

THE 1902 SIT-IN AT TOURO SYNAGOGUE*

by BERNARD KUSINITZ

Past issues of the *Rhode Island Jewish Historical Notes* have carried papers by David C. Adelman, Esq. and Judge John C. Burke containing accounts of the break-in at Touro Synagogue in Newport, Rhode Island in 1902. However excellent they were, both were limited in scope. In the belief that as much as possible of the story should be told, an attempt will be made to recreate the events of the period within the context of the spirit and prejudices prevailing at that time.

BACKGROUND

Most events of importance have their roots in the past. The events that began in 1899 and climaxed in 1902 at Touro Synagogue were no exception. What happened at that time would make little sense to one without knowledge of the involved factors, of which there were, in fact, four.

First, because patents of incorporation could not be granted in colonial days to religious organizations *per se*, such groups could not purchase or own real estate, such as a synagogue building, in their own name. The law was circumvented by the Jews of Newport by appointing three individuals to purchase the land, who would then act as trustees for the building and maintenance of the synagogue. While for all practical purposes the land and synagogue belonged to the entire congregation or "Jewish Society", as Jacob Rodriguez Rivera one of the trustees, wrote in his will of 1787, legally the title to the land and buildings rested with the appointed trustees, who purchased the land as individuals. Upon their death the title passed on to their heirs.

Second, for historical reasons not relevant to the story, Touro Synagogue belonged to and still is the legal property of the trustees of Congregation Shearith Israel of New York City, title and trust of the synagogue having been deeded to them by the remaining legal heirs of the synagogue in 1894.

Third, after their deaths in 1822 and 1864 respectively, Abraham and Judah Touro both left money in their wills to be administered by the State of Rhode Island and the city of Newport. They were implemented through several acts of the General Assembly of Rhode

*Adapted from an incomplete manuscript tentatively titled "An Historic Chronology of Touro Synagogue".

Island. Abraham's will provided for the maintenance of the building and premises, while Judah's provided for the salary of a minister or reader and for repairing the only Jewish cemetery existing at the time in Newport.

Fourth, one of the several basic problems facing the new congregation, just recently organized in 1893, was a dual matter: which group of individuals was going to control both the congregation and the synagogue building locally and what was the relationship going to be between the New York congregation and the Newport group? In fact, the whole bizarre chain of events that began in 1899 had its origin in what, under other circumstances, would have been a mundane matter of "*schul* (synagogue) politics." It turned out to be considerably more.

That it was much more than "*schul* politics" and that a real fission in the congregation had occurred virtually from the beginning is documented by the following communication sent by Reverend David Baruch, the spiritual leader and secretary of the congregation, to the Board of Trustees of Shearith Israel on June 13, 1893:¹

Two separate bodies had organized at that place, each claiming to exercise authority over the Synagogue and appurtenances, one of which had applied to the legislature for a charter.

CONTEST FOR PHYSICAL POSSESSION

The chain of events that unfolded in the next few years is perhaps unique in the history of this or any other congregation. Beginning as a contest for the physical possession of Touro Synagogue, it contained all the elements of high drama: physical force, emotional personality conflicts, intra-ethnic prejudices, violence, police action, court contests, and much more. Its conclusion has shaped the history of the congregation to the present time. While it lasted, it demonstrated the tremendous vitality, strong leadership, and will to shape its own destiny that characterized the newly revived Jewish community of Newport, a community that was rapidly growing with the influx of new immigrants—adding still another dimension to the struggle. The newcomers had sunk their roots in Newport and were there to stay, unlike other immigrants who had come there during the 1850s.

Moreover, the legal settlement that emerged is responsible for the paradox that was, and still is, Congregation Jeshuat Israel. It settled the question of who would control both the congregation and the synagogue building. It answers the questions of how it is that an

Ashkenazic (Western European) congregation in Newport, Rhode Island is still legally affiliated with a Sephardic (Spanish-Portuguese) congregation in New York City and how a modern Ashkenazic congregation worships according to the ancient Sephardic ritual, using Sephardic prayer books, but until recently with Ashkenazic pronunciation.* It explains why the religious leadership of a synagogue building of Sephardic origin was Ashkenazic beginning with the rabbinate of Jacob Seidel. Finally it answers the somewhat vexing question of how once upon a time the Jews of Newport broke into Touro Synagogue not to vandalize but to pray, thus conducting possibly the first "sit-in" in the country. There is the final ironic touch that it happened under the guidance of a brilliant young Irish lawyer named John C. Burke.

The differences between the "two separate bodies," referred to by Reverend Baruch in his communication to Congregation Shearith Israel, had apparently been kept under control during his tenure as rabbi and secretary. There was not even a hint of such a rift in the minutes of the congregation of that period except for one entry in a report of a special meeting held on April 26, 1894: "Resignation of I., M., and S. Levy also from Jacob Servadio accepted with regret." Unfortunately, there is no discussion or explanation offered.

However, if we consider that the affairs of the community between 1883 and 1893 were conducted by a triumvirate consisting of Reverend Abraham Pereira Mendes, Maurice Rosen, and Isaac Levy, and for a while Lewis Ginsberg in place of Rosen, and that the first officers of the new congregation in 1893 were Isaac Levy, president; Eugene Schreier, vice-president; and Max Levy, secretary and treasurer, then it must be concluded that the resignation en masse of such leaders as the Levys must be considered significant and possibly an early indication of the more complete rift to follow. And indeed after Reverend Baruch's death on March 30, 1899, the differences did burst forth like a flame from a smouldering fire, which all but consumed the Newport Jewish community in its intensity. The passions that combined to produce the conflagration fed one upon the other.

THE CAST OF CHARACTERS

Seemingly innocuous to the modern-day American Jew, these differences—religious, personal, and organizational—were real, relevant, and crucial to these newly arrived American Jews. Not only were they

*This continued until June 1969 when Congregation Jeshuat Israel voted to adopt the Sephardic pronunciation to comply with the world-wide trend of following the example set by the State of Israel.

not as yet completely Americanized, but also they had not completely lost their old world values and prejudices. In effect, they were one part American, one part European, and one part Jewish. Sufficient time had not yet passed to reconcile these differences and to convert them to modern American Jews. Unless this is understood, it is difficult for the present-day Jew to realize how seriously the first generation American Jews took their backgrounds and their places of national origin. Their sons, grandsons, and great-grandsons, the present-day second, third, and fourth generation American Jews, are largely indifferent as to whether their forebears were Germans (Deutchers), Russians (Rushashas), Polish (Paylishes), Hungarians, Rumanians, Lithuanians (Litvaks), or Latvians or, God forbid, Galitzianers (Galicians)!* Depending on one's viewpoint, each had its own sterling qualities as opposed to unflattering characteristics of the others. Such differences were real, important, and even decisive to these newcomers to the new world and were no less vivid (if not more violent) than the hatred of the nineteenth century southern rebels for the damned Yankees of the north.

So real and passionate were such feelings that they account in part for some of the bitterness that was engendered in the sequence of events that followed. Adding to the fire, the newcomers to town, who were Ashkenazic, found alien the traditional Sephardic *minhag*, or ritual in use in Touro Synagogue. Finally, add to all this the absentee landlord situation, the control of the Touro Funds by the local and state governments, and the personality conflicts engendered by the "haughty" German, Eugene Schreier, who had become the "agent" of the trustees of Shearith Israel in 1898 and had thus been brought into direct conflict with the less sophisticated mid-Europeans such as the Davids and the Dannins. Adding fuel to the already growing fire, Eugene Schreier, the second president of the new congregation, had established a close working relationship with the parent group in New York in the preceding formative years of the Newport congregation. What other explanation is there for the action taken by the New Yorkers in presenting him with a silver loving cup on the occasion of his twenty-fifth wedding anniversary in "appreciation of your services as their representative in Newport"?

*Leo Rosten in his *The Joys of Yiddish* explains: "The *Galitzianer* and the *Litvak* were often at odds, each claiming superiority over, and looking with a certain disdain upon, the other. The respective chauvinists viewed a marriage between a *Litvak* and a *Galitzianer* as almost exogamous, and wedding guests were fond of predicting that no good could come of such a strange misalliance." The German Jews were "a self-appointed elite." Ed.

Whatever relationship had developed—whether others in Newport liked it or not—was formalized when Doctor H. Pereira Mendes and N. Taylor Philips went to Newport on Decoration (Memorial) Day 1898 and recorded the following action in the guest book of the synagogue:

The undersigned delegates, this being an official visit, and the first official visit to represent the Congregation Shearith Israel of New York since the official ratification of the relationship existing between the two congregations above mentioned, hereby confirm those ratifications declaring the proprietary rights of the former Congregation Shearith Israel, Spanish and Portuguese, of New York, and that Mr. Eugene Schreier of Newport, Rhode Island, is to act as the representative or agent of said Congregation (Spanish and Portuguese) Shearith Israel of New York, to take charge of the building, appurtenances, or properties, services and cemetery . . . the Synagogue building [situated] in the ancient site in Touro Street and the cemetery at the corner of Kay Street and Bellevue Avenue.

And the undersigned hereby affix their signatures in ratification of the above.

