

Survey of Recent Halakhic Periodical Literature

USE OF SURVEILLANCE SYSTEMS ON SHABBAT

I. CLOSED-CIRCUIT TELEVISION

Closed-circuit television has become a widely used surveillance method and is frequently employed in private security systems. Such systems have been in use in various forms for a considerable period of time. When television sets were not as ubiquitous as at present, electrical appliance stores frequently sought to capture the attention of potential customers by placing closed-circuit systems in their windows. Passers-by would become enthralled at the sight of their own images on the television screen and, the proprietors hoped, would be enticed to enter their establishments. When used as a method of surveillance, the camera, which in private systems is generally fixed but may also oscillate to sweep over a large area, captures the image of any person or object that comes within range. The screen can be placed in a remote location and monitored for the purpose of detecting the presence of a trespasser or to enable the observer selectively to grant entry to the premises. Frequently, the person being observed on closed-circuit television is unaware of the fact that he is under surveillance.

Some time ago, Rabbi Israel Rosen, one of the editors of *Tehumin*, solicited the late Rabbi Moshe Feinstein's opinion with regard of employment of such a security system on *Shabbat*. The inquiry was based upon the valid presumption that the device may be rendered operative in advance and requires no adjustment over the course of *Shabbat*. Rabbi Rosen ascertained that the television cameras utilized in commercially available systems, once rendered operative, continuously photograph the area within their range. Thus, entry of a person into the range of the camera causes no change whatsoever in the operation of the mechanism as, for example, would be the case were the camera to be heat or motion sensitive. However, Rambam *Hilkhos Shabbat* 11:17, rules that painting a picture or creating a graphic image on *Shabbat* constitutes a prohibited form of "writing."¹ Accordingly, the issue is whether a person may enter the camera's optical field on *Shabbat*, thereby allowing his image to be "painted" and hence "written" on the screen.

In a short and succinct reply published in *Tehumin*, vol. XIV (5754), Rabbi Feinstein responded that “since this script is non-durable (*eino mitkayyem*)² and is even inferior [to writing that is *eino mitkayyem*] therefore it [entering into range of the monitor] constitutes, at most, a rabbinic transgression.” Rabbi Feinstein then concludes that, in any event, no transgression is involved since the act of producing an image on the monitor is a *pesik reisha de-lo ikhpat leih*, i.e., the prohibited act is an unintended effect of an entirely permissible act and the actor is indifferent to that unintended effect.

In order properly to appreciate the reasoning underlying Rabbi Feinstein’s ruling it is necessary to consider it within the context of the “double effect” theory recognized as a halakhic principle.³ The Mishnah, *Beizah* 23b, records a controversy between R. Judah and R. Simeon regarding the permissibility of dragging a bed, chair or the like along the ground on *Shabbat*. Although entirely unintended, there is a distinct possibility, although not a certainty, that in the process of pulling the bed or chair over the uncovered ground a hole or groove may be gouged in the ground. Intentional digging of a pit or hole in the ground on *Shabbat* constitutes a forbidden form of labor. R. Judah forbids the dragging of an object over uncovered ground because of fear of inadvertent and unintentional transgression. R. Simeon permits such acts on the grounds that an unintended effect does not render an otherwise permitted act impermissible. The normative rule is in accordance with the permissive view of R. Simeon.

Nevertheless, the Gemara, *Shabbat* 75a, declares that even R. Simeon concedes that such an act is forbidden in a case of *pesik reisheih ve-lo yamut*, literally, a situation in which a person severs the head of an animal from its body but does not intend it to die. Quite understandably, the Gemara expresses incredulity that a person might sever the head of an animal on *Shabbat* with the intention of feeding the head to a dog, of collecting its spurting blood or for some other purpose and then plead that he did not intend to cause the death of the animal. Since severing the head of the animal necessarily results in its death, intention to cause its death is imputed. Thus, an act that produces a double-effect, one permissible and the other prohibited, can be sanctioned only if the unintended but prohibited effect is not a necessary concomitant of the intended and entirely permitted act. [In fealty to the principle underlying this *Shabbat* regulation, the proposition should more accurately be formulated as follows: An act that is permissible when undertaken to achieve one effect, but impermissible when undertaken to achieve another effect, can be sanctioned only if the unintended effect is not a necessary concomitant of

the permitted act.] Thus, *Shulhan Arukh, Orah Hayyim* 337:4, rules that, despite the fact that a bed may be pulled over the ground under usual conditions, nevertheless, a heavy chest or the like may not be moved in a similar manner since it is assumed that a heavy object transported in that manner will certainly gouge a hole in the ground.

The biblical prohibition attendant upon a *pesik reisha*, at least with regard to prohibited forms of labor on *Shabbat*, is limited to situations in which the person performing the act derives some benefit from the unintended effect. Thus, a person may not wash his hands in his own garden if the water dripping from his hands will fall on plants or vegetables. Intentional watering of vegetables is forbidden because it promotes growth. Hence, even washing one's hands in a manner that allows water to fall onto the ground is forbidden since the inexorable effect of water upon vegetation and the potential benefit of that effect combine to impute intention. Washing one's hands in a neighbor's garden is significantly different in that, although promotion of the growth of the vegetation is a necessary result of the act, nevertheless, the person washing his hands derives no benefit from that growth. Accordingly, if there is no actual intent to water the garden, such intent is not imputed by operation of law. Such an act is termed a "*pesik reisha de-lo niha leih*," literally, "severance of a head that provides no satisfaction to him."

The term "*pesik reisha de-lo niha leih*" is itself somewhat ambiguous in that the term "*lo niha*—provides no satisfaction" is employed simply to connote the absence of benefit or advantage in the resultant death of the animal but the term might erroneously be presumed to have a more restrictive meaning in denoting the certainty of a negative or deleterious impact, i.e., some form of damage or harm that would cause the person performing the act to abjure or actively to disdain such an effect. A person may not actively desire fertilization of his neighbor's garden because he has no financial interest in his neighbor's resultant bounty but, unless he harbors biblically forbidden ill-will toward his neighbor, he has no reason to be distressed at his neighbor's good fortune in reaping an enhanced crop of vegetables. His attitude vis-à-vis that unintended result is simply that of indifference.⁴ Because of that ambiguity the term "*pesik reisha de-lo ikhpat leih*—severance of a head that is of no concern to him" is sometimes used in order to capture the correct nuance of meaning.

