be a theist. It might seem like an insignificant difference, but I don’t think so.

More importantly, you then asked, “Aren’t you a “Jew” because your mom told you you’re a Jew?” No, I am not a Jew because my mom told me that I am a Jew. Rather, I am a Jew because my mother was a Jew and, according to traditional Jewish law, the child of a Jewish woman is a Jew.

Judaism is the religion of the Jewish people, but it is more accurately described as a set of laws that presume to dictate the behavior of the Jewish people. For better or worse, there is no Jewish “pope” to decide what are and are not the laws of Judaism. So we end up with

⁷³ 2020

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different branches of Judaism interpreting Jewish law differently and probably as many different flavors of being Jewish as there are Jews.

In any case, being a Jew is more about peoplehood or nationhood than it is about religion.

For almost 1900 years, from the year 70, when Rome quashed a Jewish revolt against Roman rule and sent most of the Jews into exile, until the founding of the modern state of Israel in 1948, Jews were a nation without a country of their own. As a result, we developed rules to maintain our national identity, especially when our Christian and Muslim neighbors and rulers would not let us be full citizens of their countries without renouncing the Jewish God and accepting their God. Besides when my great-great-grandmother could be raped by a Cossack with impunity, it was useful to have developed a rule that says that the child of a Jewish woman is a Jew.

I'm stealing my friend Jeff's analogy that being a Jew is analogous to being a member of a Native American tribe with associated lifestyle, customs, and traditional beliefs/religion. Would someone say to a Navajo, "How can you be a Navajo when you don't believe in the traditional theology of Navajos?" Does that question make sense? They were born a Navajo and identify as a Navajo; their beliefs aren't really relevant to their being a Navajo.

It's true that a person can become a Jew by converting to Judaism, which involves learning about the religion and performing certain religious rituals. But this is more like moving to America and becoming an American citizen. A person who converts to Judaism joins the Jewish people, not just the Jewish religion.

Being Jewish is not just being an adherent to a religion. That may be part of it, but that's not all of it and it's not even a necessary part. There is nothing contradictory about being a Jew and an atheist at the same time. I can be a member of the Jewish people without believing in the tenets of Judaism, the religion of the Jewish people, or adhering to the laws of Judaism. Aren't I still an American even if I break the laws of America?

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I've heard many Catholics refer to themselves as "ex-Catholics" or they say, "I used to be a Catholic." Not just "I used to be Catholic," but "I used to be *a* Catholic." My understanding is that, to be a Catholic, you have to believe what Catholicism says is true and, if you no longer believe those things, then you are no longer Catholic and you are no longer *a* Catholic.

I don't know much about Presbyterianism. You say you grew up a Presbyterian, but you no longer consider yourself to be a Presbyterian. To that extent, being a Presbyterian is different from being a Jew.

I have never heard anyone describe themselves as being an "ex-Jew" or say "I used to be a Jew." You say that you and your oldest friend Greg have never discussed your (former) religions with each other. Do me a favor and ask Greg whether he considers himself to be an "ex-Jew" or whether he has ever said the phrase "I used to be a Jew." And then let me know what he said.

But someone can renounce his or her American citizenship, right? Can't someone renounce his or her Jewish peoplehood? I guess so, if they want to. There are undoubtedly Jews who say they are no longer Jewish, but I've never heard a Jew say he or she is no longer a Jew.

When it comes to being a Jew, it's not just Jews who decide who is a Jew. When the Nazis killed people because they were Jews, they killed people who had a single Jewish grandparent, even those who were practicing Christians, including Jewish-born nuns and priests.

So it's not just me who gets to decide whether I am a Jew or not. Just ask all those "fine people" who were marching in Charlottesville whether or not I get to choose to be a Jew. I am a Jew because other Jews say I am a Jew, and I am a Jew because many non-Jews say I am a Jew, and I am a Jew because I get to say that I am a Jew, even though I do not believe that the Jewish God (or any God) exists.

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Why Am I Still a Jew?

There's an old Yiddish expression: "Shver zu zein a Yid." It's hard to be a Jew.

It's hard to be a Jew, because Judaism makes it hard to be a Jew. All those laws. The dietary laws. The Sabbath laws. The holiday laws.

But it's also hard to be a Jew, because non-Jews make it hard to be a Jew. All that anti-Semitism. The Crusades. The Inquisition. The expulsion of Jews from England in 1290, from Hungary in 1349, from France in 1394, from Austria in 1421, from Spain and Sicily in 1492, from Lithuania in 1495, from Portugal in 1496, from Nuremburg in 1499, from Naples in 1510, and from Milan in 1597. The Chmielnicki massacre. The pogroms. The Holocaust.