Schreier himself had a year earlier strengthened his position on the occasion of the dedication of Shearith Israel's new synagogue building on 70th Street in New York City, perhaps bidding for support from New York for the older group in its struggle against the newer congregation, which was also attempting to get use of the Touro funds in Newport, and perhaps attempting further to reinforce his own personal relationship. Schreier on that occasion in his most ingratiating manner stated:

The connection of this Congregation with the Congregation Jeshuat Israel worshipping in this Ancient Edifice are such that their interest is one. The descendents (of the 3rd and 4th generation) of the men who helped build this ancient Edifice are now members of the Congregation Shearith Israel, and the unity existing between the two bodies will I trust be an everlasting one. [Punctuation added.]

LEGAL SPLIT

Against this background of human prejudices and weaknesses, the "two separate bodies" which had organized a few years earlier now legally split into two congregations. One, keeping the name and organization of Congregation Jeshuat Israel, was led by Eugene Schreier, excluding such men as L. and H. Hess, Herman Weiner, Julius Engell, E. and L. Davidson, and G. and S. Schuster, among others. The other was led by Israel J. Josephson and Julius Engell, who, together with

Barney Wilsker, David Frant, Sigmund Barber, Sigmund Schwartz and Moses Wagner, incorporated on April 10, 1899, under the name of "The Touro Congregation of Newport, Rhode Island for the purpose of religious worship according to the rites of the Jewish religion." Many of the new arrivals in town, such as Nathan Ball, the Dannins, and the Davids, joined the latter group.

The Touro Congregation, being the larger and more influential, won recognition by the Newport City Council,² which apparently had one eye on the ballot box. It voted to pay the salary of its Rabbi, Reverend E. M. Meyers, out of the Judah Touro Ministerial Fund, which it administered, rather than that of Reverend Moses Guedalia, the Rabbi of Congregation Jeshuat Israel. Without a doubt the proper and prudent action for the council would have been to seek legal opinion and to avoid entanglement in an issue involving separation of church and state.

Thus began the struggle for physical possession of Touro Synagogue. However, the legal ownership of the synagogue by the trustees of Congregation Shearith Israel of New York was not challenged or even questioned until a much later date. At the outset only the matter of rightful and lawful possession was in dispute, this being a technical but highly crucial point of difference in the eyes of the law.

NEW YORK GROUP TAKES ACTION

Congregation Shearith Israel, motivated by its desire to preserve revered traditions, to protect its legal authority over the synagogue which was now being placed in jeopardy, and to support Congregation Jeshuat Israel, the legal successor to the original Congregation Yeshuat Israel, immediately brought suit against the Touro Congregation, charging entry by force and unlawful detention of their property. The ensuing complicated legal maneuvering resulted in several court cases, which ended three-and-one-half years later after it precipitated the famous 1902 break into Touro Synagogue followed by the unprecedented "sit-in".

The first phase of the struggle, as recorded in Volume 31 of the Records of the Appellate Division Supreme Court for Newport County, took the form of a complaint sworn to by L. Napoleon Levy, one of the trustees of Congregation Shearith Israel, in an action of Forcible Entry and Detainer, an ancient legal proceeding to determine rightful possession of a given premise without settling the right of legal title or ownership. The action, taken on June 9, 1899, was instituted by

attorney James Tillinghast acting for L. Napoleon Levy, David De Meza, Anthony Wallach, Edgar J. Nathan, Henry Belais, Alfred Lyons, Albert J. Elias, and N. Taylor Philips, and members of the New York congregation. They alleged entry by force and unlawful detention of their property and asked for relief. The action was taken against the Touro Congregation and the following individuals: Julius Engel, David Frant, Albert Goddard, Charles Dannin, Moses Wagner, Abraham Solomon, Sigmund Barber, Max Levy, Nathan Dannin, Michael Bassin, Jacob Heller, Charles Heller, Israel J. Josephson, Baruch Corn, Isaac Levy, Esy Schwartz, Louis Dannin, Abraham Siegal, Sigmund Schwartz, Joseph Dannin, and Moritz Adler.

The defendants through their attorney filed a demurrer, a legal plea admitting the alleged facts, but asking in effect, "What of it"? They argued that the plaintiffs were not in actual and peaceful possession. The judge overruled the local group. Although the decision was of tremendous importance, the details of the trial were in themselves of no great importance. They are nevertheless interesting for two reasons: First, they reveal something of the contempt in which the Schreiers held the men of the Touro Congregation; and second, they expose a peculiar error made by the Court and also by David C. Adelman in his 1958 account of that phase of the proceedings.

It is stated that three witnesses testified for the complainants; that one of them was Henry Osborn, "a colored man"; that Eugene Schreier and his son Alfred "affirmed" that Eugene Schreier testified that "a mob" came towards him with tools as if to strike him, howling like a "Wild West Show"; and that Schreier named half a dozen of them, one of whom protested and was quieted by the sheriff. Next, a witness was asked about a Sullivan Schwartz. The court then asked that the person answering to that name stand up for identification. Three men arose and seemed to be identified, but afterwards it was said none of them was "Sullivan Schwartz." Of course, no Sullivan Schwartz could stand up because there is absolutely no contemporary evidence to substantiate the existence of such a person. There is the possibility that the name was a misreading, for example, of Sigmund Schwartz, one of the defendants in the case. Of particular interest to Newporters, however, was the observation made by Adelman that the largest clan in Newport was the Sullivans and that "it is interesting to note that as far back as 1899, one of them was a Jew." What a shame that this ecumenical observation was based on an error in fact!

Be that as it may, Alfred Schreier, secretary of Congregation Jeshuat Israel, testified that after Levy's men went away the synagogue was

relocked, but that the next day "the mob came in like a flock of sheep from all sides and threats and attempts were made but no striking done." He stated that "his father withdrew from the mob and he couldn't tell whether or not he liked the Levys."

The testimony of one Osborn, a watchman, was interrupted by a sudden recess, and, fortunately, the conciliatory attitude of the New Yorkers prevailed. The question at issue was not that of rightful legal title to the synagogue, but of rightful and lawful possession. Counsel for both sides agreed upon a written verdict which was signed by all of the jurors and which found that the complainants were entitled to speedy possession. To that end a writ of execution was signed by Judge W. W. Douglas of the Supreme Court of Rhode Island, dated July 10, 1899, and delivered to "the Office of the Sheriff or his Deputy of Newport County."

SUPREME COURT DECREE

Because this decree of the Supreme Court became the legal ground on which the New York trustees depended in their continuing controversy with the Newport congregation over the possession of Touro Synagogue, the decree is presented in full as it appeared in the contemporary press of Newport:

I. S. The State of Rhode Island and Providence Plantations
Newport, S.C.

To the Sheriff of our County of Newport or his Deputy:

Greeting:

Whereas at a Court of Inquiry of forcible entry and detainer holden at the city of Newport in our county of Newport upon the tenth day of July in the year 1899 before one of the Justices of the Supreme Court, the jurors impanelled and sworn by our said justice did return their verdict in writing signed by each of them that the complainants, L. Napoleon Levy, David De Maza, Anthony Wallach, Edgar J. Nathan, Henry Belais, Alfred Lyons, Albert J. Elias, and N. Taylor Phillips were upon the Eighth Day of June 1899 in the rightful possession of a certain messuage or tract of land in the city of Newport bounded and described as follows, to wit:

Southerly on Touro Street 92 46-100 feet, Easterly on land of the Newport Historical Society 109 8-10 feet, Northerly on Barney Street 90 65-100 feet and westerly on land of George P. Lawton being that lot of land wherein the building known as the Jewish Synagogue stands, together with said Jewish Synagogue building thereon, and that the defendants, Julius Engel, David Frant, Albert Goddard, Charles Dannin, Moses Wagner, Max Levy, Nettin Dannin, Abraham Sigel, Sigmund Schwartz, M. Bassin, Jacob

Heller, Charles Heller, Israel J. Josephson, Baruch Coren, Isaac Levy, Esy Schwartz, Max Schwartz, Louis Dannin, Joseph Dannin, and the Touro Congregation of Newport upon the same day did unlawfully with force and arms and with a strong hand enter forcibly into the same, and did unlawfully with force and a strong hand hold and keep out the said complainants herebefore named and that they do still continue wrongfully to detain possession from the said complainants. Whereupon it was considered by our said justice that the said complainants should have restitution of the same we command you that, taking with you the power of the county, if necessary, you cause the said defendants, and each of them, to be forthwith removed from the premises and the said complainants to have peaceful possession of the same.

And make return of this writ, and your doings thereon, within twenty days next coming.

Given under my hand and seal the tenth day of July in the year 1899.

Wm. W. Douglas
Justice of the Supreme Court

At 5:45 P.M. of the same day Deputy Sheriff Hugh Gifford complied with the writ as follows:

Newport, S.C.

I have this tenth day of July A.D. 1899 at 5:45 o'clock P.M. caused the within named defendants and each of them to be removed from the within described premises, and I have put the within named L. Napoleon Levy, complainant, in peaceful possession of the same and I have delivered to him the said Levy, the keys of the said premises, and I hereby return the within execution as wholly satisfied.

Hugh N. Gifford
Deputy Sheriff

The question of legal ownership was left in abeyance, and both local groups joined in worship in the synagogue. As testimony to this we find that in the May 1901 election the following individuals were chosen officers of the Congregation Jeshuat Israel: President, Julius Engle; Vice-President, Moses Wagner; Secretary, Sigmund Barber; Treasurer, Sigmund Schwartz; and two of the trustees, Joseph Josephson and Fischel David. Most of these men were from the Touro Congregation and were among the defendants in the 1899 court action.