The eleventh-century lexicographer, R. Nathan ben Yehi'el of Rome, author of the *Arukh*, is cited by *Tosafot* in numerous places (*Shabbat* 103a; *Yoma* 35a; *Ketubot* 6a; and *Keritut* 26b) as ruling that the performance of an act involving a *pesik reisha de-lo niha leih* is entirely permissible.⁵ However, the weight of authority among early-day

authorities is that even a *pesik reisha de-lo niha leih* is tantamount to an intentional act and hence is biblically forbidden when the act involves a transgression of any biblical commandment other than the commandment forbidding labor on the Sabbath. With regard to *Shabbat* restrictions another provision idiosyncratic to labor forbidden on the Sabbath must be considered, viz., the biblical prohibition is attendant only upon an act intentionally performed for a specifically proscribed purpose. When the forbidden effect is not consciously intended, the act, almost by definition, is not performed for its proscribed purpose. For example, the forbidden *telos* of "digging" is the making of a pit or a hole in the ground; removal of soil, although a necessary result, is not the effect to which this prohibition is addressed. Acts performed other than for the proscribed purpose (*melakhah she-einah zerikhah le-gufah*), e.g., digging because of a need or desire to obtain soil, are forbidden by virtue of rabbinic decree. Thus, on *Shabbat*, performance of an act of labor in the form of a *pesik reisha de-lo niha leih* is regarded by those authorities as forbidden only by rabbinic decree.⁶

The foregoing discussion is limited to acts having unintended effects which, were those effects intended, would be biblically forbidden. Acts of labor that are intrinsically banned only by rabbinic decree represent a different category entirely. Some authorities, including Me'iri, *Shabbat* 29b and 120b, *Terumat ha-Deshen*, no. 64, as understood by *Magen Avraham* and *Mahazit ha-Shekel*, *Orah Hayyim* 314:5, maintain that an act, when performed in a permissible manner, is permitted even if the unintended rabbinically forbidden effect is both a necessary result and beneficial.⁷ Put more succinctly, those authorities maintain that a *pesik reisha*, even when *niha leih*, is permissible with regard to a rabbinically forbidden act. Other authorities, including *Tosafot*, *Shabbat* 103a, *Beizah* 23a and *Bekhorot* 24b; Rosh, *Bekhorot* 3:5; Rashba, *Shabbat* 120b; and Ran, *Shabbat* 111a, maintain that the prohibition of an act involving a *pesik reisha* applies even to rabbinically proscribed acts.⁸ The stringent opinion is accepted by *Magen Avraham*, *Orah Hayyim* 314:5, and *Sha'ar ha-Melekh*, *Hilkhot Shabbat* 25:24.⁹ That controversy applies to a *pesik reisha de-niha leih*, i.e., instances in which benefit is derived from the unintended effect. A third body of opinion maintains that even a *pesik reisha de-lo niha leih* is forbidden even when the underlying infraction is only rabbinic in nature¹⁰ while others maintain that when the underlying prohibition is rabbinic in nature and no benefit is received from the unintended effect the act is permissible.¹¹

In ruling that a person may allow his image to be captured on a closed-circuit television monitor, Rabbi Feinstein follows the permissive

view that maintains that a *pesik reisha de-lo niha leih* is permissible with respect to a rabbinic prohibition. The prohibition against “writing” is, of course, biblical in nature, but is attenuated and becomes reduced to a rabbinically proscribed act in situations in which the writing is not durable as is the case, maintains Rabbi Feinstein, with regard to an image that appears on a television screen.

Rabbi Rosen forwarded Rabbi Feinstein’s reply to Rabbi Joshua Neuwirth with the somewhat tentative comment that Rabbi Feinstein’s reply reflects an inaccurate factual presumption because “it is possible” that “in our case” the unintended effect is indeed a matter of interest to the person whose image appears on the monitor and, accordingly, solicited Rabbi Neuwirth’s opinion with regard to that objection. Rabbi Neuwirth demurred in deference to the already announced opinion of Rabbi Feinstein but, as will be explained, indicated that, in any event, use of such devices might be permitted because of an entirely different consideration. That exchange of correspondence is included in the same volume of *Tehumin*.

Rabbi Rosen does not identify the basis for his conclusion that producing an image on the monitor may indeed be a matter of interest and benefit to the person whose image is captured. In point of fact, that concern, at least in some instances, is quite cogent. Surveillance systems in public installations and in some apartment complexes may have cameras focused upon multiple unlocked entrances with screens placed in a central location. A person monitoring the screen will take action only if he fails to recognize the individual entering the facility or if his suspicions are aroused in some manner. Alternatively, the entrances may be locked and the system designed solely to alert a guard in instances of an attempt at forced entry. In each of those cases, insofar as the person seen in the screen is concerned, the act of entering the range of the camera yields no benefit.¹² Alternatively, such a system may be designed to enable a doorman, guard or householder to identify a person seeking to enter through a locked door so that the door may be unlocked on behalf of the person seeking admission to the premises. In the latter case, the unintended effect certainly redounds to the benefit of the person whose picture is being projected on the screen. Indeed, if the person seeking to have the door unlocked on his behalf is aware of the presence of the television camera, it may be presumed that there is actual intent on his part to be recognized by projecting his picture.

The problem is even more serious if it is the owner or householder who installed the device who allows his likeness to be reflected in the television monitor. The owner who installed the security system and

allows it to remain functional over *Shabbat* certainly wishes the system to perform properly, i.e., to capture the image of every passer-by. The owner desires the system to be fully operative in order to prevent intruders from gaining entry and perhaps also in order to take advantage of a reduction in insurance premiums granted when security systems are in place and functional. For such a person, the picture that is produced is not an incidental and unintended effect but is actually and directly intended. A visitor or passer-by has no such concern and hence has no particular desire for the system to remain operational. Even a tenant who has not sought installation of such a device may be unconcerned with regard to issues of security and hence derive no benefit from the images produced. Such a tenant certainly derives no benefit from the projection of his own image or those of his guests.

Nevertheless, Rabbi Neuwirth reports that the late R. Shlomoh Zalman Auerbach had expressed the opinion that utilization of closed-circuit television is permissible under all circumstances because the image projected on the monitor cannot at all be considered to be encompassed within the category of "writing." That observation reflects a sophisticated understanding of how a television image is actually produced. A television receiver contains a screen whose back is coated with a fluorescent compound. When an image is projected, a narrow beam of electrons bombards the back of the screen in a scanning action. Electrons emitted by a cathode-ray tube cause the coating of the screen at the other end of the tube to light up. A bright spot of light appears wherever the electrons strike the screen. The electron beam scans across the screen in horizontal lines (525 lines per picture in the United States and 625 in Europe). An illusion of motion is created by projecting between 25 and 30 separate pictures per second.