So, if it's so hard to be a Jew and if I don't believe in the existence of God, then *why* am I still a Jew.

When I observed the dietary laws of keeping kosher more strictly than I do today, I would tell people, "Jews keep kosher because God said to keep kosher; I keep kosher because Jews keep kosher." I have also said, "Jews believe in God; I believe in Jews."

First, let me say, that, in the modern history of the Jewish people, at least since the year 70, it has never been easier to be a Jew than it is today both in Israel and in the United States. But don't confuse the situation for Jews here in the United States today with the situation for Jews in the United States 80 years ago and certainly not 100 years ago. There might not have been massacres and pogroms, but there certainly was prejudice and outright discrimination in housing, in schooling, in employment, in accommodation. It paled in comparison to the past and present prejudice and discrimination against Blacks in America, but it wasn't like it is today. And it's certainly not over today, which is why there still is an Anti-Defamation League for me to be actively involved with.

Unlike the bad old days when so many Jews living in Europe simply did not have the option of no longer being a Jew, today in

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America I could, in theory, stop being a Jew and I could have raised my children completely divorced from Judaism and the concept of them being Jews. (Coincidentally, my sister and I are having a Zoom call later this evening with old friends, a sister and brother whose Jewish parents survived the Holocaust and raised them with no Judaism and no Jewishness. I will ask them tonight if they consider themselves to be Jews.⁷⁴)

Even though I do not believe in God, there are still many Jews who do and there will be at least as long as I am alive. I could very likely opt to “pass” as a non-Jew, but that would mean abandoning my fellow Jews to the anti-Semites of the world. When my nine-year-old brother went to high school, he used to get beat up for being a Jew. Nine years later, the world, or at least my high school, had changed enough such that I never got beat up for being a Jew. But Jews today are being shot and killed in synagogues in Pittsburgh and California and in Kosher grocery stores in New Jersey and Jews are being stabbed in Brooklyn for being Jews. That’s why I am involved in the Anti-Defamation League. For my own sake, but also and maybe more for theirs.

Although I rarely go to synagogue for religious services these days, when 11 Jews were shot and killed and another six were wounded in that Pittsburgh synagogue in 2018 by an anti-Semite, the next week I and many Jews and even non-Jews went to synagogue for services, despite the fact that the risks of going to synagogue were greater than normal due to the possibility of a copy-cat murderer. I went to show solidarity with my fellow Jews who go to synagogue because they do believe in God and to help make a statement against anti-Semitism and anti-Semites.

And I have continued to support my synagogue because I believe that I have a civic (not a religious) responsibility to help make sure that a synagogue is available to those who do want to go there to pray to the God they believe in.

⁷⁴ They do.

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This may sound crazy, but if I were to stop being a Jew, then Hitler would have succeeded just a little more than he already did. And not just Hitler, but Stalin and the Cossacks and Chmielnicki and the Inquisitors and Ferdinand and Isabella and the Crusaders and on and on.

Furthermore, although belief in God is admittedly the most important tenant of Judaism, it is certainly not the only one. There are many other aspects of Jewish law that I adhere to and which I believe are worthy of adhering to. Admittedly, one of the struggles that I have had and continue to have is to figure out which practices of the Jewish people I want to continue to adhere to and which I don't. Which of Judaism should be, for me, the baby and which the bathwater? That answer is evolving over time.

I have to admit as well that there are some aspects of Judaism that I find objectionable. The whole notion of Jews being the self-proclaimed Chosen People is especially problematic. Modern Jewish interpretation of that concept tries to make it less offensive by espousing that we Jews were chosen by God not for special treatment but rather for extra obligations. More of a burden than a blessing. That we are required by God to behave "better" than non-Jews to be a Light Among the Nations, a moral compass and a beacon of ethical behavior for others to see and emulate. But even that more-benign interpretation of chosen peoplehood is condescending and patronizing and ultimately obnoxious. So, like most Jews who pick and choose what we like about Judaism and what we don't like, I reject that notion, especially since I don't believe that there is a God who supposedly made such a choice.

But as you alluded to earlier yourself, it's not all bathwater; there's a lot of baby there as well that's worth preserving. The challenge that I am struggling with is figuring out which is which and the solution is constantly evolving.

And I can't deny the unfortunate aspects of clannishness that you mentioned, the tendencies of Jews to speak to one another as if they are members of a club that you are not.