Although by all rights the whole matter should have been resolved then and there, the pot continued to boil. New elements and new characters entered the picture, aggravating the situation. Another series of events beginning in January of 1901 caused the members of Congregation

Jeshuat Israel to realize that Eugene Schreier and Shearith Israel were antagonists to Jeshuat Israel as well as to the Touro Congregation.

Looking at the situation in another way, in addition to the hostilities between the Touro group and the New York congregation, as evidenced by the "revolt" of the Newporters against the New York landlords, friction also developed between Eugene Schreier, the agent of the New Yorkers, and his own Congregation Jeshuat Israel. In other words, a "civil war" was being fought within the ranks of one congregation while the revolt was taking place between the other Newport group and the third party in New York.

CIVIL WAR

Two separate elements seemed to make up the "civil war". On the one hand there was the friction between Schreier and his congregation, Jeshuat Israel. On the other, any action taken by the trustees of Shearith Israel to close the synagogue to the Touro Congregation also closed it to the original Congregation Jeshuat Israel. The climax of this "sub-plot" was still another court case having nothing to do with those instituted by Congregation Shearith Israel.

As evidence of the friction between Schreier and Congregation Jeshuat Israel, the following notice signed by Congregation Jeshuat Israel appeared in the January 8, 1901 edition of the *Newport Daily News*:

Eugene Schreier, no longer being an officer in or having any authority to approve bills contracted in the name of the Congregation Jeshuat Israel, all persons are hereby warned that the said Congregation will not pay any bills so approved.

This elicited a reply from Schreier in the same newspaper, in which he states that he did not claim to have any authority either to contract or approve bills for the congregation and that he did not attend their meetings and was ignorant of their proceedings. After pointing out that the bylaws of the congregation provided that all bills must be passed upon by the board of trustees before they could be paid and that the board alone had the right to contract bills, and, since he was not a member of the board, he failed to see the necessity of publishing the above notice, particularly since he hadn't held any office for nearly one year. He then proclaimed that any bills presented in his name were a forgery and that the notice was a libel. He signed his letter "Guardian of the Touro Jewish Synagogue."

CLOSING OF THE SYNAGOGUE

Indeed, feelings had to be high to warrant such a heated exchange in the public eye. In this climate of personal hostility, the closing of the synagogue followed in January of 1901, and a further incident immediately arose out of the closing, an account of which follows.

Various books and articles on Touro Synagogue mention the several gifts made to the synagogue during its initial period of revival, including a Torah, a Scroll of the Law, in 1901 by Leonard Lewisohn of New York City. While not a descendant of any of the founders of the synagogue, as was mistakenly reported by Rabbi Morris Gutstein, he nevertheless came from a most interesting background. He was, indeed, a member of *the* Lewisohn family, the Lewisohn's of "Our Crowd," of "The One Hundred" as they called themselves, or of the "Jewish Grand Dukes", the famous Jewish families which came to New York during the 1848 immigration wave.

The occasion of the gift was the marriage of Lewisohn's daughter, Lillian, in Touro Synagogue on March 22, 1900, a wedding important enough to be listed in the summary of the year's outstanding events as published by the *Newport Journal and Weekly News* on March 19 and March 24, 1900. The affair was referred to as "a fashionable wedding" that "will take place at the Touro Synagogue, the fifth that was ever celebrated in that ancient edifice." The reporter in referring to the wedding as the fifth to take place in Touro Synagogue may or may not have been accurate, but that is incidental to our story. According to the Synagogue's guest book, the ceremony was performed by Reverend Morais, the local rabbi, and by the famous Reverend Stephen Wise, who was brought from New York to participate. Morais performed the major part of the ceremony, with Wise giving the closing prayer and benediction.

Lewisohn's very generous gift, unfortunately, produced more complexities than at first appeared likely. Undoubtedly it was never intended to cause the trouble that subsequently ensued. For the donation was not an actual Torah, but rather was in the form of a thousand dollar donation—for the benefit of the congregation to be used at the discretion of its incumbent president, Eugene Schreier. The rabbi recommended that a new scroll be purchased to replace one that was nearly worn out. Part of the money was then used to purchase the scroll, which was dedicated during the Feast of Passover. Later the congregation asked for a written statement from Schreier indicating that the scroll was the property of the congregation. He replied that, since

they had the scroll, no such paper was necessary. Finally, he did present a paper which stated that the scroll was for their use as long as they worshipped in the synagogue. This they refused to accept. When the synagogue was closed by orders from New York, the congregation brought a replevin case in February of 1901 to obtain possession of the scroll. The scroll, of course, was locked up in the synagogue while all the congregants were locked out! The hearing of the evidence, the attempts to rattle opposing witnesses, and the sparring of the two lawyers, Nolan for the complainants and Sheffield for the defense, lasted for about an hour-and-a-half. The court decided in favor of the defendant, Schreier.

TRUCE SHORT-LIVED

In the meantime the truce between the two local congregations turned out to be short-lived. The Jewish community was growing larger in numbers, including such names as the David brothers, Fischel, Israel, Moses, and Nathan. They were representative of a new and dynamic element in the community, with minds and prejudices of their own. The synagogue had been closed in 1898 and part of 1899, and again from January 1901 to April 21, 1902, the latter time because of the friction between Eugene Schreier, the representative of the trustees of the New York congregation and the members of the Touro Congregation. This phase of the drama began in January of 1901 and laid the groundwork for the famous sit-in episode beginning in April of 1902.

The complicated story unfolds with the publication in the *Newport Daily News*, January 1, 1901, of the following apparently innocuous but starkly laconic notice. Perhaps at another time, under other circumstances, and with less controversial names this notice might have precipitated very little, or at least another type of reaction. But coming at this time under the combination of circumstances then existing, it only served as a catalyst for what eventually followed:

NOTICE!

The Synagogue on Touro Street will remain closed until further notice by order of L. Napoleon Levy, Trustee, and for the owners of the property.

Eugene Schreier

Agent for the Trustees and Owners

The scene shifts next to the chambers of the city hall of Newport, where a routine resolution was presented to the city council directing the city treasurer to pay the salary of the "minister of the Jews' Synagogue" on approval of the president of the congregation. However, the city treasurer, Ward by name, moved to refer the resolution to the finance committee. President Engel and Max Levy appeared before the Committee speaking in favor of the original resolution and Eugene Schreier in opposition. After a lively hearing it was decided to ask the city solicitor's opinion in regard to the city's position, since it was noted that the synagogue was closed and there was in consequence no minister to pay. Undoubtedly this was the proper procedure, which the council should have adopted from the first. When the council took the part of one congregation as against the other, it did so in violation of the principle of separation of church and state. Such an action should have been challenged by the offended party. However, the following events can be related to the council's decision.

TO APPOINT MINISTER

Just as every action brings a reaction, this move by the council, apparently backed by the city solicitor, brought the following reply from the New York trustees, which speaks for itself:

Congregation Shearith Israel in the city of New York, New York
March 12, 1901

To the Honorable The City Council Newport, R. I.

Gentlemen: We have received a copy of the resolutions of your body passed March 5, 1901 relative to the payment of salary of Jewish Minister in your city. As owner of the synagogue property we are anxious that it be opened and services held there regularly for the benefit of the entire Jewish community of Newport. Your resolution stipulates that the salary shall be paid upon the certificate of the president of the congregation. No congregation having any control over or in fact anything to do with the synagogue edifice, and in consequence no power to appoint a minister to officiate therein or approve a certificate of his services, you will observe that it is impossible for the terms of your resolution ever to be complied with.

We think it proper to advise you that we are ready to appoint a minister to officiate in the synagogue, provided you amend your resolution so that his salary can be paid upon his own certificate of services rendered in the same manner as was done for many years by the late Rev. A. P. Mendes, who received his appointment at our hands. You will perceive that should this not be done, and we in consequence be obliged to keep the synagogue closed this will of course prevent any clergyman from officiating

therein, and as your resolution will become impossible of execution the Jewish residents of Newport will in consequence be deprived of sacred services. We earnestly trust that you will not make this necessary.

Very respectfully yours,
L. Napoleon Levy
For the Owners

As reasonable and legally correct as this letter was, at least on the surface, it nevertheless was read with disdain by some of the local residents. In fact, it elicited the following response in the form of a letter to the editor of the *Daily News*. Just as the position and feelings of the New York congregation are expressed in the above communication, the following letter explains the feelings and motivation of those Newporters who sought to determine their own religious destiny:

To the Editor of the News:

After reading the copy of the communication addressed to the City Council over the signature of L. Napoleon Levy, it forcibly impressed itself upon my mind that the misstatements therein contained and the deceit which is being attempted to be practiced upon the City Council and the citizens in general should not be permitted to pass without a challenge. It is only too well realized by those in position to appreciate the facts that the fatherly and religious concern expressed by the writer of the communication, backed and encouraged by some local influence, is a farce, and that this solicitude is but of the length, depth and breadth of a \$30,000 fund which the State of Rhode Island holds in trust for the Hebrew residents of Newport. I venture the statement that with the dissipation of this fund all this solicitude and apprehension for the religious, mental, and physical welfare of the Hebrews of Newport will disappear also. It is to preserve the fund and to prevent its dissipation and absorption by individuals that the Hebrew residents of this city are making their stand.

