

the Conference had become Zionists.

By this time it may well be that the majority of our members are Zionists. We do not seek to know. We do not submit our members to a creedal test.

The manifest fact now is that there are many, perhaps even a majority, of our members who are both convinced Zionists and convinced Reform Jews. These rabbis do not find their Reform Judaism and their Zionism to be mutually incompatible....

Whether we are justified in thus changing a past emphasis, or whether what we have changed is an essential, indispensable doctrine, may well be debated. All I can say to you is that the majority of the Rabbis of the Conference believe that it is a justified and liberal change to permit each member to have his own opinion on Zionism without considering this opinion a violation of Reform. If the judgment of the majority of the Reform Rabbis on this question is not acceptable to you, whose judgment will you accept?<sup>12</sup>

This was, of course, a dialogue of the deaf, since the key argument of Beth Israel's dihard protest was that to support Zionism was to violate the essence of Reform Judaism. However, once again Freehof's ability to articulate a vision of Reform Judaism with which the vast majority of his colleagues – and increasingly, most Reform congregants – agreed, contributed further to increasing his stature in the movement.

In short, given the CCAR membership's growing interest in halakic questions, which Freehof himself had done much to stimulate; given the evidence his colleagues saw of his halakic expertise in his CANRA activities and in the 1947 Report on Intermarriage; and given his enormous personal visibility and prestige in the CCAR in the 1940's, it is no surprise that colleagues who wanted answers turned to him even while Israel Bezaan served as chairman of the CCAR Responsa Committee. We therefore turn now to a consideration of the enterprise that became his passion and consumed the bulk of his time and effort for the rest of his career, the Reform responsa.

## CHAPTER 5

### SOLOMON B. FREEHOF'S "REFORM RESPONSA"

Let me say at the outset that when a liberal, modern rabbi bases an opinion on Jewish Law, it does not mean that we should be strictly governed by the Law in the Codes, but that we should be guided by them as much as is possible under modern conditions. The reason why Jewish Law should be our guide as much as possible, is that it is much more than merely Law, but is an embodiment and a summary of centuries of Jewish thought and feeling.

— Solomon B. Freehof, 1953

As we saw in Chapter 4, Freehof did not set out to become Reform Judaism's premier rabbinic authority. Rather, a combination of factors placed him in that position in the late 1940's: his personal stature within the CCAR and the Reform movement at large; his growing halakic expertise and the recognition thereof afforded through his CANRA activity, his publication of *Reform Jewish Practice*, and his authorship of the 1947 CCAR Report on Intermarriage; and the growing interest among CCAR members in the relationship between Reform Judaism and the rabbinic tradition, which had its roots in Jacob Lauterbach's influence and in the interwar reorientation of Reform Judaism, and which Freehof's CCAR papers had done much to strengthen. Even while his friend Israel Bezaan, Professor of Midrash and Homiletics at HUC in Cincinnati, chaired the CCAR

merely take the Torah out as a symbol and have the boy read from the printed Bible."<sup>44</sup>

Enough variations on the same question continued to cross his desk through the 1930's that in 1960 he included a responsum on "Bar Mitzvah on Sunday" in *Reform Responsa*.

Here he made very clear the reasons for his objection to the growing phenomena of bar mitzvah in Reform congregations, and took a stronger negative stance than in his 1953 letter.

The frequency of inquiries as to Sunday Bar Mitzvah is manifestly due to the unfortunate fact that the social celebration that accompanies the Bar Mitzvah has become so elaborate and so many guests are invited, that parents are eager to have it on Sunday, the day on which more people can attend. This elaboration of festivities is nothing new with us. It is an old social ailment which responsible leaders of the past have endeavored to curb....

It is surely our obligation to do as much as possible to keep the Bar Mitzvah primarily a religious festival and not to make it easier to convert it entirely into a festivity. Clearly, the important part of the Bar Mitzvah is the calling up of the boy to participate in the Torah reading....

So it is clear that the Bar Mitzvah must take place on the Sabbath in connection with the Torah reading. As for the party, it is closer to tradition if the social festivities take place on the same day. [The Magen Avraham] says that it is a mitzvah to make a party (Seuda) on the day when one's son is Bar Mitzvah.