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But, you seem to be asking me, shouldn't I, as a devout atheist, believe that the world would be a better place if there were no such artificial divisions between people and shouldn't I at least behave in a way that moves society in that direction? And shouldn't I at least want to help make the world a better place by raising children who are not Jewish the way you are raising children who are not Presbyterian?

There didn't have to be a Judaism and there didn't have to be Jews, but it appears that religion evolved in human society for certain reasons. Perhaps those reasons no longer exist and the human species no longer needs religion. But religion isn't going to be disappearing anytime soon.

Would the world be a better place overall if there were no religions? Arguably yes (although it is certainly possible that religion does more good than bad). Would the world be a better place if there were other religions but no Judaism and no Jews? I say no.

I don't know enough about Presbyterianism or Presbyterians, but I believe that the world would not be a better place without Judaism and without Jews. I look at the outsized contributions that Jews have made to civilization in just the last 150 years or so of overall relative freedom (not counting the years 1933-1945, of course). Do you realize that there are fewer than 15 million Jews in a world filled with over 7.8 billion people? That's less than 0.2% of the world's population. Even the 6 million Jews in the U.S. make up only about 2% of the American population. Yet I look at the contributions Jews have made in science, in education, in entertainment, in literature, in the arts, in philanthropy. It's way beyond our numbers.

There just seems to be something about Judaism that works. I believe that the Jewish emphasis on religious study and learning and all those Jewish rules and regulations promote commitment and discipline towards both education and hard work, which have resulted in those disproportionate contributions of Jews.

So those are some of the reasons, in spite of the fact that I am a devout atheist, why I am still a Jew. I'll probably think of others later.

LETTER TO MY DAUGHTER⁷⁵

Dear Lauren,

I am writing to tell you how happy I am. And how sad.

The other day, I asked you if you would please stay five years old forever. You refused, saying that you want to “grow up and be a teenager.”

You are learning so much about Judaism at our synagogue’s preschool. On more than one occasion you have said to me, “I’m really glad that I’m Jewish.” You don’t know just how happy that makes me to hear you say that. And yet so sad at the same time.

When you say how great it is to be Jewish, because you get presents for eight days during Hannukah instead of just one day on Christmas or because you get to light candles and eat Challah on Friday nights for Shabbat, I get an ache in the pit of my stomach. The same ache that I am now feeling as I write these words. “Just wait,” I say to myself, “it’s not all great.”

I have been very lucky in my life. I was born in 1957 and have lived my entire upper-middle-class life in the United States. By the time I got to high school, even the Jew-hating gym teacher had stopped picking on the Jewish students, as he had when my brother was there only nine years before. I remember the irony of “Coach” having to reschedule one of his beloved soccer games because a majority of his starting line-up would not be available to play on Yom Kippur.

⁷⁵ 2002

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Unlike my brother, the only anti-Semitism I ever had to deal with at a personal level was a back-handed insult that I mistakenly interpreted as a compliment, when one of my high-school classmates confided to me that “You and Ira are the only two Jews I like.”

Today I am living the American dream: a wonderful wife, two sweet children, a beautiful home, my own successful business. I feel extremely fortunate.

My friend Jeff, the best man at my wedding, is living his own dream, an Israeli dream instead of an American dream: a wonderful wife, five great kids, a home in a suburb of Jerusalem, a prestigious career as a college professor and entrepreneur.

I send him e-mail messages describing what is happening at work and the latest successes and failures of the local sports teams; he sends me messages about listening to books on tape during his long work commute and the latest suicide bombing at an intersection he had driven through not two hours earlier that same day on his way to work. I write to him about my golf game and the cute things you and your little brother Jack say; he writes to me about coaching his son’s baseball team and their decision not to let their children take public transportation for fear of terrorist attacks. I tell him that I feel guilty; he tells me not to.

Don’t get me wrong; I love being a Jew. I feel very lucky to be Jewish. I also feel very lucky to be a Jew in the United States. I truly believe that the world would be a better place if there were more Jews. And yet there is also a tinge of guilt that I have brought you into this world also to be a Jew.

So, when I hear you say that you are glad that you are Jewish, I am thrilled. But I am also sad.

Sad because you are five years old and you don’t know that, already, people hate you. Hate you because you are a Jew.

Before I was a parent, I considered myself a sympathetic person. Now that your mother and I have you and Jack, I believe that I am empathic as well. When I read about a Nazi German SS officer picking up a Jewish baby by the feet and slamming his head against a wall during the

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Holocaust, I think about that baby being your little brother. When I hear about a Palestinian terrorist shooting to death a five-year-old Jewish girl who is cowering in fear under her bed in her room, I think about that little girl being you.