Regarding the ownership of the synagogue proper, the citizens of Newport will know it has always been considered a public place of worship and the City Council of Newport has exercised control over it up to the present time, the city treasurer of the city of Newport being in fact the keeper of it and responsible to the State of Rhode Island for its preservation, and it is a shame to close the building and in this land of liberty and religious toleration prevent those who so desire from entering this place of worship and appealing and praying to their God for His blessings and beneficence. The Hebrews of Newport are firm in their conviction that there is not a particle of real title in this party and his colleagues. Their boast is and has been that with their immense wealth they will "squeeze the life out of the people" here and gain their end; but they reckon without their host, for the Hebrews

of this city will drain every mill before they are deprived of their rights, privileges, and liberty.

The Hebrews worshipping in this synagogue have for the past 20 years elected their own minister. Dr. Mendes was their choice, after his death came Dr. Baruch, and then the present incumbent, Dr. Morais; and a reference to the resolutions of the City Council will show that in every case such resolutions have the clause that the minister should be paid his salary upon approval of the president of the local body. The Hebrews of Newport claim the right to govern themselves free from dictation from within or without, the right to select their own minister, and the right as beneficiaries under the Touro Funds to know where the funds are going and who is receiving it. Why have others such a desire to have a minister of their own selection, and to draw the salary without a voucher for the performance of the duties required of him? The Hebrews of Newport know well among themselves the purport of the whole matter and it is their desire, hope, wish and prayer that the City Council of Newport will protect their interests by throwing a safeguard around the fund and permit the resolution to remain as it now is.

It is beyond legal controversy that, even granting for the sake of argument that the so called owners have a legal right, the ministerial fund is an independent matter, and is connected with the building in no way. We claim the building to be public property. The city of Newport has always recognized it so for no taxes have been levied upon it; the city treasurer is keeper, a public fund maintains it in repair, and by all reasonable argument a church was never built as yet for one man worship.

Take the ammunition away from the gunner and you hear no more from him; keep the funds away from certain men and they will disappear.

Very Respectfully
A Hebrew

Newport, March 15, 1901

In this trying period, with accusations and recriminations being hurled back and forth, life nevertheless went on. The Touro Congregation, still desirous of conducting services on a regular basis, conducted them in the home of Nathan Ball on Coddington Street off the upper end of Thames Street. Ball served in the capacity of reader. He had already been commissioned the city "shohet", or ritual slaughterer, so that the Jews of Newport would no longer have to take turns in going to Fall River via public transportation to purchase kosher meat for the entire group.

Events rapidly moved toward a climax when Fischel David took the step which culminated in that colorful drama at Touro Synagogue that no one could foresee.

BURKE ENGAGED AS ATTORNEY

After consulting the leading attorneys in the area about opening the synagogue to all Newport Jews and being informed that the situation was such that nothing could be done, David, in a last desperate move, turned to a young Irish lawyer who had been practicing in Newport for only three years. Before his career ended, several decades later, he achieved not only local, but also statewide fame as a brilliant lawyer with a keen mind possessed of a vast knowledge of the law beyond most practitioners. John C. Burke, later Judge Burke, even at this early stage in his career displayed his knowledge, his ability, his daring tactics and his desire to win—even in a hopeless case such as the one posed by the men of the Touro Congregation.³

Just as he found a little known statute which enabled Dennis Roberts to retain his office as governor of Rhode Island in the controversial 1956 gubernatorial election, so fifty-five years before that episode he had discovered an obscure state law by which his clients could take action. Being completely unfamiliar with the historical background of both the synagogue itself and the events of 1899 culminating in the litigation of 1899, he asked for a week or two to look into the matter. As a result of his research, he discovered a state law which provided that anyone interfering with a religious gathering while it was in progress would be guilty of a misdemeanor, a breach of law, thus prohibiting police interference with the assembly. Having concluded that there was no means or method by which his clients could go to court to get relief, he decided that the only workable strategy was for the Touro Congregation to force their way into the synagogue on a Jewish holiday and conduct a religious service continuously with a rabbi in charge in the pulpit. Burke reasoned that the police would have no right to interfere with their possession of the synagogue.

Behind this bold plan was Burke's theory that "the Jewish society" to whom Jacob Rodriguez Rivera had willed the synagogue as a "place of public worship forever" was indeed the Jewish people of Newport, that the Deed of Trust of 1894 by which the heirs of Rivera, Levy, and Hart deeded the synagogue over to the trustees of Congregation Shearith Israel was without force and effect, and that the synagogue was built in the first place by voluntary contributions. In short, Burke now intended to do what the Newport Jews previously fell short of doing. He intended to challenge Congregation Shearith Israel's legal ownership of the synagogue building itself. This he intended to do by trying the question of legal title in a court of equity, a court that held jurisdiction over trust estates. But first the main drama itself!

When Fischel David resumed his conference with Burke, he informed Burke upon questioning that the next Jewish holiday would be the Feast of Passover on Monday evening April 21, 1902. Burke then unfolded the plan that David was to follow. With the help of others he was to go to the synagogue at sundown with sledge hammer and chisel, break the locks of both the gate and the synagogue, enter, light the candles, and begin the service after calling in members of the congregation who would be standing by, but hidden out of sight. Burke's plan called for the services to be conducted by a rabbi. There was no rabbi or cantor in Newport at the time. Whether or not Burke had been told of this situation, the fact was that religious services under Jewish law need not be conducted by a minister, but could be directed by any knowledgeable layman. Fortunately the congregation had at least one such person. It may well have been Isaac Levy, although there is no documentation to confirm this.

In order to ensure the success of the plan in advance, Burke had discussed the matter fully with Assistant Attorney General Charles H. Stearns. Burke informed him of the basic facts of the situation—that the synagogue was closed, that the state of Rhode Island was trustee for one fund and the city of Newport for another, that the synagogue had been closed for a number of years, and that there was no way of getting into the synagogue other than through the plan he had devised. He informed him that he had advised his clients to break in and to start their services. If they conducted the services in a normal religious manner, he believed that the police would have no right to interfere with them. Burke then asked Stearns whether, if he advised his clients to break into the synagogue and no breach of the peace occurred, he, Stearns, would stand behind the persons who went in and see to it that there would be no police action against them. Stearns agreed to go along with the plan as long as there was no breach of the peace.

Burke had likewise consulted the Chief of Police of Newport, Benjamin Richards, who also agreed to cooperate by standing by at the station. Thus, after being assured by Burke that, although something important was going to happen on a certain evening, it would not involve the Chief in a political matter and that he wanted him there in case anything was done by the police that was unauthorized.

Since the true events that transpired Monday evening April 21, 1902 have become distorted or clouded by the passage of time, it was somewhat difficult at first to ascertain what actually happened. It was necessary to separate truth from *bubba mysas* (old wives' tales), fact from fiction. The difficulties have been heightened because none of

the participants is alive and some of the stories they handed down are either false or have been altered beyond recognition. Contrary to these stories the following is an attempt at reconstruction in accordance with police records, reports in the contemporary press, and those oral accounts which are not inconsistent with reliable written records, such as Judge Burke's written recollections.

BREAK-IN

Fischel David did indeed go to the synagogue at approximately 6:00 P.M. with one Hugo Riddell, did indeed break open the gate and door locks with chisel and sledge hammer, did indeed enter the synagogue and did indeed attempt to light the candles. However, having been seen by one Morton Chase, who reported the break-in to one Officer Dugan, David was prevented from proceeding with the rest of the plan. Officer Dugan, instead of notifying City Treasurer Hammett, the official keeper of the synagogue by vote of the City Council, notified instead Eugene Schreier, because of the 1899 Supreme Court decree. Schreier, remember, was now the agent of Congregation Shearith Israel. Schreier, accompanied by his daughter Sarah, entered the synagogue and immediately attempted to prevent David from lighting the candles amidst much talking and milling about by the thirty odd people who were reportedly inside the building, not all of whom were Jews, according to the local press. This number appears to be a realistic estimate. Nathan Ball in his written recollections states very specifically that both the Congregation Jeshuat Israel and the Touro Congregation forced open the Touro Synagogue for the Passover service, and membership of both groups was very small during this period. Officer Dugan was still outside waiting for something to happen, it being fairly obvious that passions were about to explode. The explosion finally occurred when David, a very volatile man to begin with, tired of being nagged and interfered with by the Schreiers, proceeded to tackle Schreier in effective football fashion! This, of course, created even greater excitement.

In the meantime, Officer Dugan was reinforced by the arrival of the police patrol with Sergeant Scott and Officers Esleeck and Easton. They immediately cleared the synagogue and the grounds. They arrested Fischel David, who, acting under instructions to resist arrest, bit Officer Dugan on the hand, and Hugo Riddell, who, after being put out of the synagogue, was on the sidewalk trying to incite the crowd to reenter the building. They were taken to the police station, but were released on their own recognizance. A new lock in the mean-

time was put on the gate about 7:15 P.M. and all went home, although it may be said that the natives were indeed restless during the night!⁴

RIOT CALL

John Burke, in the meantime, had heard the riot call in the form of bells ringing and had headed for the synagogue on his bicycle. He arrived just as the police were clearing the synagogue of all the worshippers upon Schreier's complaint. Burke then went to the police station to see the Chief of Police, who had not made himself available according to their agreement. Burke spoke to Captain Garnett who was in charge, explaining that the Attorney General had been in on the whole plan and had agreed to defend the action as long as there was no breach of the peace. The police had been informed by Eugene Schreier that those who had occupied the synagogue should be removed because they had no right to go in and that they might steal the Sacred Scroll.