Apparently, Rabbi Auerbach did not regard images produced by electronically generated fluorescent illumination as even ephemeral "writing" because such a phenomenon involves neither imposition of one substance upon another nor rearrangement of an existing substance, nor does it involve etching letters upon a hard substance.¹³ This was probably also the intent of Rabbi Feinstein's categorization of the television's image as "even inferior" to transient or ephemeral writing. Rabbi Neuwirth adds the comment that, because such electronic phenomena do not have the halakhic status of "writing," there is no problem in spelling out or erasing the Divine Name on a computer screen.¹⁴

As will be shown later, R. Moshe Stern, *Teshuvot Be'er Mosheh*, VI, *Kuntres Elektrik*, I, no. 82, and VII, *Kuntres Elektrik*, II, no. 21, unlike

other authorities, objects to use of closed-circuit television systems because of *ziluta de-Shabbatta*, i.e., "demeaning the Sabbath," but is less than unequivocal in banning such use.

II. VIDEO CAMERAS

Other optical surveillance systems employ video cameras that continuously take pictures on videotape. Such systems are commonly used by banks both in order to deter robbers and to aid in apprehension of criminals. Video cameras are sometimes utilized in private security systems for the same purpose.¹⁵ The permissibility of entering a building in which a video camera is operating on *Shabbat* is discussed by R. Moshe Stern, *Teshuvot Be'er Mosheh*, VI, *Kuntres Elektrik*, I, no. 82 and in VII, *Kuntres Elektrik*, II, no.21; R. Shlomoh Zalman Auerbach, in a responsum addressed to R. Ephraim Greenblatt and published in the latter's *Rivevot Efrayim*, II, no. 247; R. Isaac Liebes, *Teshuvot Bet Avi*, III, no. 249;¹⁶ and R. David Rosenberg, *Ozrot Yerushalayim*, no. 233.

The permissibility of allowing oneself to be photographed on the Sabbath by a conventional camera was discussed much earlier. R. Eliezer David Grunwald, *Keren le-David*, *Orah Hayyim*, no. 102, recognizes that an act performed by means of *gerama*, i.e., only indirectly, is forbidden solely by rabbinic edict. Nevertheless, *Keren le-David* asserts that a photographer violates the biblical transgression against "writing" even though his act is indirect and in the nature of a *gerama*, i.e., he merely snaps the shutter of the camera and indirectly causes the film to capture an image but does not directly make a mark by impressing one substance upon another. *Keren le-David* maintains that an "indirect" act that is both instantaneous with its effect and which also produces a causal nexus by making the efficient cause come into contact with the effected medium rather than *vice versa* is not regarded as a *gerama* but as a proximate cause. That principle, he argues, explains the ruling of *Magen Avraham*, *Orah Hayyim* 328:53, to the effect that placing a leech upon a patient's skin is forbidden even though unleashing a poisonous snake upon a victim does not constitute an act of capital homicide. In the first case, drawing blood is virtually instantaneous with the placement of a leech; in the second, the bite of a snake and the release of its venom is not immediate.

Interestingly, in support of that thesis *Keren le-David* cites a provision with regard to homicide formulated by the Gemara, *Sanhedrin* 77b and *Hullin* 16a. The Gemara declares that a perpetrator who renders his victim immobile and then opens a dam so that the release of

water causes the victim to drown is guilty of a capital crime provided, according to Rashi, that the immediate gush of water is of a quantity sufficient to cause the drowning. Opening the dam is essentially the removal of a barrier and hence should be regarded as a *gerama* rather than a direct or proximate cause. Conventional explanations categorize the act as the direct unleashing of pent-up force inherent in the water barricaded by the dam. Rashi, *Hullin* 16a, categorizes the water as the assassin's "weapon" and in *Sanhedrin* 77b Rashi explains that the Gemara's definition of the water as the assassin's "arrows" reflects the notion that the immediate force of the water is ascribed to the person who unleashes the water as is the case with regard to a person who unleashes an arrow. *Keren le-David*, however, candidly concedes that the cause is indirect in nature but one which has an instantaneous effect and hence, he argues, it is because of its instantaneous effect that this is categorized as a proximate cause rather than as a *gerama*. Accordingly, *Keren le-David* points to the example of the release of dammed water as the paradigm for his thesis.

It is significant to note that a quite similar thesis with regard to the concept of *gerama* is propounded by R. Chaim Ozer Grodzinski, *Teshuvot Ahi'ezer*, III, no. 60, with regard to the nature of the infraction involved in switching on electric lights on *Shabbat*. *Ahi'ezer* rebuts the argument that the act of flipping a light switch is merely a *gerama* by pointing to the discussion of the Gemara concerning the release of dammed water and by citing the comment of an early-day authority, *Yad Ramah*, *Sanhedrin* 77b, from whose phraseology he infers that an indirect act having an immediate effect is not considered to be a *gerama*.

Ahi'ezer then develops an additional thesis to the effect that any type of labor forbidden on *Shabbat* that is customarily performed in the mode of a *gerama* is biblically proscribed. That argument is formulated with regard to electric switches but is equally valid with regard to camera photography.

R. Shlomoh Zalman Braun, *She'arim ha-Mezuyanim be-Halakhah*, II, 80:54, has published a letter written to him by R. Jonathan Steif in which that authority, without entering into the issue of *gerama*, similarly declares taking a photograph to be a biblically prohibited act of "writing."