However, it would be no great violation of tradition if the party were held on Sunday.... [I]t is much easier to keep the Bar Mitzvah service religious than to make the modern party spiritual. It would be wise, then, to make clear distinction between the ritual and the party. Let the ritual remain on the Sabbath where it belongs, and let the party be on Sunday, when the people seem to prefer it.

If, however, there is great pressure on the part of the people, the rabbi can at least hold firmly to the fact that the service can take place only when there is a Torah reading.... We can have the ceremony on any day when the Torah is regularly read....

But to conduct a Torah reading where no Torah reading belongs, to recite the blessings of the Torah when none are due (Berocho L'vanolo), merely in order to make the religious service convenient to the social celebration, is to consent to an inversion of values, and should not be done.<sup>45</sup>

In private he was far more emphatic:

I am sure you know my reasons for not having Bar Mitzvah at Rodef Shalom. If I had found [it] practiced [here] when I came here twenty-five years ago, I would not have abolished it; but since it has not been practiced here, I would not institute it....

I will leave out all the historical arguments, the fact that it began as a general practice in the fifteenth century, etc. I am concerned with the fact that Confirmation is so magnificent a substitute... [that] I would do little to weaken Confirmation, the first creative Reform ceremony. Secondly, nowadays, with the lavish child-worship by American parents; Bar Mitzvah observance has become a public disgrace. Third, once one or two children's parents have these lavish parties, no parent can then afford to deny it to his child, and Bar Mitzvah becomes universal in the congregation. When that happens, every Sabbath has a Bar Mitzvah, the regular Sabbath service is destroyed because the regular worshippers stop coming, and you have a different congregation every Sabbath....

I would not presume to advise you, but I want you to know that I am glad that I never yielded to the Bar Mitzvah pressure; and I doubt whether any of my colleagues can accuse me of lacking traditional Jewish feelings.<sup>46</sup>

The bar mitzvah juggernaut continued to roll on, and in 1963, in response to questions he had been receiving about the possibility of scheduling them at Saturday afternoon services, Freehof published a responsum endorsing the idea for congregations that had bar mitzvah, noting that it seemed a good way to revitalize a hitherto neglected service.<sup>47</sup> He received the following good-natured protest from a colleague:

Now I've noticed finally that you come out strong for the Saturday afternoon Bar Mitzvah. Oy vey iz mir! O naive one, don't you realize that the motive for this kind of thing is as far removed from religion as it can be, but that it proceeds directly from a desire to go directly from the tfilah to the cha-cha. We on the front lines are fighting this thing hard, for it means that people come to the service in their formal clothes & fancy dresses (or don't come at all), and presto, the party is on.

Freehof's response was revealing.

It is evident to me that I have much to learn about the realities of American Jewish life. Here I was in favor of Saturday afternoon Bar Mitzvah on Halachic grounds and also on practical grounds

definition of the Sabbath that excluded modern opportunities for leisure, was quite accurate.

Fresko answered a great many questions on Sabbath observance, most of them in the years prior to 1972, when the CCAR published its first guide to Sabbath observance, *Tadrish Le-Shabbat: A Shabbat Manual*. His Sabbath responses overall generally resulted in decisions which accorded with Betan's notion of what a Reform Sabbath should be, but Fresko never actually referred to Betan's response, nor did he ever make a similarly sweeping statement about what the Sabbath should be in a Reform context. He answered questions as he received them, addressing himself specifically to the issues raised, and arrived at his conclusions through recourse to textual sources. However, there is an ongoing tension in his writing between his desire to provide guidance as requested and his conviction that Sabbath observance was one of the areas in which Reform should not attempt to set down strict guidelines.

Furthermore, Fresko himself realized that with regard to the Sabbath, the Reform distinction between ethical laws and ritual (or behavioral) practices was extremely problematic. In 1958 he was asked by a Christian correspondent whether the Jews considered the commandment to observe the Sabbath to be ceremonial or moral. He replied that that was a difficult question to answer.