Garnett, who had been forewarned by Burke that for every Jew who would be arrested two would be prepared to take his place, explained in the meantime to the many Hebrews who came down to the station, that he knew nothing of the merits and demerits of the case, that the police acted only to keep the peace, and that the time and place for talk would be before Judge Baker in the morning. Incidentally, it is quite possible that the voluntary presence of so many of the congregation at the station, many of whom were in and out during the night, gave rise to one of the myths arising out of this whole episode: that many of them had actually been arrested.

Counsellor Burke, in the meantime, had called Attorney General Stearns on the telephone informing him of the situation. Stearns, in turn, explained to the Captain that he had no authority to interfere with men in their performance of a religious gathering and that he would not defend him, and if he persisted he would be subject to prosecution under civil arrest. Civil arrest is an action by which a citizen wrongfully arrested by a policeman could in turn have the policeman arrested in a private suit against the officer.

WARRANTS SWORN

The next morning Chief Richards appeared before the court at the station. About 9:30 A.M., after much confusion and arguing back and forth, four warrants were finally sworn out. The first two were against Fischel David. One was for malicious mischief in destroying the locks,

the property of Congregation Shearith Israel, and forcing the doors open. The other was for assault on Officer Dugan. The third was against Hugo Riddell for reveling or disorderly conduct. The fourth was against Eugene Schreier for assault on Max Wasserman. Schreier in turn, tried to get a warrant for assault upon his daughter, but the court refused, stating that it had enough warrants already to sift and would wait until it could determine where things stood.

After Chiefs Richards had sworn out the warrants, Counsellor Burke suggested that the police had acted improperly and asked if the arrests could prevent the people from worshiping in the synagogue. The court in turn suggested that that question was not before it. Burke further contended that the whole matter was purely one for civil action, that the Schreiers had disturbed a place of worship, and that the police had forcibly evicted worshipers, which they had no right to do. Judge Baker replied that the matter of police interference was not before him and that he never refused the Chief of Police when he demanded a warrant.

The whole episode had taken about an hour. About forty people had crowded into the small court at the police station. Passions still ran high, and threats of vengeance were heard, although cooler heads seemed to prevail. The cases against the men, all of whom had pleaded not guilty, were continued to a later date after one Ernst Voight provided surety.

SIT-IN

In the meantime the "rebels", still determined to carry out the original plan of occupation, once again advanced upon the synagogue on Tuesday afternoon about two o'clock. Two men jumped the fence, again chopped off the lock, reentered the building, and once again prepared to hold services. They were joined by approximately fifty or sixty people who came in singly or in groups, and they remained for the duration! This time there was no disturbance, no police action, no excitement—despite the fact that the police had been notified that Nathan Ball had warned Schreier that his group would return in the morning and that he Schreier had better not interfere.

The police declined to interfere upon Schreier's request unless there was a definite breach of the peace. This was disclosed by Chief Richards, who had been seen by some of the Jewish women who had not eaten since Monday afternoon and were determined not to eat until they had attended services! Was this perhaps the first public

use of the threat of a hunger strike as a method of achieving a political objective?

Schreier's family had been seen in the vicinity of the synagogue, but he himself had left. However, he had a bicycle scout in the area, who brought him reports of what was going on. L. Napoleon Levy on behalf of his fellow trustees appealed to Mayor Boyle of Newport and later to Governor Kimball of Rhode Island to intervene. The appeal asked that the New York group be put in possession of the synagogue, as was directed by the courts in 1899. However, neither they nor the police, acting on the advice of Assistant Attorney General Greenough, would interfere.

Because there appear to be no written records extant covering the subject and because of the various unsubstantiated claims of many people, it is difficult at this late date to determine exactly who actually participated in the "sit-in" night and day until the matter was settled. One version, which appears to have some merit, is told by the children of one of the alleged participants, Nathan Dannin. He told his children that he, Chone Dannin, their cousin Samuel Horowitz, Fischel David, David Rosen, and their wives slept in. Daniel Rosen's nephew Harry also claimed to have come from Block Island to help his uncle and slept in for three nights. According to the Dannin account, the wives stayed by day and the men by night. Food was brought in by the Nathan Dannins, who at that time lived on Barney Street, which is adjacent to the north side of the synagogue. In view of the facts that David Rosen was president of the Touro Congregation at the time, that Fischel David was one of the leaders in the affair, and that the Dannins both then and now were keenly interested in *shul* (synagogue) affairs, much credence can be given to this version.

Another odd and interesting sidelight that merits at least passing mention is the strange case of one of the participants, Hugo Riddell. Riddell, who hailed from Providence, identified himself by a card bearing the legend "formerly Assistant Hebrew Rabbi, Christ's messenger to the Jews." He claimed that he had been invited to lecture at the synagogue as long as he didn't "preach Christ" to them. He claimed, moreover, that his presence at the synagogue that day was as an innocent guest and that he was guiltless of creating any disturbance beyond that of being a Christian attempting to speak in a synagogue!

EMOTIONAL REACTION

As a rule there are several sides to every story, and, indeed, our story is no exception. The motivation of both the New York trustees

and the Newport rebels have already been explained. In all fairness, the viewpoint of the parties in the middle, the Shreiers, should be further clarified. The prevailing local prejudices kept surfacing throughout the controversy. The haughty attitude of the Schreiers, who were German, towards their fellow Newporters of other European backgrounds was revealed in the June 1899 litigation. They contemptuously characterized their adversaries as a "mob", a "Wild West Show", and a "flock of sheep". Their attitude of superiority was displayed rather openly in a frank letter written by Eugene Schreier's daughter Sarah to a local newspaper, dated April 23, 1902. In it she referred to the "Russian Polish element" in town—a revealing glimpse of the conscious or unconscious prejudices of the American Jews of the period. Whether or not Sarah Schreier overstated her case, there was probably some justification for her horrified reaction. The letter, though lengthy and emotional, was well written. The opening paragraphs, not quoted here, are a somewhat poetic dissertation on the early history of the Jews in Newport. She continues:⁵

And into this holy place, this place so dear to me, broke a lawless band masking in the cloak of religious feeling like wolves in sheep skins. They blasphemed the name of the Almighty by breaking into His Holy Temple: a deed which no good Jew or Christian would stoop to. No words can express how low was the act; an act punishable in olden times by stoning the offenders at the door of the Temple. What was their object? Surely not religion! For I am a Jewess every inch of me; believing strongly in the tenets of my holy faith and although the building was closed, a heart breaking thing for me, I have kept my Sabbath by worshipping at home. I have worshipped in the holy place ever since I was a little girl, first taught by dear old Dr. Mendes whose memory is cherished not only by our family but also by the citizens of Newport.

I could hardly wait for the Sabbath to come so that I could be once more in the dear old edifice. Still after the dear Rabbi's death I continued to attend the services. At this time now about seven years ago the Russian-Polish element began to drift to this city and although the building was open and free to all alike to worship the average attendance consisted of our own family and two or three others. Where were these people's religious feelings then? They waited to show their religious feeling by an act which condemns them as Jews by accident of birth but not by principles of religion. They waited for the eve of the Passover, one of the greatest of our holy days, and with a hammer broke open the doors of the synagogue, an outrageous sacrilege. But they were doing it for religion? And did they, these very religious fellows allow a fellow (for I cannot attribute to them nor to him the name of the man) who is neither Jew nor Gentile, to stand before the holy

ark and inspire them with the grandeur of their act and create riot and violence in the House of God; do this for religion?

Nothing is so obnoxious to the zealous Jew as to see such a fellow enter a temple; and in other places he would have been scorned and thrown out, but then he was helping them for the sake of religion. Which religion?

Oh, bitter mockery! They defiled the sacred temple; a deed more atrocious than that of the destruction of the temple by the Romans, in as much as their deed under the guise of religion, proclaims them hypocrites. It is not a religion which prompted these fellows to the disgraceful act, it was the desire to possess a building to which they have no right, a holy place which they desecrated and which we reverence and endeavor to protect.

Is it no wonder that such passion and emotion led, or at least contributed to, the inevitable clash of personalities, ambitions, and goals. So, the pot continued to boil!

The town apparently was full of rumors, and resentment against the 1899 Supreme Court decree was heard once again, if indeed it ever stopped. Even the *Newport Daily News* took notice of the legal aspects of the situation when it was reported on Thursday, April 25, 1902 that:

It is understood that the Newport Congregation will make a legal fight against the execution of such an order. Just what they propose to do is unknown, but they think they have a good case. The New York people also think they have a good case based upon the above decision and order, and the lawyers will have a chance to fight it out in a final decision in court.

Just how much the *Daily News* actually knew or how much speculation or guesswork was involved is immaterial. What actually happened is what counts.

Against this background of strife, charge and countercharge, passion, pride, frustration, and stubbornness coupled with the failure to get relief from both the mayor and the governor, it is no wonder that the trustees of Congregation Shearith Israel felt that they had no recourse other than to return to the courts!

MORE LITIGATION

This time they broadened the scope of their attack. They (the same group of plaintiffs as before except for the substitution of Samuel Hyman for Anthony Wallach) brought another action of forcible entry titled *Equity 623 recorded No. 6915*. It alleged that on the 21st and 22nd days of April 1902 the synagogue was forcibly broken into by

the respondents and asked that the Superior Court come to Newport and hear the case of forcible entry and detainer.