Although *Keren le-David* regards the act of taking a picture to be biblically forbidden, he apparently finds no transgression involving prohibited labor in allowing oneself to be photographed. R. Chaim Lehrman, in sec. 8 of the notes appended to his letter of approbation to R. Samuel ha-Kohen Burstein's *Minhat Yom Tov* and published as an appendix to that work, states that, although a person who poses for a

photograph has not performed an act of "writing," it is arguable that, according to some authorities, he may be culpable for "assisting" (*mesayei'a*) in the performance of a forbidden act. *Taz, Yoreh De'ah* 198:21, rules that a woman immersing herself in a *mikveh* on *Shabbat* who has forgotten to cut her nails before the advent of the Sabbath may not request a gentile woman to do so for her because it would be necessary for the Jewish woman physically to "assist" in the act by extending and positioning her hand. In formulating that view, *Taz* argues that the prohibition against allowing the corners of one's beard to be cut by another person involves no more than an act of *mesayei'a* and serves as a paradigm for all biblical prohibitions. *Shakh*, in his *Nekudat ha-Kesef, ad locum*, in disagreeing with *Taz*, points to the statement of the Gemara, *Shabbat* 53a and *Beizah* 22a, declaring that with regard to *Shabbat* prohibitions "assistance" is immaterial. *Taz* himself, *Orah Hayyim* 328:1, raises that issue and distinguishes between various forms of assistance. Such a distinction is explicitly drawn by both *Ritva* and *Shittah Mekubezet*, *Beizah* 22a. See also R. Zevi Ashkenazi, *Teshuvot Hakham Zevi*, no. 82, who overlooks those sources in resolving the objection voiced by *Shakh*.¹⁷ Rabbi Lehrman finds support for *Taz*' position in a ruling of Rambam, *Hilkhot Kelei ha-Mikdash* 3:11, in which Rambam rules that a Levite who "assists" in performing a priestly service transgresses a biblical commandment and incurs the penalty of death at the hands of Heaven. Accordingly, Rabbi Lehrman asserts that "assistance" that is material and significant in nature is biblically forbidden. Rabbi Lehrman regards positioning oneself and posing for a photograph as no less significant a form of "assistance" than positioning oneself for shaving the corners of one's beard.

Keren le-David also raises the issue of "assistance" but dismisses the problem with the comment that a picture might be taken at precisely the same spot without anyone's cooperation. That argument, however, is subject to rebuttal on the grounds that, absent that individual's cooperation, an entirely different image would have been produced; hence, he is a *mesayei'a* to the act that was actually performed.

R. Isaac Liebes, *Bet Avi*, III, no. 249, candidly concedes that he can adduce no proof in support of his view, but nevertheless offers the opinion that there can be no culpable "assistance" without tactile contact. In support of *Bet Avi*'s thesis it may be argued that *Taz*' position regarding a prohibition against physical "assistance" in a transgression is derived from the biblical paradigm of the prohibition against allowing the corners of one's beard to be shaved. The "assistance" in that paradigm is certainly tactile in nature.

Bet Avi further opines that “writing” produced other than by a hand is prohibited by rabbinic edict but not by biblical law and that with regard to rabbinically forbidden acts there is no prohibition of *mesayei’a*. That point is subject to dispute not only because a photograph is snapped by hand but also because writing other than with the dominant hand is not biblically forbidden because it is an “unusual” mode of writing whereas the picture taken by a camera is produced by means of ordinary and usual operation of the camera. *Bet Avi* himself draws attention to Rambam’s statement in his *Commentary on the Mishnah*, *Shabbat* 103a, in contradiction to his position in the *Mishneh Torah*, to the effect that the category of *roshem*, which includes the creation of a picture or an image, is a category of labor entirely separate from writing and hence it may not be limited to drawing or painting by hand.

However, raising an entirely different consideration, he comments: “Nevertheless, it seems clear that there is a prohibition in the nature of ‘*mimzo hefzekha*—and [you] shall honor it [the Sabbath], not doing your wont ways nor pursuing your business’ (*Isaiah* 58:13)—which is forbidden as is made clear in [*Shulhan Arukh*, *Orah Hayyim*] 306:1 for it is no less [an infraction] than measuring as is made clear in [*Orah Hayyim*] 306:7.” The phrase “*mimzo hefzekha*” serves to bar any activity on *Shabbat* pertaining to “your business,” i.e., any activity related to commercial matters even in an indirect or preparatory manner. Thus, as spelled out by *Shulhan Arukh*, *ad locum*, it is forbidden to survey one’s property in order to plan the morrow’s work, to position oneself to leave the city upon the conclusion of the Sabbath, to hire laborers or even to stroll for purposes of locating a horse, wagon, or ship in preparation for a journey to be undertaken after the conclusion of *Shabbat*.

It is, however, quite difficult to appreciate a comparison between any of those activities and photography. In context, *Keren le-David*’s responsum addresses the plight of an individual who was being “examined” in some manner by government officials on *Shabbat* and was required to produce a photograph. Posing on *Shabbat* for a passport photo would certainly seem to be subsumed in the prohibition against making preparations for a journey on *Shabbat*. Similarly, posing for a photograph required by government authorities for issuing a license or for some other such purpose would also be forbidden. Although it is odd that *Keren le-David* does not indicate that a Jew is not permitted to undergo the government “examination” to which reference is made (perhaps because the Jew had no choice with regard to submitting to the interview but might have appeared without an accompanying pho-

tograph), it seems to this writer that it is only posing for a photograph for a commercial or "weekday" purpose to which *Keren le-David* objects. Allowing one's picture to be videotaped by a surveillance system neither requires any particular act on the part of the person other than those ordinarily undertaken in the enjoyment of Sabbath activities nor is the video image designed to advance a commercial or mundane interest. Hence, it seems to this writer that *Keren le-David* would find surveillance cameras unobjectionable.

In *Be'er Mosheh*, VI, Rabbi Stern begins his discussion with a citation of *Keren le-David*'s view regarding the prohibition against taking a photograph on *Shabbat*. Apparently misreading this source, *Be'er Mosheh* implies that the prohibition devolves upon a person allowing himself to be photographed as well.¹⁸ For reasons that he does not attempt to explain, *Be'er Mosheh* maintains that a person who traverses the door of a house protected by a system that is set in place before *Shabbat* and which automatically photographs each passer-by is in violation of a rabbinic edict rather than of a biblical prohibition. Accordingly, in reliance upon the authorities who maintain that, with regard to a matter that is prohibited only by rabbinic edict, a *pesik reisha de-lo niha leih* is permissible, he finds no fundamental prohibition in situations in which the individual has no desire to be photographed and derives no benefit therefrom. That analysis notwithstanding, *Be'er Mosheh* regards the act to be forbidden for reasons of "*ziluta de-Shabbatta*," i.e., "demeaning the Sabbath." Therefore, *Be'er Mosheh* advises a person who lives in a dwelling in which such a system is in place and where he finds himself powerless to disarm it over *Shabbat* to find a new dwelling. In the interim, for reasons that he does not spell out, he advises the person to "enter the house walking backwards, or at least sideways, so that the apparatus not photograph him in the manner of making an image."