The difficulty lies in the fact that the classic Jewish law would not admit too sharp a distinction between the moral and the ceremonial, since both are in obedience to God's commandments. The Talmud (Makkot 23b to 24a) in discussing the question of summing up or condensing the 613 commandments, sums them up in the verse from Habakkuk, "The righteous shall live by his faith."

So you see that their feeling is that the ceremonial and the ethical are of one nature. Of course, they did make a distinction be-

tween the commandments which are "between man and man" and those which are "between man and God," but, nevertheless, all of them together are deemed equally sacred, equally spiritual, and therefore, one might say, equally ethical."

The difficulty for Reform in general, and for Fresko in particular, lay in fulfilling the ethical imperative of the Sabbath by translating it into ritual and practical behaviors. He resolved this difficulty by appealing regularly to the need to preserve as much of the "spirit" of the Sabbath as possible, given that the realities of modern life made it impossible to observe the traditional Sabbath fully. Thus a questioner who complained that a temple had held a Purim dance on Friday night and a carnival on Saturday afternoon, and wanted to know whether that was appropriate, received the following answer.

Reform Judaism never told anyone to violate any Sabbath law. However, it faces the fact that Sabbath laws in the western world are largely neglected and tries to rescue the *spirit* of the Sabbath as much as is possible. Therefore it is always a vague situation we have to meet when we are asked if we should permit a certain public event on a Friday evening. The best that we can do in this vague situation (whose vagueness we did not create but life created) is to judge by the feeling of the particular community. If there is a strong current of indignation against a Purim dance on Friday night we are in duty bound to pay heed to it. We respect whatever Sabbath observing sentiment is present, provided it is genuine, as far as we can. Of course, this means that the dance occurs after the Sabbath service. For example, here in Pittsburgh, we have no Friday night service. We have a Saturday morning and a Sunday morning service. Once or twice our Mens Club gave its Father and Son dinner on Friday night. I permitted this on condition that we have a little Friday night home service first, and so the dinner became a home dinner. In other words, in such questions we must judge by the sentiment of the community. There is a principle in Jewish law which says, "Everything is according to the place and the time." Of course, they did not mean it to apply to whether the Sabbath is to be observed and how much, but we apply it in this realistic circumstance in this way."

In his appeal to the "feeling of the particular community" we see the notion of *minhag* brought down to the level of the individual congregation. What is striking here, however,

ber from officiating at a mixed marriage. [but] the older men insisted that there are times when it is far preferable to do so. Therefore, because of the influence of the older men, the former regulation of the Conference was reiterated: The Conference frowns on mixed marriage, but we left out any statement that the Conference prohibits them."<sup>21</sup> However, aside from that exceptional case (in which he also said that officiating was only a possible last resort if the man absolutely refused to undergo a very undemanding conversion), Freehof was consistent throughout his career in his opposition to rabbinic officiation at mixed marriages. As he had written to the same colleague only a few months earlier concerning the same elderly couple:

If it were a young couple, one Jewish and one non-Jewish, I believe we ought to stay firmly with the preferred stand of the Conference and not officiate....

Our concern is the maintenance of the Jewish community which is small and subject to attrition all the time. Whenever a rabbi follows the decision of the Conference and refuses to marry such a mixed couple, he helps create a mood in the community which makes it clear to young people that such marriages are improper from the religious point of view. It tends to discourage such marriages. If you will forgive the personal reference, if in my thirty years in Pittsburgh I had consented to officiate at such marriages, there would have been, by now, a hundred of them. I have had to endure the resentment of one family very now and then; but I have helped every other family in the community. Young people at college easily and naturally fall in love with each other. My firm refusal over the years has helped them decide not to marry, and there are certainly hundreds of couples in which Jews are married to Jews and Christians to Christians, and both thereby benefited, due to my willingness to endure the resentment of a few families. By refusing to marry such a couple, you are helping every other family in your congregation.

But all the above does not apply strongly in the case that you mention.... I would say to the Christian groom in this case, "If you would state that it is your intention to join the Jewish congregation and be part of the Jewish community, that is all I would require of you, and we would consider your family a Jewish family..."

In case he refuses to do that, which is a reasonable request on your part, then he is more than a merely nominal Christian....