However, the defendants in the present instance were Fischel David, Hugo Riddell, Max Wasserman, Israel David, Charles Wagner, Meyer Kravetz, Sigmund Schwartz, Moses David, Nathan Ball, David Frant, Moses Wagner, Nathan David, Joseph Dannin, Israel Josephson, David Rosen, and the Congregation Jeshuat Israel, while Eugene Schreier swore out the complaint. By including Congregation Jeshuat Israel, the New Yorkers attempted to prove their claim against the entire Jewish community of Newport, rather than the Touro Congregation alone as in 1899. This was a clever move but no more so than the next brilliant counter move made by counsel for the defense, John C. Burke. At the request of Fischel David and group, both Max Levy and, later, Clark Burdick were added to the defense. While in 1899 Max Levy was still a court stenographer and law student, by 1902 he had become a full-fledged lawyer, the only Jewish lawyer in town and in fact the first in Newport's history. Burdick, a lawyer and prominent politician, was in later years associated in business with Nathan David in the now defunct Standard Wholesale Co. However, at the insistence of Burke neither Levy nor Burdick took an active part.

The strategy Burke now decided upon was based on a simple proposition. The only issue before the court was interference with the possession of the synagogue by the New York group, and the law was clearly against the defendants. Therefore, the only way to right the wrong claimed by his clients was to bring the matter before a court of equity. Hence, he astutely conceived the maneuver of asking Judge W. W. Douglas, who was in charge of the Newport Trial Division calendar of the Supreme Court, to restrain himself from hearing the forcible entry and detainer action being brought by the New Yorkers until Burke could file a bill in equity and his clients be heard. Burke proceeded to Providence to appear before Judge Douglas in person with his Bill of Complaint, which was numbered *Equity 622 recorded No. 6952*. It was titled "David, et al. vs. Levy et al."

CASE REACHES APPELLATE DIVISION

This action by Burke put Judge Douglas on the spot. Since Douglas would have to hear the forcible entry case in Newport, Burke felt he should not sit on the motion for the restraining order in Providence. Douglas, however, was up to the challenge. He shrewdly took himself "off the hook" by allowing Burke to present his case to three judges of the Appellate Division of the Supreme Court who happened to be

in another room in conference, agreeing to abide by their decision as to whether or not he should restrain himself. At that time the Supreme Court was comprised of two sections, the Appellate and the Trial Divisions.

After hearing Burke out, the Appellate Division advised Douglas not to issue a restraining order. They reasoned that the plaintiff's action was a summary one designed by law to protect persons who have allegedly been forcibly evicted from their property. If these allegations were true and they had indeed been evicted by Burke's clients, then the latter did not come into the court of equity with clean hands. Therefore, Judge Douglas should not enjoin himself from acting. Judge Douglas, true to his word, accepted their decision and refused to issue the restraining order. The forcible entry case then came before Douglas in Newport on May 8, 1902.

As in the original case of 1899, the issue was simple and was well presented by the plaintiffs. All they had to do was to show that they were in lawful possession and that the defendants had forcibly evicted them. If they proved that, then the court would order the restoration of the property to the persons who were unlawfully and forcibly evicted. It clearly called for a directed verdict against the defendants. First, Sheffield, counsel for the plaintiffs, outlined the case for the petitioners. Then, Eugene Schreier was called to explain how he was deprived of possession of the synagogue on April 21, 1902 by the sequence of events that occurred. Next, Doctor H. P. Mendes of New York testified to delivering the keys of the synagogue to Schreier, having received them from L. Napoleon Levy. He was followed by the parade of witnesses for the petitioners, who also testified to the disturbance at the synagogue. The Sheriff then testified to serving the court order which put Schreier in possession. Among the witnesses were Captain Garnett, Officers Dugan and Easton, and Deputy Sheriff Gifford, also Morton Chase and one Carlo Frero, both of whom saw the actual breaking and entering, and Sarah Schreier, who told of her encounter with the defendants inside the synagogue.

After an attempt had been made to reconcile the two parties, the case went to the jury. Judge Douglas was about to instruct the jury to direct a verdict against the defendants, when John Burke once again arose and requested leave to make a motion. The lawyers for the plaintiffs, including L. Napoleon Levy himself, James Tillinghast of Providence, and William P. Sheffield of Newport, objected on the grounds that no motion could be allowed as the action was a summary one limited to one point.

Judge Douglas, however, stated that he could see no harm in hearing what the motion was. Burke thereupon made another shrewd move. If indeed the court was going to direct the jury to return a verdict in favor of the plaintiffs, he requested that the Judge withhold execution for five days to allow him sufficient time to file a petition in the Supreme Court for a writ of *certiorari*, a petition to bring the record before the highest court for review. His move was based on the ground that the action by the New York trustees had been brought illegally since it had been sworn to by Eugene Schreier rather than by the trustees themselves, Schreier not being a party to the cause. The law on the other hand requires that the oath must be sworn by the complainant. Judge Douglas overruled the objection of the opposing attorneys and directed the jury to return a verdict in favor of the New York plaintiffs, but withhold issuance of an execution order for five days, as Burke requested.

MEANINGLESS VICTORY

The sum of it all was that, although the trustees of Shearith Israel had won, the victory was meaningless, for the Newporters continued in possession of the synagogue night and day. The Supreme Court on June 11, 1902, as recorded in the Rhode Island Reports, Volume 24, Page 249, ruled against the plaintiffs, on the grounds that Schreier, who had signed the complaint, was not a party to the cause and the law did require that the oath be sworn by the complainant. Hence the action by the New York trustees was not in conformity with the law and was therefore void. The trustees of Shearith Israel were right back where they had started from in April!

Counsellor Burke in the meantime had pressed forward his plan and had filed a bill in equity which encompassed his original theory. The bill, therefore, included a history of the synagogue, the statement in the Rivera will that set forth "The Jewish Society Doctrine", and the Deeds of Trust of 1894. He argued that the trustees of Shearith Israel had been holding the synagogue unconditionally for the Jews of Newport to worship in, and that the deeds of 1894 were invalid. The New Yorkers countered on June 16 by successfully having the bill in equity moved to the United States Circuit Court for the District of Rhode Island on the grounds of diversity of citizenship, because L. Napoleon Levy was a citizen of New York. Also, they were granted an extension of time to August 15, so that they could prepare a reply. They filed a demurrer and plea to the bill in equity in the United States Court, as had the Touro Congregation in 1899. In it they stated

simply that they had title to the synagogue and that the Newporters had forcibly deprived them of possession of their property.

Events then rapidly came to a head and the demurrer was heard on December 13, 1902 by Judge Arthur L. Brown. The decision was handed down on January 10, 1903. Judge Brown sustained the demurrer and plea of the trustees of Congregation Shearith Israel and dismissed the bill in equity which had been filed by John Burke for the Touro Congregation. Thus ended the possession of Touro Synagogue by the Touro Congregation, which ostensibly had held continuous services and definitely maintained peaceful possession since April 21, 1902.

ARGUMENTS STRUCK DOWN

Judge Brown's decision was both interesting and decisive in the way he struck down John Burke's arguments one by one. Judge Brown's opinion was to the effect that the original grant of land in the deed of 1759 was to individuals; that there were no facts to show that a trust arose as a result of that purchase; that, even if there were a trust in favor of the Jews of Newport, David and group did not allege that any of them were indeed Jews; and furthermore that Congregation Jeshuat Israel, a domestic corporation, could not be considered to be a Jew. Moreover, even assuming that they were Jews, they didn't show any facts which would give them legal or equitable interest in the building or the land. Finally, continuing his argument, Judge Brown referred to the famous portion in Jacob Rodriguez Rivera's will quoted by Burke that ". . . I have no exclusive right, title, of or to the Jewish Public Synagogue in Newport on account of the deed thereof, being made to myself, Moses Levy, and Isaac Hart . . . but that the same was done, meant, and intended in trust only, to and for the sole use, benefit, and behoof of the Jewish society, to be for them reserved as a place of public worship forever". He argued that the trust for the Jewish society did not mean a trust for the Jews of Newport and that they hadn't shown that they indeed constituted such a society or that they had the right to demand of such a society or its trustees the right to attend worship. Finally, he affirmed that, in addition to these failures of proof, the complainants could not take the law into their own hands, acquire possession before and then invoke the aid of a court of equity to maintain them in possession. This possession as it appeared from the bill was without legal or equitable justification and appeared by the plea of the New York trustees to have been obtained by forcible entry and detainer. In the last analysis, despite all that had happened, Judge Brown's decision

in the demurrer did not decide the question of legal ownership, but only the rights to possession.

RECONCILIATION

In the meantime the turbulent situation, which had been boiling since 1893 or 1899, the year depending on one's point of reference, came to a head in fact as well as by law. For, in the interval between the verdict by the State Court against the New York trustees on June 11, 1902 and Judge Brown's decision in the United States Court against the Newporters on January 10, 1903, attitudes softened and a spirit of conciliation once again permeated the air. Lawyers for the New York trustees of Congregation Shearith Israel, Sheffield in particular, approached Counsellor Burke and posed the question of reconciliation so that the controversy could be settled once and for all. Burke indicated that if the New York group would be reasonable, it could be accomplished. And within the Jewish community of Newport itself the two rival congregations, whose differences had not apparently been hard and fast and may have been more superficial and emotional than real and logical, agreed to phase out the rebel Touro Congregation and become one again under the banner of the Congregation Jeshuat Israel. After a series of conferences between the trustees of Congregation Shearith Israel and Congregation Jeshuat Israel, an agreement in the form of a five year lease was signed on February 1, 1903, the terms of which are still adhered to.