In his second discussion, *Be'er Mosheh*, VII, Rabbi Stern seems to equate video cameras with closed-circuit television systems with regard to all facets of the issue and expresses a somewhat different view. Since his concern is only because of "dishonor of the Sabbath" he modifies his opinion in situations in which the presence of the television monitor is not evident to passers-by or guests and in which there are no children in the house and adds, "Perhaps even if children, young or old, are present in the home and it is possible for the master of the house to secrete the television within the house on Friday in a manner such that the children perceive nothing but he himself can see what he needs to see through a crack or the like. . . . Perhaps there is indeed no dishonor [of the Sabbath] even if there are children, young or old, in the house

for they see such each week and know that no person does anything." It is, however, unclear whether or not *Be'er Mosheh* would have made this final comment with regard to video cameras. In any event, the many other scholars who examine this issue do not object to use of surveillance systems on the basis of "demeaning the Sabbath."

Rabbi Liebes permits video surveillance in reliance upon the earlier-cited view that allowing oneself to be photographed involves only a rabbinic prohibition because he takes it for granted that the benefit is not only unintended but is actually disdained. Accordingly, he regards the act as a *pesik reisha de-lo niha leih* with regard to an otherwise rabbinically proscribed act and rules that such an act is permissible. Nevertheless, he notes that each of those points is subject to dispute and accordingly he counsels that a God-fearing person should not enter a building protected by such a system and certainly should not do so on an ongoing basis.

R. Shlomoh Zalman Auerbach permits utilization of a video surveillance system for the most fundamental of reasons. In order to elucidate Rabbi Auerbach's ruling it should be noted that when a camera snaps a picture no discernible image is generated on the film. The picture emerges only when the film is developed. Accordingly, taking the picture can hardly be a form of writing. Rabbi Auerbach notes that a person who employs disappearing ink in writing on *Shabbat* is culpable but declares that this is so only because the writing is discernible as script for at least a very brief period of time and the writing can be retrieved and made to reappear if the requisite procedures are employed. Not so with the case of a photograph since, at the time the picture is taken, nothing appears on the film. Rabbi Auerbach adds, albeit without evidence, that it is "reasonable" (*mistaver*) to assume that even "writing" of that nature is forbidden by rabbinic decree. Nevertheless, he permits a guest to enter a building protected by a video surveillance system because the "writing" is carried out in an unusual way (*ke-le-ahar yad*) in light of the consideration that, since the image "is desired only by the homeowner but not by the person who enters," the act represents a *pesik reisha de-lo niha leih*.

As noted earlier, it is not clear to this writer that photography represents an "unusual" act. Nevertheless, since no image is created at the time a photograph is taken, there is reason to question whether capturing a picture on film is prohibited even by rabbinic decree. Moreover, in the final analysis, insofar as a person who derives no benefit from the surveillance system is concerned, the vast majority of rabbinic authorities permit a *pesik reisha de-lo niha leih* with regard to an act involving an underlying rabbinic prohibition and would permit such a person to enter a building protected by an optical surveillance system.

III. MOTION DETECTORS

Another mode of surveillance involves use of a motion detector that causes lights to turn on when the movement of a person is detected. In isolated areas the resultant illumination prevents intruders from breaking and entering under cover of darkness and at the same time serves to provide a measure of physical safety for persons who would otherwise be entering the house or passing down the street in the dark. Motion detectors are also used in many public buildings, schools, offices, etc. in order to economize on electricity. In some locales installation of such devices in newly constructed buildings is mandated by law as a conservation measure. Motion detectors may employ either passive infrared or ultrasonic technology. Passive infrared technology operates by detecting the difference between infrared energy emitted by a heat-emitting object, e.g., a human body in motion, and the background space. Ultrasound technology uses the Doppler principle and high frequency ultrasound to sense motion within its range. The two technologies may be combined in what is known as dual sensing verification in order to eliminate false triggers.

The permissibility of entering areas on *Shabbat* in which electric lights are controlled by motion detectors was first addressed by the late British rabbinic authority, R. Chanoch Dov Padwa, *Heshev ha-Efod*, III, no. 83. Further discussions by R. Moses Kessler, R. Samuel ha-Levi Woszner, author of *Teshuvot Shevet ha-Levi*, R. Abraham David Horowitz of Strasburg and R. Yochanan Woszner of Montreal appear in the II Adar 5757 issue of *Or Yisra'el*. A further item addressing this issue in the form of a letter to the editor by R. Eliezer Falk of Jerusalem was published in the Sivan 5757 issue of the same journal.

Rabbi Padwa permits ordinary activity in the presence of such devices in reliance upon two separate considerations: 1) the permissive view of the *Arukh* with regard to a *pesik reisha de-lo niha leih*; 2) the view of Rashba, cited by *Magen Avraham*, *Orah Hayyim* 316:11, permitting a person to close the door of a room in which a deer has sought refuge on *Shabbat* even though, as a result of closing the door, the deer will be "captured." Although neither of those positions is accepted by the codifiers of Halakhah, Rabbi Padwa nevertheless asserts that, taken in combination, they may be relied upon.

Rabbi Padwa's assumptions are subject to challenge on a number of counts. Rabbi Kessler and Rabbi Horowitz both note that, in point of fact, the illumination is *niha leih*, i.e., the light provides a direct benefit and would presumably be welcomed if not for the possible Sabbath

infraction involved. Rabbi Yochanan Wosznar, however, asserts that a person may indeed not wish his coming and going to be observed by all and sundry and, when the system is designed to thwart intruders, others may be discomfited by the feeling that light is made to shine upon them because they, too, are under a cloud of suspicion.

Rashba's permissive view with regard to the unintended "capture" of a deer may represent acceptance of the position of the *Arukh* regarding a *pesik reisha de-lo niha leih*.¹⁹ Alternatively, Rashba's ruling may reflect a unique consideration limited to the notion of "capture" or be otherwise limited to the case discussed by Rashba. R. Iser Zalman Meltzer, *Even he-Azel, Hilkhhot Shabbat* 1:5-7, s.v. *u-be-ikar*, for example, explains that, as a halakhic category, "capture," by definition, must be intentional and therefore an animal unintentionally trapped in a room is not "captured." Rabbi Horowitz notes that some authors have distinguished the capture of a deer by closing a door from other forms of *pesik reisha* on the basis of the fact that no act is performed upon the deer itself.

There may, however, be additional considerations that would serve to permit use of motion detectors. Many authorities, including R. Shlomoh Zalman Auerbach, *Minhat Shlomoh*, I, no. 10, sec. 6, s.v. *ve-gam*, rule that an otherwise forbidden *pesik reisha* is permitted when the act is carried out indirectly.²⁰ However, as noted earlier, many authorities regard all instantaneous effects as direct rather than indirect.

