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## COURTING DISASTER: THE JUDGE'S DUTY OF DAUNTLESSNESS

Adapted from the writings of Dayan Yitzhak Grossman

On July 19, a man knocked at the door of the New Jersey home of U.S. District Judge Esther Salas. When the door was opened, he fired multiple shots, killing the judge's son and injuring her husband. The authorities have identified an attorney who had once appeared before Salas as the primary suspect, but the gunman's motive remains unclear. Judge Salas had received threats in the past, and the authorities are investigating whether there is any connection between those prior threats and the shooting. North Brunswick Mayor Francis "Mac" Womack, a family friend, said that "As a judge, she had threats from time to time, but everyone is saying that recently there had not been any." In this article we discuss a judge's responsibility to dispense justice even in the face of threats of violence.

### LO SAGURU

In *Parshas Devarim*, the Torah commands judges: "You shall not tremble (*lo saguru*) before any

man, for the judgment is G-d's."<sup>1</sup> The translation (by ArtScroll) of *lo saguru* as "you shall not tremble" follows one interpretation of the *pasuk* by Chazal, accepted by the *poskim* as normative, that it is a prohibition against a judge refusing to hear a case out of fear of one of the litigants.<sup>2</sup> The Sifri goes so far as to assert that a judge is enjoined from saying "I am afraid of so-and-so, lest he kill my son, or lest he burn my heap [of grain], or lest he cut down my saplings." This demand of a judge to risk even his child's life in order to do his duty is accepted by most *poskim*, although the *Bach* rejects it as non-normative.<sup>3</sup>

### THE SCOPE OF THE PROHIBITION

Even some of the *poskim* who do accept the position of the Sifri as normative, however, limit its

<sup>1</sup> Devarim 1:17.

<sup>2</sup> Sifri; Sanhedrin 6b; Rambam, Sefer Hamitzvos, lo sa'aseh #276, Hilchos Sanhedrin 22:1; Shulchan Aruch C.M. 12:1.

<sup>3</sup> Bach ibid.

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Excerpted and adapted from a shiur by  
HaRav Chaim Weg

### PARSHAS VA'ES'CHANAN

#### MIDDLE MANAGEMENT

And you shall tie them for a sign on your arm, and they shall be as totafos between your eyes.

Devarim 6:8

The Rambam (*Hilchos Tefillin* 4:1) writes that the tefillin must be centered on the head ("tzarich l'chavein b'emtza"). What is the source of this halacha? Perhaps we can suggest the following explanation.

The Gemara (*Menachos* 34b) states that the order of the *parshiyos* in the *shel rosh* is *Kadesh li* and *V'haya ki yeiacha* on the right and *Shema* and *V'haya im shamoa* on the left, and "*hakorei korei k'sidran*," one who reads, reads them in order. According to Rashi, the right and left and *korei* refer to the right and left of one facing the wearer of the tefillin. Thus, he would read the *parshiyos* from right to left in the order they are written in the Torah: *Kadesh*, *V'haya*, *Shema*, and *V'haya im shamoa*. Rabbeinu Tam interprets the description differently and arrives at the sequence—from the right to the left of one facing the wearer—of *Kadesh*, *V'haya*, *V'haya im shamoa*, and *Shema*.

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### Sleeping Accommodations

**Q** I enjoy listening to relatively loud music. My neighbor claims that he goes to bed at 9:30 pm and the music disturbs his sleep. Recently, I made a *sheva berachos* in my home that ended at 11:30. He was very upset. I don't believe that most people share my neighbor's early sleep schedule. Does he have a valid claim against me, or is he burdening me with his personal difficulties?

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application to where the risk is uncertain.<sup>4</sup> The Shevus Yaakov goes even further and explains that Jewish litigants, even ones with an established character of general wickedness, are not suspected of being prepared to commit murder in reaction to a verdict of civil liability, but if a litigant does indeed have an established character of that sort, then the prohibition of *lo saguru* does not apply (although it would still apply if the anticipated harm is merely financial).<sup>5</sup> See below, however, for R' Aharon Walkin's dissenting view.

The Erech Shai aligns the position of the Sifri with the Talmudic principle that "those on the path to perform a mitzvah are not susceptible to harm (*sheluchei mitzvah einan nizokin*)," unless the "danger is commonplace (*sh'chiach hezeika*)."<sup>6</sup> He explains that the prohibition of *lo saguru* is based on the idea that the judge who is performing a mitzvah will not suffer harm thereby,<sup>7</sup> since *sheluchei mitzvah einan nizokin*, but insofar as the danger is *sh'chiach*, the principle of *sheluchei mitzvah einan nizokin* does not apply, and therefore neither does the prohibition of *lo saguru*, even where the anticipated harm is merely financial, since it is "utterly unreasonable" to expect the judge to suffer a financial loss in order to protect the interests of the (rightful) litigant, due to the basic rule that one's own interests take precedence over those of others.<sup>8</sup>