If it does not work, then do what you consider you ought to do. And don't write me that this is not a firm answer — I know that myself!<sup>22</sup>

Over the years Freehof's arguments against mixed marriage did not change; he frequently exhorted colleagues not to waver in the face of community or parental pressure, even while he sympathized with and even consoled those who felt that they had no choice but to give in.<sup>23</sup> He was apparently unaware of the extent to which his colleagues were officiating at mixed marriages; in 1966 he expressed his dismay that his expectation that rabbinic officiation would disappear had been so wrong:

When I was Chairman of the Committee on Marriage, we passed a number of rules about mixed and intermarriage. We refrained, however, from absolutely forbidding our members to officiate. This hesitation was due to the fact that a few of our older members would occasionally officiate at a mixed marriage, so we thought at the time that it would be sufficient merely to express the disapproval of the Conference to mixed marriage. The implied hope was that since such are few, it will cause us little trouble.

But now that you tell me that many members of the Conference in Long Island do officiate at mixed marriages, then perhaps it is a time for the Conference to take a strong stand on the matter.<sup>24</sup>

However, this was the only time he expressed such a sentiment. Since Freehof's reading of the 1909/1947 resolution was that CCAR members were not to perform mixed marriages, he was not about to publish any responsa suggesting to colleagues how far they could go in participation in one. The only responsa he published on mixed marriage, therefore, was one which the CCAR resolution did not cover: Could a mixed marriage (at which the congregation's rabbi did not officiate) be held on the synagogue premises?<sup>25</sup>

By way of answering he explained that it was analogous to other questions he had received, in that all wanted to know "to what extent, if at all, should we participate in a

Responsa Committee:

But in practice almost no difficulty at all was ever experienced in arriving at a decision. The decision was based on classic Jewish law. Because of the exigencies of wartime, the more lenient authorities were generally chosen, and when even the liberal decision would be contrary to the practice of Reform Jews, their exceptional point of view on the matter was specifically provided for. Sometimes, too, the Orthodox member of the Committee would record his disagreement. On this basis it was possible to come to a decision on virtually every question which confronted us with almost no disagreement either among the members of the Committee or from the complete Committee of the CANRA when the reports were presented to it.<sup>11</sup>

In other words, allowance was made for diversity of Jewish religious perspective. With his characteristic graciousness and conciliatory tact, however, Freehof forbore to mention the Responsa Committee's struggle to achieve its unified perspective. As chairman of the committee, Freehof had wisely laid down the principle from the beginning that all decisions would be reached by consensus, not by majority vote. Therefore, when they were absolutely unable to reach consensus without one of the members feeling that agreement would violate his particular principles, they either allowed for multiple solutions or refrained from offering any decision.

Another tactic which made cooperation possible was an agreement to avoid certain areas of halakhic jurisdiction where consensus would be impossible. CANRA's mandate was Jewish military life during wartime; by narrowing its focus as much as possible the Responsa Committee was able to avoid a number of potentially fatally divisive matters on the grounds that they were primarily of concern in civilian life, and should therefore be left to the jurisdiction of whichever civilian rabbi a GI chose to turn to. As Freehof explained, "At first we discussed a number of questions with regard to marriage and divorce, but we very soon decided to stop dealing with such matters."<sup>12</sup> The commit-

tee did not decide *ab initio* not to deal with certain questions; rather, they were forced to do so by some of the realities that confronted them. Yet another tactic was simply to refuse to render a decision and instead to leave matters in the hands of the individual chaplain. The files do not reveal how individual chaplains felt about having their questions unanswered, but the fact remains that CANRA was usually able to prevent American Jewry's characteristic religious fractiousness from undermining the JWB's efforts to remain on good terms with the military and the War Department and thereby advocate most effectively for Jewish service personnel.

America's rapid and massive expansion and mobilization of its military forces resulted in the drafting or enlistment of tens of thousands of Jews in the first months of the war. As a result, the Responsa Committee received more questions (twenty-two in all) in 1942, when the committee members were new to their task as well as to each other, than in any other single year. Not surprisingly, these included most of the thorniest questions.