Rabbi Samuel Wosznar, both in his contribution to *Or Yisra'el* and in his *Teshuvot Shevet ha-Levi*, III, nos. 41 and 97, develops a rather novel thesis in explaining that not every *pesik reisha de-lo niha leih* is forbidden. A person who severs the head of an animal performs an act upon the animal that causes the animal to die; death of the animal is a change in the animal directly related to the act of severing the head. Similarly, a person who pulls a heavy object along the ground creates a change in the ground by making a hole. Although those acts are forbidden, Rabbi Wosznar argues that, if an act is itself ordinary, usual and innocuous and in no way modified on account of, or physically connected to, the prohibited effect, the act is not forbidden even though it necessarily results in a prohibited effect. Stated in other terms, Rabbi Wosznar argues that *pesik reisha* in the nature of an unintended epiphenomenon not contiguous to the act performed is not prohibited.²¹

Rabbi Kessler states, not without reason, that he does not understand the distinction formulated by Rabbi Wosznar. This writer would express the distinction in a somewhat different manner. As stated by the Gemara, *Shabbat* 120b, the verse "you shall not do any work on the Sabbath day" (Exodus 20:8) serves to establish that labor is forbidden on *Shabbat* only

if the labor is performed by means of a physical "act" (*ma'aseh*). A physical act is generally defined as an act involving movement of the body.

Moreover, not every muscular movement rises to the level of a *ma'aseh*. A sin-offering is brought in expiation of certain sins but only if they are committed by performance of an "act." The Gemara, *Sanhedrin* 65a, posits a controversy between the Sages and R. Akiva with regard to whether unwitting blasphemy requires such a sacrifice. The crux of the controversy is whether or not the act of "curling the lips" that is necessary for the fashioning of speech constitutes a *ma'aseh*. Similarly, the Gemara, *Makkot* 2b, explains that bearing false witness is not punishable by lashes because mere speech does not constitute a physical act. The Gemara, *Bava Mezi'a* 90b, records that movement of the lips that produces a tangible physical effect, e.g., a shouted command to animals of different species harnessed together that causes them to move or a vocal order designed to prevent an animal from eating while the animal is engaged in threshing, is regarded by R. Yohanan as a punishable offense. Resh Lakish, however, disagrees because he regards the *de minimis* movement of lips to be below the threshold level of movement that constitutes a *ma'aseh*.

Definition of a *ma'aseh* as an act involving movement of the body is reflected in a discussion of the Gemara, *Bava Kamma* 10b, particularly as elucidated by *Tosafot*, *Bava Kamma* 10a, s.v. *kegon*, regarding a person who breaks an object by means of the sheer weight of his body rather than through physical movement. The case discussed involves a number of people seated upon a bench. In initially seating themselves upon the bench they did no harm. However, an additional person sat himself upon the bench with them and the combined weight of all those seated on the bench caused it to collapse. *Tosafot* cites the position of Rabbeinu Tam who maintains that those previously seated are equally liable together with the last person to seat himself upon the bench who thereby provided the proverbial straw that broke the camel's back. In reflecting upon Rabbeinu Tam's position, it is obvious that the original occupants are not culpable for having seated themselves on the bench since that act yielded no harm. They can be culpable only for failing to rise when the weight became too great for the bench to withstand. But failure to rise is passive in nature and should not give rise to tort liability. Culpability must then result from the fact that an "act" effected by sheer weight is deemed to be tortuous. Indeed, the Gemara, *Bava Kamma* 27a, declares that a person who causes harm simply as a result of being blown off a roof by the wind is liable for damages. Apparently, movement is not a necessary condition of an "act" but the

effect of body weight certainly must be regarded as the outer limit of what may be defined as an “act.”²²

It is clear from the comments of Rabbeinu Tam that the power generated by sheer mass constitutes an “act.” However, the effect of the force of body weight is readily distinguishable from other effects created by the mere presence of a body. Thus, for example, “labor” effected by body heat triggering a heat detector, according to this analysis, would not constitute an “act” since causal effects of body heat do not arise from a *ma’aseh*.²³ Similarly, motion detectors do not produce their desired effect by virtue of force exerted by the body but because of their sensitivity to a change taking place in the person. To put the matter in somewhat different terms, it is not force produced by motion that causes the effect but the apparatus’ ability to discern that the person has moved from one spot to another by sensing the presence of body heat and/or the reflection of imperceptible ultrasound waves that yields the effect. Such a phenomenon, it may be argued, does not rise to the threshold level of a *ma’aseh*. Put more colloquially, a person’s mere existence does not qualify as a *ma’aseh* and, accordingly, any labor caused by a person’s mere existence is not prohibited on *Shabbat*. If this analysis of the notion of *ma’aseh* is correct, there could be no prohibition in the purely passive act of allowing oneself to be photographed on *Shabbat*.

There is, however, at least one authority among early-day decisors who maintains that a forbidden act of labor performed entirely passively by the body is forbidden when such an effect is directly intended. *Teshuvot ha-Rashba*, IV, no. 74, cited by *Bet Yosef, Orah Hayyim* 308:46, addresses the practice, apparently prevalent in his time, of women placing silkworms under their armpits to hatch. Rashba forbids the practice on the Sabbath, both because the worms are *mukzah* and also because causing the worm to hatch is forbidden. In the preamble to his responsum, Rashba notes that “although [the activity] does not constitute an actual act of labor (*she-einah melekhah mamash*), nevertheless, it is intentional labor” and concludes with the statement that intentional employment of body heat to effect an act of labor is forbidden. Rashba apparently regards utilization of body heat to perform an act of labor to be forbidden, perhaps by rabbinic decree, even though the act is entirely passive and hence “not an actual act of labor” but regards such conduct to be forbidden only when the effect is caused intentionally.²⁴

It seems to this writer that the concept that an act passively performed does not constitute a biblically forbidden form of labor is inherent in the commentary of Ralbag to Exodus 20:9. Ralbag states, “It fur-

ther clear that eating is not [a forbidden form of] labor; rather it enters into the category of natural acts for all living creatures perform this act." Ralbag's comments, if taken literally, are problematic, to say the least. Trapping or capturing animals is a forbidden form of labor on *Shabbat* despite the fact that it is an activity in which brute animals also engage. Suckling a lactating animal is a form of expressing milk that is forbidden of *Shabbat*²⁵ despite the fact that animals also obtain milk by nursing.²⁶

Ralbag may, however, be understood as asserting that any natural act performed in common with lower animals does not constitute a form of labor provided that the act is final rather than instrumental in nature. Eating is clearly such an act. Capturing an animal, when carried out by a human being, is far different from capture of one animal by another. The animal consumes its prey immediately; a man does not. For man, the normal way for obtaining milk is by a process of manual milking, an act that is only preparatory to drinking the milk, as opposed to an act of suckling in which the purpose is achieved immediately.²⁷ It therefore stands to reason that activities yielding effects produced as a result of entirely usual human and animal function, e.g., locomotion and the giving off of body heat, and not designed for any further purpose should not be among activities forbidden on *Shabbat*.