THE AGREEMENT

The principal terms of the agreement were as follows:

1. The annual rental was to be one dollar payable in advance on the first day of February of each year.
2. If said one dollar was not paid or any of the "covenants herein contained" were defaulted, the New York trustees could "reenter the said premises and the same to have again, repossess, and enjoy."
3. The Newporters could not "assign this lease nor lot nor any part of the said premises nor make any alterations therein" without the written consent of the New York trustees "under the penalty of forfeiture for damages nor could they occupy or use the synagogue nor permit the same to be used for any purpose other than herein stated without the like consent under the like penalty."
4. Congregation Jeshuat Israel "will cause the same to be used and occupied for the maintenance therein of the usual and stated religious

services according to the ritual, rites, and customs of the Orthodox, Spanish, and Portuguese Jews at this time practiced in the Synagogue of the Congregation Shearith Israel in the city of New York."

5. "Before any minister can officiate in said synagogue his appointment to the position must first be approved of in writing by a majority of the parties of the first part (the New York Trustees) or of their successors."

6. Any violation by the local congregation could result in repossession by the New York trustees, but otherwise they could "peacefully and quietly have and enjoy the said demised premises for the term aforesaid."

7. At the expiration of the term of time agreed to the Congregation Jeshuat Israel "will quit and surrender the premises hereby demised in a good state and condition as reasonable use and care thereof will permit damages by the elements excepted."

The committee for Congregation Jeshuat Israel, consisting of Julius Engel, I. J. Josephson, and David Frant, signed the document in the presence of William P. Sheffield. Signing for the New York group before Lewis A. Mitchell, Notary Public in New York City, Cert. No. 196, were the eight plaintiffs who brought the April 28, 1902 action against Congregation Jeshuat Israel.

At a special meeting called for that purpose the above lease was discussed and approved by Congregation Jeshuat Israel, as reported in the following minutes:

Newport, R. I.
Feb. 2, 1903

At a special meeting of the Board of Trustees of the Congregation Jeshuat Israel at Newport, Rhode Island on the 2nd day of February 1903 the following was unanimously passed:

Whereas all matters in difference between this Congregation and Napoleon Levy and others, Trustees, owners of the Synagogue building at Newport, having been amicably settled and adjusted by Messrs. Engel, Josephson, and Frant, a Committee authorized to confer with the said Trustees, and

Whereas the said Committee having reported the terms of said adjustment, it is now

Resolved that the said Julius Engel, I. J. Josephson, and David Frant of this Congregation be and they hereby are authorized and directed to surrender the possession of the Synagogue building, premises, and paraphernalia belonging thereto at Newport to the

said Trustees, owners of the property and to agree upon the terms and the provisions of a lease from said Trustees to this Congregation for the term of five years from February 1903, at the nominal rent of one dollar yearly, in form satisfactory to the landlord.

Barney Wilsker, Sec'y

This, then, is the story of a gallant group of "greenhorns", who were determined to shape their own religious destiny in their newly adopted city. They would have a synagogue to worship in no matter what was required to achieve it. Could it have occurred at any other place at any other time under any other circumstances? The chances are remote. Take away any of the given factors and it is unlikely that what had happened might ever have taken place at all.

STORY OF A PARADOX

It is the story of the paradox of Congregation Jeshuat Israel and the basis for the enduring relationship of relaxed congeniality that has flourished between the Sephardic Congregation Shearith Israel of New York and the Ashkenazic Congregation Jeshuat Israel of Newport. This relationship, which has been put to the test and been renewed many times, contrasts with the earlier controversies beginning in 1893. It settled once and for all the principle of which Newporters would be the legal successors to the old Congregation Yeshuat Israel and which group would shape the destiny of Touro Synagogue in the years ahead. Whatever hard feelings still existed were strictly among the members of the local congregation based upon differences of personality and of European origin. With the passage of time other differences arose out of diversities in secular education, disparities in the accumulation of material wealth, and religious preferences related to the three major branches of Judaism—Orthodox, Conservative or Reform. Such differences have in our time overshadowed the earlier controversies in emphasis and importance. It is hoped that one day the bonds common to all Jews will prevail over their differences, as they did in Newport almost three-quarters of a century ago.

NOTES

¹Many of the records of Congregation Shearith Israel were still packed in boxes after moving to its present location and thus were not available to this writer in 1972. However, secondary sources are available and helpful. In this category is Rabbi Morris A. Gutstein's "The Story of the Jews of Newport," which contains on page 271 the Rev. David Baruch's 1893 communication to New York referring to the organization of "two separate bodies." The rest of his account is brief and incomplete.

Likewise, the whereabouts of the Reverend Abraham Pereira Mendes's record book of 1883 through 1892 and the Touro Synagogue visitors book of 1880 through

1907, both of which came into the hands of Rabbi David de Sola Pool, are presently unknown. We are fortunate to have his summary of the data contained therein. This account confirmed the relationship between Eugene Schreier and the Congregation Shearith Israel and also informs us of the men who were active in the years before 1893, when Jews again settled in Newport. It also contains much other relevant material.

²Newport city documents, which were annual summaries of the city government's activities were important in verifying that Lewis Ginsberg was a paid employee of the organization in 1884. They disclose which rabbis were paid and which were not paid during the controversial period. They also revealed that no rabbis were paid during periods when the synagogue was closed.

³Judge Burke's recollections, even though reduced to writing many years after the fact, were a prime source for David Adelman's account and are a major source for the legal aspects of the controversy. Official court records confirm his recollections. They are also our most reliable source concerning his legal services to Fischel David and the Touro Congregation.

⁴The Newport police records are the most reliable source concerning the actual break-in, the persons arrested, and those booked on specific charges. They help dispel many of the myths that circulated in later years.

⁵The accounts in the contemporary press gave much detail during the entire episode on the actual break-in, the court cases, and the emotional aspects of the affair as revealed in the letters written by the various principals involved.

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A HALF CENTURY OF JUDAH TOURO LODGE NO. 998
INDEPENDENT ORDER OF B'NAI B'RITH

by BERNARD KUSINITZ AND SAMUEL KOSCH

As the year 1924 began it did not augur well for the future of the Jewish community of Newport, Rhode Island. The community was in a state of transition as a result of a change in its numbers, character, and problems. Many of the pre-World War I families had left, and many new ones were coming in. Most of the existing organizations which had been created to complement the efforts of Congregation Jeshuat Israel (Touro Synagogue) and the Ladies Auxiliary of Congregation Jeshuat Israel were limited in scope and in function. The hub of activity had been the YMHA and YWHA,* both of which had served their purpose admirably in bringing cultural, educational, athletic, and social activities to the community. However, their popularity along with that of other organizations was on the wane in the 1920s. Another group, The Family Circle, an early forerunner of the Cousins' and Couples' Club concept was limited to certain families. The situation, therefore, was opportune for a group such as the B'nai B'rith to enter the scene, fill the void, and meet the needs of the new community. The gloomy outlook at the year's inception was about to be reversed.

Newport's new man of destiny appeared in the person of Samuel Goldman from the Henry Friedman Lodge No. 899 of B'nai B'rith in Pawtucket, Rhode Island. Representing District Grand Lodge No. 1, he entered into negotiations with the late Nathan David and other community leaders such as Doctor Samuel Adelson, Max Adelson, and others.

In a relatively short time Judah Touro Lodge No. 998, Independent Order of B'nai B'rith, was organized with thirty-two charter members, including many of the community's outstanding young men and leaders. The fledgling group deemed it fit and proper to grace the new lodge with the name of Judah Touro, philanthropist, soldier, and benefactor of many worthy causes, including the Newport Jewish community. The Institution Banquet was held on November 2, 1924 at the New Cliffs Hotel with a four-part program. Among those present were many dignitaries of B'nai B'rith, including the following:

Louis Fabricant: President District Grand Lodge No. 1

Henry Lasker: Past President District Grand Lodge No. 1

*Young Men's and Women's Hebrew Associations.

Archibald M. Hillman: Past President District Grand Lodge No. 1

Max Levy: Secretary District Grand Lodge No. 1 (not to be confused with Judge Max Levy of Newport, who was toastmaster)

Nathan H. Friedman: Chairman on Intellectual Advancement

Samuel Goldman: Henry Friedman Lodge

Judge Samson Nathanson: Henry Friedman Lodge

Max H. Rebock: Deputy District Grand Lodge No. 1

This was before the heyday of radio and the emergence of television. The limited scope and activities of the few other organizations and the limited mobility of the community created a definite need and demand for cultural, educational, and especially social activities in this relatively homogeneous and gregarious community. Newport was ready for B'nai B'rith, and B'nai B'rith with its three principles of Benevolence, Harmony and Brotherly Love suited well the Newport Jewish community.

The new lodge met twice a month on Thursday evenings—alternating business and social programs. At first they met in the small upstairs room in the rear of Touro Synagogue. With an expanding membership creating the need for larger quarters, the lodge moved to the Builders' and Mechanics' Hall on Washington Square. Members wore tuxedos, and meetings were conducted according to full ritual. The lodge also took its degree team quite seriously; such teams were judged in annual contests conducted by the District Grand Lodge.