Table 3: Questions Received by CANRA Responsa Committee in 1942<sup>11</sup>

February	1. May the Torah be read at other times if it is impossible to hold services on Shabbat mornings?
	2. Should Jewish soldiers practice the etiquette of uncovering their heads for the singing of the National Anthem when it is sung at the conclusion of a service?
	3. Should Jewish services be held in a post interfaith chapel when there is a Christmas tree present?
	4. To what extent are Jewish soldiers justified in violating the dietary laws under military conditions?
	5. Should married Jewish soldiers be encouraged to write conditional divorces for their wives to prevent their becoming agunot in case of the soldier's disappearance?
	6. Should Jewish soldiers being married insert a special clause in their ketubah providing for a divorce in case of the soldier's disappearance?
March	7. Could the fact that an individual was a kohen allow him to claim C.O. status?
	8. Could a rabbi who was a kohen volunteer to be a chaplain?
April	9. If a soldier was about to be shipped overseas, could a chaplain perform a marriage for him during sefirah, hot ha-mo'ed, or other times when weddings are not customarily performed?
May	10. Could dances and other festivities be held for Jewish troops during sefirah?
August	11. Should a JWB worker arrange for a marriage to be performed by a Justice of the Peace or a Christian chaplain if no Jewish chaplain or civilian rabbi is available?
	12. May a chaplain undertake the conversion of a soldier's Gentile fiancée in order

Torah, he noted that aside from Shabbat morning, Jewish tradition also mandated Torah reading on other occasions, which he listed. Then he continued:

As to whether the Torah can be read on Friday night (a question which was not specifically asked), there is a partial precedent for that in the reading of the Torah on the evening of Simchat Torah. The Union Prayerbook (Newly Revised) has made provision for the reading of the Torah on Friday evening but considers it merely a voluntary part of the service. Our answer is general, therefore, can be that the Torah may be read at any regular service when it can be read with reverence and solemnity but that the preferable time is Sabbath morning.<sup>21</sup>

Concerning bareheadedness, he cited Lauterbach's responsum which demonstrated that covering the head was a custom of comparatively recent origin in Judaism, but conceded that

widespread custom has considered bare-headedness un-Jewish. This custom should be respected although the reason often given for the custom (chukkas hagoi) should not be emphasized in these days and in the environment of army comradeship. In the light of these considerations, namely that we are dealing here not with an absolute law but with a custom revered by many Jews, we can give the following answer: that if the National Anthem or "America" is sung before the Jewish service actually begins or after the service comes to its close (i.e., not in the middle of the service) there is no objection to Jewish soldiers uncovering their head. (sic)

Concerning the Christmas tree he wrote:

The same chapel is used in the army for Catholic, Protestant, and Jewish services. Around the Christmas season for a week or two there will, in all likelihood, always be a Christmas tree in the chapel. This Christmas tree elaborately decorated cannot possibly be removed. It would be contrary to public policy (mipnei darshet shalom) if, during this season of friendliness and good will, Jewish soldiers should refuse to enter the chapel and hold services there. Let us answer the question as follows:

The Christmas tree is not in essence a Christian symbol. It is just a folk symbol. If it is not crowned with a cross (it generally is crowned with a star) Jewish soldiers should not refuse to hold services in the chapel.

Finally, concerning the dietary laws he referred to the responsum of Gumbard Deutsch on the same question during the First World War. Deutsch's responsum was essentially an endorsement of the well-known responsum of Ezekiel Landau concerning Jews who were drafted into the Austrian army in the late eighteenth century, which took the stance that since these Jews were draftees, they were considered to be under compulsion and therefore not liable for violations they committed of Jewish law. Frenchof proposed the following response:

Our answer ought to be virtually that of Ezekiel Landau: Try to observe as much as possible. If under certain circumstances it is impossible to obtain kosher food then you are not committing a sin because you are under the compulsion of the government military law. The Sabbath laws are much more important than dietary laws and yet a soldier could not refuse to march or to carry a burden or to fire a gun on the Sabbath.