A reporter on National Public Radio whose name is Robert Siegel (and a Jew?) asks Elie Wiesel why there is any difference between killing a five-year-old Jewish girl hiding under her bed and killing a five-year-old Palestinian girl who happened to be in the car next to the terrorist that the Israeli army was targeting for assassination, because, after all, they are both dead. I can't help but shake my head in disbelief.

I read reports about conspiracy theories that postulate that the Israeli secret service Mossad planned and implemented the attacks on 9/11. I just shake my head in disbelief.

I hear about trumped up charges of a massacre at Jenin. I just shake my head in disbelief.

Am I missing something here? Are there really people outside of the Arab world who believe any of this stuff? And, if so, why?

The knee-jerk reaction from many Jews has always been to blame anti-Semitism for every slight and misfortune directed at or felt by even an individual Jew, let alone Jews in general. I have always been reluctant to join that bandwagon. I am beginning to realize that I have been tragically naive.

And that's why, when you tell me how glad you are that you are Jewish, I am both happy and sad.

Just wait, I thought. Just wait until you realize that there are people who hate you just because you are Jewish. Just wait until you realize that there are people who want to kill you and would kill you just because you are Jewish.

Just wait until you realize that people hate Jews because of Israel and hate Israel because of Jews.

Just wait until you realize that people believe that Jews kill non-Jewish babies to make matzo for Passover.

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Just wait until you realize that people believe that there is an international conspiracy of Jews to dominate the world.

Just wait until you realize that, in a world with over 6 billion people, there are only about 18 million Jews. That's one Jew out of every 3,000 people.

Just wait until you realize that there are countries where there are practically no Jews and still people hate Jews. Some of these countries used to have lots of Jews until they were either killed or forced to leave. And still people in these countries hate Jews. Some of these countries never had many Jews, and still people there hate Jews.

And so it is with mixed emotions, both joy and sadness, that I say,

I Love You,
Daddy

TO BE READ AT MY FUNERAL⁷⁶

When I was alive, I always enjoyed getting together with family.

With my family spread from coast to coast and from continent to continent, getting together with family was limited to three basic types of events: holidays, family celebrations, and funerals.

I have to admit that I did enjoy funerals. Not in the morbid sense that Harold and Maude enjoyed attending funerals of complete strangers. I enjoyed funerals, because funerals meant getting together with family and getting together with family was fun. In fact, sometimes funerals were even more fun than holidays and family celebrations.

When we got together on holidays and family celebrations, there was nothing to keep us from reverting to the old roles we played during childhood. Thus, even the most joyous holidays and most happy family celebrations could degenerate into all-to-familiar family spats and quarrels. Nothing serious, mind you, but you all know how annoying my family was at times. Not to mention how annoying I was.

But there was never any fighting during funerals. Everyone had finally grown up enough to be too mature to fight about who ate the last piece of Mom's chocolate chip Passover cake or who had dibs on the lounge chair in the TV room. At funerals, there was just too much respect for the dearly departed. And so, everyone got along famously during funerals. We'd sit around and talk and play with the children and reminisce. Of course, everyone was sad about the absence of the person whose demise had caused us all to gather, but nevertheless it was fun.

⁷⁶ 2000

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A holiday or a family celebration lasted a day or two or maybe even a three-day weekend, but a funeral meant sitting shivah with family and friends for seven days of kinship, comradery, fellowship, and mutual support. That was fun.

And so, here you all are, gathered to bid me a fond farewell. That is, I hope it's fond. I know that many of you are sad and perhaps even greatly distressed at my passing, but know this one thing: While I miss you all dearly and I am sorry that I am missing the enjoyment I had in getting together with family, the thing that I am most upset about is missing the next seven days of stuffing myself with all that great food. Do me a favor, save me the last piece of cake.

Love,
Steve

P.S. Actually, those who knew me will appreciate that the other thing that upsets me is that I am not able to watch all of you while this is being read.

P.P.S. Please put the following on my tombstone: "*I told you so.*"

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MY FAVORITE JOKE

*Did you hear about the one-armed fisherman?
He caught a fish this big.*

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ABOUT THE AUTHOR

Steve Mendelsohn (steve@mendelip.com) is a big enough egotist to have published this collection of his essays. If you enjoyed these essays, please do Steve a favor and send him an email message to feed his ego. If you did not enjoy these essays, do the rest of us a favor and please send Steve an email message to knock him down a peg or two. He's getting quite insufferable, and the last thing we need is for him to write a third book.