Rabbi Kessler finds yet additional grounds to permit use of motion detectors to provide external illumination. A person passing through an area protected by sensory devices may be certain that the lights will go on but it is entirely unlikely that he will know which particular step will trigger the lights. Therefore, each discrete step constitutes a doubtful *pesik reisha*. Such a situation is comparable to another scenario discussed by earlier sources. In the case of a box housing flies from which many, but possibly not all, the flies have been observed to exit, *Taz, Orah Hayyim* 316:3, rules that it is not necessary to examine the inside of the box before placing a lid upon it despite the fact that it is possible that some flies may remain in the box. If that were so, placing the lid upon the box and thereby preventing any remaining fly from escaping would constitute a prohibited act of "capture." Since there is no intent to capture and it is doubtful that there are any flies in the box that might be captured, the act constitutes a merely doubtful *pesik reisha*, *Taz* permits the closing of the box. *Taz* maintains that intent cannot be imputed in cases of empirical doubt and hence rules that a doubtful *pesik reisha* is an entirely permissible *davar she-eino mitkhaven*. *Mishnah Berurah, Bi'ur Halakhah* 316:3, s.v. *ve-lakhen*, cites a number of early-day authorities whose comments evidence that they espouse an identical view.²⁸ That view, however, is not universally accepted.²⁹

One aspect of the operation of outdoor motion detectors seems to have evaded all of these scholars. Unlike indoor motion detectors which are designed to cause lights to go on virtually instantaneously, outdoor motion detectors generally have a delayed time feature. The purpose of a built-in time delay is to prevent even minimal motion or momentary vibration unlikely to have been produced by a human being from triggering the mechanism that causes the lights to go on and off. Depending upon the particular device, the delay may be as brief as fifteen seconds and as long as thirty minutes. When there is a time delay effected by a timer, the act triggering the mechanism does not directly cause the lights to turn on. Instead it causes the timing device to wait a predetermined period of time and, upon expiration of that time period, a separate action effected by the timing device turns on the lights. An act that generates a second act in order to create an effect has the halakhic status of a *gerama*. Rema, *Orah Hayyim* 334:22, permits an act performed in the manner of *gerama* only for a "great need." However, Taz, *Orah Hayyim* 334:6, permits an act in the form of *gerama* for even a less serious need. Other authorities, it must be remembered, permit a *pesik reisha* with regard to all rabbinic prohibition and hence those authorities would permit a *pesik reisha* performed by means of *gerama*.³⁰

Rabbi Falk expresses the view that, even if motion sensitive systems may not be intentionally used on *Shabbat*, a person about to enter the range of a detector need not be cautioned that by doing so he will cause a light to go on. Inadvertent and unknowing tripping of the switch, he contends, involves no Sabbath infraction whatsoever. That thesis is based upon the definition of *shogeg*, i.e., inadvertent transgression, insofar as *Shabbat* laws are concerned. An act of inadvertent *Shabbat* transgression for which a sacrifice in expiation of sin is required is defined as a forbidden act of labor performed by a person who is either unaware that such an act is forbidden or is unaware that the day on which the act is being performed is actually the Sabbath day.

A person who knows full well that it is *Shabbat* and is also fully aware of the forbidden status of the act but is ignorant with regard to the physical nature of the act he is performing is not a *shogeg*. Thus, a person who cuts a fruit or vegetable in the belief that it has already been plucked from the ground only to discover after the act was performed that it was still attached at the time of cutting is not a *shogeg*. A person performing such an act is termed a "*mitasek*" rather than a "*shogeg*" and is not required to offer a sacrifice for purposes of expiation. R. Jacob of Lissa, *Mekor Hayyim*, *Orah Hayyim* 431, maintains that an act committed in the form of *mitasek* is entirely innocuous and requires no atonement whatsoever.³¹

Thus, according to *Mekor Hayyim*, a person who knows that the fruit or vegetable is still attached to the ground need have no compunction in directing someone who mistakenly believes it to have been severed from the ground to cut the fruit or vegetable since the person who performs that act commits no infraction whatsoever. R. Akiva Eger, both in *Teshuvot R. Akiva Eger*, no. 8 and in his *Hiddushei R. Akiva Eger*, *Bava Kamma* 26b, disagrees and maintains that, although the infraction is less serious than a *shogeg* and requires no sacrificial expiation, it nevertheless constitutes a transgression for which atonement is necessary.³²

Rabbi Falk argues that, even according to R. Akiva Eger, an infraction occurs only when the person at least intends to perform an act of cutting but is ignorant of the status of the object he is cutting. However a person who does not at all intend to cut any object incurs no infraction if he severs a plant still attached to the ground because such an act is mindless and totally unintended and hence is not a *melekkhet mahashevet*, i.e., a "mindful act." A person acting in that manner is ignorant not merely of incidental details and circumstances surrounding his act but is ignorant of the very nature of the act.³³ Applying this principle to motion detectors, it is evident that a person who is ignorant of the presence of the detector is totally unaware of the nature of his act and hence his situation is comparable to that of a person who has no intention at all to cut fruit. Since his act involves no *melekkhet mahashevet*, argues Rabbi Falk, it is entirely innocuous.

A similar point is made, albeit tentatively, by R. Shlomoh Zalman Auerbach, *Minhat Shlomoh*, I, no. 91, sec. 9, s.v. *bram*. Rabbi Auerbach suggests that an act in the nature of *mitasek* that produces a forbidden effect only in the form of a *pesik reisha* is entirely innocuous even according to R. Akiva Eger.³⁴ The example he gives is that of a person who opens a refrigerator door on *Shabbat* on the assumption that the electric bulb has been removed. The act is clearly a *mitasek* since the person opening the door has no knowledge of the presence of a functioning light bulb. Causing the light to go on constitutes a *pesik reisha* since the person's intention is only to open the door but not to release the button controlling the light.³⁵ A person who is intent only upon walking in a certain area and is unaware of the presence of a motion detector is a *mitasek* and the unintentional effect of the light being turned on is a *pesik reisha* of that *mitasek*.