Frenchof's proposed answers are strikingly amateurish compared to his later work, both in their lack of specificity with regard to halakhic citations and in their lack of concern for traditionalist sensibilities. The only sources he appears to have consulted are the responsa by Deutsch and Lauterbach available in the CCAR Yearbooks.<sup>22</sup> All the earlier halakhic sources he cites are ones which are cited in those two responsa. When offering the evening Torah reading of the festival of Simchat Torah as a precedent for Friday night Torah readings in military camps, he cites no halakhic basis for such a leap, offering instead only a quibblesomely Reform phrase: that the Torah could be read at any regular service provided it was done "with reverence and solemnity." Nor did it seem to occur to him that the Reform practice of reading Torah on Friday night would not constitute an acceptable precedent for meditationists. His language with regard to head covering reveals his own Reform tendency to regard this as a minor matter, while the argumen-

Traditional Jews would not read [Torah] on Friday night and would not look upon the reading on the evening of Simhath Torah as even a partial precedent. If, however, for one reason or another it should have been impossible to read the Torah during that week, I dare say as a *Hora'at Sha'ah* [temporary measure] such reading may be arranged....

Orthodox Jews would never uncover their heads at any religious service. Soldiers do not uncover their heads when they salute the flag. For that reason one could not make it permissible to remove the hat, since both Jewish tradition and the regulation governing the American soldier agree in honoring the flag with the head covered. Since it is very difficult to find only reformed [sic] Jews in any particular group, it seems to me that it will be right to keep the head covered throughout the Service.

...As to the Christmas tree, even if it is not a Christian symbol, it is a Christian practice, and would interfere with the Kavanah and the atmosphere of the Jewish prayer.

The folklore or the background of the ceremony is not the decisive factor. I know that the average Jewish layman and the average traditional Rabbi would find it impossible to worship in front of a Christmas tree.

...Where danger to one's health is involved, the transgression of the Dietary Laws is legitimate. When there is no possibility of obtaining sufficient kosher food, the soldier would be obliged to eat whatever he can get, but he should and would distinguish between the eating of treifah food and food that is not quite kosher. I do not believe that the average kosher soldier would make a distinction between meat of a kosher animal that was not prepared by Shechitah and pork or pork-products. He would abstain from both. Though the Sabbath Laws are more stringent than the Dietary Laws, the soldier would find it more difficult to eat treifah than to violate the Sabbath. The advice of Rabbi Ezekiel Landau still holds good.<sup>21</sup>

In mid-March Freehof sent a second draft of the answers to these four questions to Steinberg and Jung. Concerning Torah reading, he added Steinberg's suggestion that the scroll be kept in the Ark at all times even if it couldn't be read and Jung's idea that it could be read on Friday nights as a *hora'at sha'ah*. He accepted Steinberg's and Jung's insistence that in traditional services all heads were to remain covered for the national anthem but insisted that in mixed services each soldier was free to follow his own custom.

Since there was complete disagreement on the Christmas tree, he informed them that he would forward both opinions to CANRA. Concerning the dietary laws he adopted the idea raised by his two colleagues that there were degrees of violation and that soldiers should be least willing to violate the most severe prohibitions.<sup>22</sup> Steinberg accepted Freehof's second draft; Jung still pushed Freehof to state that "only at designated reformed [sic] services will soldiers remove their caps." He noted that even when allowing the Torah to be read on Friday night as a temporary measure, the blessings should not be recited. He also informed Freehof that since the average soldier might not know how to grade the various levels of *kashrut* violation, he was preparing a guide for distribution to the chaplains to assist them in guiding the "conscientious orthodox and conservative Jew."<sup>23</sup>

While these questions were being discussed, a fifth one was brought to CANRA and turned over to Freehof's committee. On March 16 Freehof informed Jung and Steinberg that they had been asked to rule on whether a *kohen* could claim conscientious objector status on the grounds that as a soldier he would come into contact with dead bodies, and also whether a *kohen* was allowed to serve as a chaplain. Reform Judaism had ceased to recognize the special status of the *kohen*, so for Freehof this was a non-issue. Both Steinberg and Jung agreed that a *kohen* could not claim CO status, because of the general principle established by Ezekiel Landau that a soldier is under compulsion from the government and therefore not responsible for violations of Jewish law he must commit. The chaplaincy question was different, however. Clergy could not be drafted as chaplains; they had to volunteer, and therefore the principle of compulsion did not apply to them. It appears that in his original letter to Jung on this subject, which has not survived,

Ernstof's draft responsum, with which Jung concurred, is a quantum leap in both style and content over his first tentative attempts in the winter of 1942. It is, in fact, a model of the form which he would use for the next 45 years, and as such is worth quoting in its entirety.