R' Yaakov Gesundheit in Tiferes Yaakov arrives at a similar position based on an entirely different argument. A judge is prohibited from adjudicating a case in which he has any interest whatsoever (*nogeia badavar*), however remote.<sup>9</sup> How, then, can a judge be even allowed, let alone obligated, to adjudicate a case when his property or the life of his child is at stake? Rav Gesundheit therefore concludes that the Sifri's demand is limited to cases of indefinite and uncertain danger, where the mitzvah of *lo*

*saguru* orders the judge to disregard such unsubstantiated concerns, but where the danger is likely ("*karov*") and the litigant has an established character of malevolence, the judge is certainly considered an interested party and is indeed prohibited from adjudicating the case!<sup>10</sup>

### YEIHAREIG V'AL YA'AVOR?

Related to this issue of the extent of the prohibition according to the Sifri is the question of how to reconcile the Sifri's apparent contention that the prohibition of *lo saguru* applies even in the face of a concern for human life with the general rule that one is not required to give up his life in order to fulfill a mitzvah (*ya'avov v'al yeihareig*):

- Some propose that (as above) the Sifri's comments are limited to where the potential for harm is indefinite and uncertain, and in such circumstances one is indeed required to obey the commandment despite the possibility of harm.<sup>11</sup> Others, however, object that the rule of *ya'avov v'al yeihareig* should apply even in such a case.<sup>12</sup>
- R' Zvi Hirsch Kalischer in Moznayim Lemishpat explains that the Sifri is referring not to the refusal to hear a case but to the issuance of a false ruling that will serve as a precedent for the future. This constitutes uprooting the law of the Torah, and one is indeed obligated to forfeit his life rather than do so (*yeihareig v'al ya'avov*).<sup>13</sup>
- R' Aharon Walkin explains that since the very essence of the mitzvah of *lo saguru* is a prohibition against fear, this extends even to where the fear is for one's life (or the life of one's child), and is thus tantamount to an explicit exception to the general rule of *ya'avov v'al yeihareig*. He therefore challenges the Shevus Yaakov's understanding that the Sifri is not referring to a case of serious danger to life.<sup>14</sup>

4 Shu"t Maharashdam C.M. siman 378.

5 Shu"t Shevus Yaakov end of cheilek 1 siman 143.

6 Pesachim 8a-b.

7 A similar interpretation of the prohibition of *lo saguru* appears already in Sha'arei Teshuvah cheilek 3 siman 33.

8 Erech Shai ibid. s.v. uveShu"t Shevus Yaakov.

9 See Rambam Hilchos Eidus 16:4 and Shulchan Aruch ibid. 37:21.

10 Tiferes Yaakov C.M. ibid. s.k. 2.

11 See Moznayim Lemishpat ibid.

12 Choshen Aharon ibid. and Shu"t Zekan Aharon cheilek 2 siman 126 s.v. vein lomar.

13 Moznayim Lemishpat ibid. s.k. 2. Cf. Yam Shel Shlomo Bava Kama perek 4 siman 9; Mordechai Hillel Djavaheri, Ziyuf Hatorah: Yehareig V'Al Ya'avov.

14 Choshen Aharon and Zekan Aharon ibid.

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There is a section in Shulehan Aruch Choshen Mishpat that deals with *nizkei shechainim* (torts of neighbors). According to the Rama (C.M. 156:2), one may engage in noisy work like hammering nails even though it disturbs a neighbor's sleep. (This is because one may generally live as he pleases in his own home, provided that any harm caused to neighbors is both tolerable and indirect.) If the neighbor is sick, however, one may not engage in noisy activity, because that is considered intolerable to a sick person. Nevertheless, the contemporary *poskim* explain that producing sleep-disturbing noises during normal sleeping hours is comparable to doing so during the day when a neighbor is sick (see Emek Hamishpat, *Nizkei Shechainim* 35:3). Thus, noisy music would only be a problem during normal sleeping hours or if your neighbor is sick. To the best of my knowledge, 9:30 PM is not generally considered a normal sleeping hour in most neighborhoods; 10:30 or 11 likely would be. If your neighborhood is that way, too, it would be permitted, unless the neighbor is sick.



DAYAN YEHOASHUA GRUNWALD

Making a loud *sheva berachos* would be permitted even though it is done during normal sleeping hours and even if the neighbor were sick. The reason is that the occasional late *sheva berachos* is part of the normal use of a home and not something a neighbor has the right to object to, just as one is permitted to have small children at home though they often cry loudly at night.

Notwithstanding all of the above, if you can find a way to please your neighbor it would be very praiseworthy (see Mishkan Shalom, *Nizkei Shechainim* 10).

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Why did the *breisa* formulate the order based on a division between the

right side and the left side? Couldn't it have simply written the order of the *parshiyos* without making this division? The Piskei Siddur in the back of the Shulchan Aruch HaRav explains that this teaches that the

right two *parshiyos* must be on the right side of the head and the left two must be on the left side of the head. This, then, may be the source of the halacha that the tefillin must be centered.



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