One of the most important aspects of the lodge's work was its support of the "Widerscope" program, which has since evolved into the Service Fund. The Widerscope program included the Anti-Defamation League, Hillel, and support for Palestine. The lodge raised money for this program by a series of popular bridge parties under the chairmanship of Irving Eisenberg and Samuel Kosch.

The social programs, which were open to the public, consisted of an address by a guest speaker on a timely and interesting subject, entertainment by Jewish talent of the community, orchestral music, dancing, and refreshments. Dances were also held annually for several years and on a number of Jewish holidays. The lodge for a time published a monthly newspaper called "The Spectator", edited by Murray Jacobs. It was revived in the 30s for six years with Samuel Kosch as editor. A popular activity during the 30s was the bowling league, organized by Abraham Pechow. It climaxed each season with an annual banquet. An example of the lodge's participation in national affairs

was a symposium held in 1936 in honor of United States Supreme Court Justice Louis D. Brandeis, who acknowledged the affair with a personal note to the lodge. The speakers were Judge Mortimer A. Sullivan, Judge Robert M. Dannin, and Rabbi Morris Gutstein, all of Newport. The committee included George Teitz, Nathan Ball, and Everett Hess.

From pre-World War I days the Jewish community had dreamed of having a community building of its own. When this finally came to fruition, the lodge moved to the building, commonly referred to as the Jewish Community Center*. Upon his death, Samuel Goldman, who had helped initiate the lodge, had attended nearly all of its meetings, and had been made an honorary member of the lodge, left a bequest to furnish a room for the use of the lodge. This was dedicated in an appropriate ceremony in conjunction with the seventh installation of officers on January 16, 1930. The room on the second floor of the Center is still used by the lodge, although breakfast meetings are now held in the lower assembly and social hall.

After World War II the lodge honored the returned Jewish veterans, as had the YMHA after World War I, in a gala affair held at the Viking Hotel with city, state, and lodge dignitaries present. During the war members and their wives had made regular visitations to the Naval Hospital, the Naval Base, the Robinson House on Kay Street, and the USO on Thames Street. They served pancakes and refreshments and played bingo. The lodge also took care of the two rooms in the Center that the Jewish Welfare Board had had remodeled to serve as a USO for servicemen of all faiths.

Although the lodge went into a decline after the war, it made a strong and lasting comeback between 1948 and 1950 with the entrance of new members and the presidencies of William Dannin, Clifford Weiss, and Bernard Kusinitz. During these three terms, the lodge debt was paid off, a surplus created, and past dues collected to the extent of 97 per cent. The 25th Anniversary event was held in 1949 at the Muenchinger-King Hotel. Much interest was created by a well-planned and extensive program embracing many B'nai B'rith activities and the use of local and professional talent.

Because of its impact on both the lodge and the community, and since it served for many years as a prototype with some modifications based on changing conditions, the program for the crucial year of

*A Greek revival mansion across Touro Street from Touro Synagogue, moved from its former location on Washington Square. Ed.

1948-1949, as planned by the program chairman, Bernard Kusnitz, under the supervision of the president William Dannin, is relevant:

Dedication of Veteran's Plaque at Jewish Community Center
and Memorial Service at Jewish Cemetery

June Frolic and dance at Newport Beach

Informal talks on "City Planning" by Alfred Edwards

Card Social and refreshments at Community Center

"Jewish Wit and Humor" featuring Frank Shapiro

"Father and Son Night" with movies

Hillel Pilgrimage to Newport from three Rhode Island Colleges

"Trends in Anti-Defamation" and "The Rumor Clinic" featuring
James R. Silverman

"The German Mess" featuring Dr. Saulk Padover

Silver Anniversary Dinner Dance, with Quincy I. Abrams, Vice
President, District Grand Lodge No. 1 as guest speaker

The community, with the aid of B'nai B'rith, had responded to its cultural and educational needs with less emphasis on the social aspects than in previous years. Dances were held with less and less frequency, while entertainment took the form of spectator rather than participation events.

In the fifties and sixties the lodge again demonstrated its ability to revitalize itself and to respond to changing conditions. The community underwent a considerable transformation as it had after World War I. It now became more mobile. Its roots were now no further away than in nearby cities rather than in Europe. Radio and television supplied home entertainment to a degree never before known. As the need and desire for social and cultural activity declined, the lodge switched its emphasis to service activities. The ritual type meetings on Tuesday or Thursday evenings were discontinued in favor of Sunday morning meetings conducted without ritual but quite often with breakfast. Programming and activities embraced the entire range of official B'nai B'rith concern.

There were annual Anti-Defamation League Programs with appropriate speakers, such as, on one occasion, Sol Kolak of the Boston ADL office. There were brotherhood nights with such speakers as Father Henry Sutcliffe, Sister Mary Christopher, and Michael Walsh; panel discussions; choir groups; and presentation of plaques to graduates of the Naval Officer Candidate School. Sports nights were held in the Jewish Community Center with speakers, movies, prominent sports

personalities, and refreshments. Trips to Boston in groups for athletic meets were arranged. Citizen of the Year Awards accompanied by testimonial dinners were initiated in 1957 with Winifred Mason as the first recipient. The lodge also produced a musical revue, "The Community Capers of 1961", the proceeds of which went to charity.

Monthly visitations were made to the Newport Naval Hospital by a committee of brothers including Jack Falkow, Morton Kosch and Barney Cohen. The committee provided good cheer, refreshments, bingo parties, and prizes. For this activity the lodge received an American Red Cross Certificate Award. The lodge hosted several Central New England Council meetings. John J. Dannin, a member of the lodge, became president of the Council in 1964.

Three faithful workers, John J. Dannin, Samuel Kosch, and Irving Eisenberg, were honored, with special recognition to Kosch, in a special ceremony at the Muenchinger-King Hotel in which the new members of that year were inducted under the designation "Sam Kosch Class of 1960." Annual Memorial Day services were held at City Hall, and markers and flags were placed on Jewish veterans' graves. A Judah Touro Lodge No. 998 Scholarship in memory of Joel Goldberg was awarded annually on a non-denominational basis to a Rogers High School student entering college.

The lodge participated regularly in *Oneg Shabbat** programming in Touro Synagogue. Funds were raised for the Chile Disaster Relief of 1966, the year of the great earthquake, for which the *National Jewish Monthly* carried a story with pictures.

A significant event in the sixties was the 40th Anniversary of the lodge, on October 13, 1964, held at the Shamrock Cliff House. The prestige of the lodge in B'nai B'rith circles during the Morton Socks presidency was evidenced by the presence at the celebration of Label Katz, the international president of B'nai B'rith. Also present were local, state, national, and military dignitaries. The overall committee was headed by Morris Dannin and included Samuel Kosch, Irving Eisenberg, Barnett Fisher, Aaron Slom, Earle Slom, Milton Mitler, John J. Dannin, Morton Socks, Joseph Dannin, Philip Goldberg, Samuel Bor, and Jack Falkow. Among the dignitaries were Mayor Charles A. Hambly, Jr., of Newport; Rabbi Stanley H. Dreifuss, first rabbi of Temple Shalom of Newport; a representative of Governor John H. Chafee; Veterans Administrator Charles L. Nelson; US Representative Fernand St. Ger-

**Oneg Shabbat*, literally "Sabbath joy or delight" (Hebrew). Cultural or social gatherings held on Friday nights in synagogues following the regular services.

main; US Senators Clairborne Pell and John O. Pastore; and Rabbi Theodore Lewis of Touro Synagogue.

While much of the familiar programming continued into the seventies, new activities were added. Among these were annual Mayoral resolutions honoring the State of Israel accompanied by the raising of the Israeli flag at City Hall. The 25th Anniversary of the State of Israel, celebrated by one of the largest crowds in history at the Jewish Community Center, was arranged by Charles Waterman of the Jewish Planning Council and president of Judah Touro Lodge, the lodge being one of the sponsoring groups of the Council. Since the inception of the AZA* and its metamorphosis into the B'nai B'rith Youth Organization for both boys and girls, the lodge has had a growing relationship with youth extending into the late 60s and 70s. It participated in joint programming and provided both financial and administrative assistance when they hosted other youth groups from nearby cities. The lodge, working with the Jewish Planning Council, obtained a room in the Center for the exclusive use of the BBYO. Vocational guidance was offered to the young people through the B'nai B'rith vocational service.

While visitations to the Newport Naval Hospital ceased, the lodge's brotherhood programming expanded to include other groups such as the Stone Mill Lodge No. 3 of the Masons. The Lodge observed the 1970 Brotherhood Week in March 1970 in Touro Synagogue with Father Joseph P. Lennon, Vice President of Providence College, as speaker. This was the first appearance of a non-Jewish clergyman there as a principal speaker since World War I days, and the first of a Catholic priest ever.

The future of a group is assured only to the extent that there is a constant injection of new blood to blend with the experience of the old.

It would appear that the survival of the Judah Touro Lodge No. 998 of B'nai B'rith in Newport, while other similar groups disappeared after a few years, was attributable to (1) the flexibility of its leadership in recognizing the changing role of B'nai B'rith in the community; (2) the changing emphasis of B'nai B'rith programming as the character, nature, and needs of the community changed; and (3) the fact that many of the brighter and more concerned young men of Newport saw fit over the years to become involved in its activities.

*Aleph Zadek Aleph, the first and last letters of the Hebrew alphabet.