**Question:** A woman was divorced in the civil courts about a year ago. She has recently gotten a Get. She wants to remarry, and the soldier she is to marry is about to go overseas. However, the prescribed three-month interval between her divorce and re-marriage has not elapsed. Should we waive this required period of waiting under war-time conditions?

**Answer:** The purpose of the law requiring the three-month interval between a divorce and marriage to another man is in order to establish the paternity of a child so that there should be no doubt whether a child born seven months after a second marriage is a seven-month child of her second husband or a nine-month child by her first husband. See the discussion in Yevamos 42a. If we consider merely the question of fulfilling the purpose of [the] law, then we could decide that *masamak* if she has been civilly divorced and therefore separated from her first husband for a period of much longer than three months, that the purpose of the law is fulfilled. If we so decide we would be taking the same stand as Rabbi Judah in the *Tosefta* Yevamos VI, 6 where the discussion concerns a woman who was driven out of her husband's home and gone home to her father's house, etc. Rabbi Judah decides that she may be married at once to another man (i.e., if she has been separated from her husband for a period longer than three months, she may be re-married at once after her divorce). Somewhat the same reasoning is back of the decision by Joseph Caro in the *Schulchan [sic]* Aruch Even Ho-ezer 13, 1, when he decides that the three months must be counted from the day that the divorce is written even though the woman may not get the divorce for a considerable time afterwards, and the reason he gives for this decision is that they had not lived together after the divorce is [sic] written.

However, although the woman in the case referred to our Committee has been separated from her husband for a period longer than three months and has thus fulfilled the basic purpose of the law of waiting, she may not be re-married until three months has [sic] passed since the Get, for the law is not according to Rabbi Judah who would permit her immediate marriage, but according to Rabbi Meir who forbids it. See the *Tosefta* passage just quoted, and b. Yevamos 42b. See also Be'er Hapaleh to Shulchan Aruch,

Even Ho-ezer 13, 1. In other words, in order to prevent carelessness with regard to the law in the case of women [sic] the paternity of whose child might be open to doubt if she marry before the three-month period, the rabbis have made a *gezeirah* forbidding the second marriage before the three-month interval, even for such women who could not have been physically intimate with their husbands during the period involved.

In guiding our chaplains with regard to such marriages, we should follow the same principle which we have followed in a number of analogous decisions in the past and ask the chaplain to consider the family background of the parties involved. If, for example, they are from a family belonging to a Reform synagogue which accepts the validity of civil divorce, they may be married. If they belong to a family of stricter observance which does not accept the validity of civil divorce, then the rabbinical law of divorce must be followed including the requirement of a three-month period of waiting for all women no matter what their individual circumstances may be.

In the specific case brought before the Committee, the fact that the woman received a Get after having had a civil divorce is indelicate enough that either she or her former husband or the man that she is about to marry is Orthodox and therefore she should not be married until the full three-month period has elapsed.<sup>44</sup>

In this case the answer was easily found in the Talmud and the codes, and Ernstof explained it clearly and concisely. In their discussion of this issue all three rabbis had expressed their desire to find a permissive ruling that would allow this couple to marry without delay. For Ernstof, as for his mentor Jacob Lauterbach, not the *halakha* but the ethics of the *halakha* were the essential concern, which in this case was to remove any chance of doubtful paternity. In his view this purpose had been served by the year-long separation between the woman and her first husband after their civil divorce, and so he would have been quite willing, on that basis, to allow her to remarry immediately. Accordingly he had written to Jung:

I think that we agree that there seems to be no other solution except that she must wait. I must say, however, it seems rather strict on our part to make this decision in *war* time, particularly since she has fulfilled the purpose of the law having been separated from her