USE OF SOFT CONTACT LENSES ON SHABBAT

Hard lenses are made from polymethyl methacrylate (PMMA) and are essentially non-permeable. Rigid gas permeable contact lenses, also known as oxygen permeable lenses, are made of permeable materials, usually silicone and fluorine, that allow oxygen to reach the eye. Because they are made of a relatively hard material such lenses retain their shape when the wearer blinks which, in turn, is one of the reasons that such lenses tend to provide crisper vision than is provided by soft lenses. They are also extremely durable and with proper care may last years. Hard lenses do not absorb water. As a result protein and lipids naturally present in tears do not bind to hard lenses as easily as to soft lenses. If these deposits are not removed they impede use and may cause a corneal abrasion. Such deposits are also a haven for bacteria that may cause sight-threatening infections. Proper use of the lenses requires lightly rubbing a cleansing solution in the lens with the index finger, rinsing the lens and storing it in a contact lens case filled with a storing and conditioning agent as well as, in most cases, occasional use of an enzymatic cleanser on a daily, weekly or monthly basis to assist in removal of protein deposits. Since the lenses do not absorb liquid and the cleansing process is designed only to remove surface debris and dust, the cleaning of hard lenses on *Shabbat* and *Yom Tov* is generally regarded as being problem-free insofar as Halakhah is concerned.

Most patients find frequently replaced soft lenses to be more comfortable than hard lenses. More important is the fact that they eliminate the buildup of protein deposits and hence reduce the risk of corneal abrasion and infection. The replacement schedule for soft lenses may be daily, weekly, bi-weekly, monthly, semi-monthly or quarterly. Some contact lenses are also designed for extended or overnight wear. Although the F.D.A. has approved extended wear for up to seven days, some practitioners advise that wear for even three days without removal can lead to potentially dangerous infections of the eye.

Soft lenses that are discarded daily require no cleaning and hence present no halakhic problems. The removal schedule for extended wear lenses can readily be arranged to obviate the need for removal on *Shabbat* or *Yom Tov*. However, since soft lenses absorb water the cleansing of lenses that must be removed nightly does present a problem on *Shabbat* and *Yom Tov*. The water content of soft lenses ranges from 36% to 70% by weight. Permavision lenses, which are visibility tinted contact lenses manufactured

by Bausch and Lomb, are 36% water by weight when immersed in a sterile borate buffered saline solution. SofLens, one-day disposable contact lenses also manufactured by Bausch and Lomb, are 70% water by weight.

Soft lenses that are reused require daily cleansing and must be kept in a saline solution in order to prevent them from drying out and hence becoming unusable. Since soft lenses become water-laden when placed in an appropriate solution, lens care on *Shabbat* and *Yom Tov* presents three separate issues: 1) Is soaking the lens a form of "washing" that is forbidden on *Shabbat* and *Yom Tov*? 2) Does the cleansing process performed by dipping a finger in the solution and rubbing it over the lens constitute a forbidden form of washing? 3) Does handling the lens in the course of cleaning and removal from the solution constitute a forbidden form of *sehitah*, i.e., of expressing or squeezing a liquid from a solid? The issue of soaking lenses on *Shabbat* is addressed by R. Yosef Shalom Eliashiv in a brief item included in his recently published volume of responsa, *Kovez Teshuvot* (Jerusalem, 5760), no. 18. A more detailed discussion of those issues is presented by R. Jacob Mordecai Rubin in *Yeshurun*, vol. VII (Elul 5760). The same edition of *Yeshurun* contains a letter by R. Samuel ha-Levi Wosznier to Rabbi Rubin addressing these questions. The issue is also addressed by R. Abraham Salem, *Teshuvot va-Ya'an Avraham*, IV (Jerusalem, 5760), no. 7; R. Yeshayahu Pinchas Rotenberg, *Teshuvot Minhag Pri*, III (Jerusalem, 5760), no. 34; R. Yehonatan Ben Tzur, *He'ir ha-Mizrah*, no. 22-30; R. Ephraim Greenblat, *Kiryat Sefer*, published by Makhon Nahalat Yisra'el, Kislev 5960; and R. Abraham Chanunu, *Kol ha-Torah*, no. 50 (Nisan 5751), published by Agudath Israel of Europe. An earlier succinct ruling regarding use of soft lenses on *Shabbat* is included in R. Joshua Neuwirth's *Shemirat Shabbat ke-Hilkhatah* 15:2.

As recorded by Rema, *Orah Hayyim* 302:9, it is forbidden to soak clothing made of cloth in water on *Shabbat* because soaking, in and of itself, is a form of "washing" that is prohibited because it constitutes *melabben* or "whitening," one of the thirty-nine forms of "labor" prohibited on *Shabbat*. However, as recorded by *Shulhan Arukh*, *Orah Hayyim* 302:9, it is permitted to pour water on leather garments on *Shabbat* because mere soaking is not regarded as a form of *melabben* with regard to leather. R. Moshe Feinstein, *Iggerot Mosheh*, *Yoreh De'ah*, II, no. 77, expresses the opinion that the usual restrictions regarding washing do not apply to plastic tablecloths because they are non-absorbent but he nevertheless concludes that "since it is impossible to find this *din* explicitly stated because [plastic] is a new species that was not seen in early generations it is therefore proper to be stringent and not to pour water directly with

force but to be lenient in cleansing gently with water.” With regard to plastic, *Iggerot Mosheh* apparently relies upon the lenient view recorded by Rema, *Orah Hayyim* 302:9, that permits an individual to pour a small quantity of water upon a garment to which dirt has not adhered but nevertheless prohibits him to pour a copious quantity of water upon the garment “lest he squeeze the water out of the garment.”

Although made of plastic, soft contact lenses are regarded in an entirely different light by the earlier-cited authorities because they do absorb water. Rabbi Rubin tentatively suggests that the distinction between cloth and leather is not based upon absorbency but upon the consideration that soaking either is not effective in cleaning leather or that it takes much longer to achieve that effect. If so, absorbent plastic may have a halakhic status comparable to leather.

Rabbi Eliashiv draws attention to a controversy among early-day authorities cited by Rema, *Orah Hayyim*, 302:9. Rosh, *Yoma* 8:4, maintains that soaking constitutes a prohibited form of “washing” only if the garment has been soiled in some manner. If, however, the garment is perfectly clean, or even if it has become somewhat dull or drab because of wear and/or the passage of time and hence the soaking is designed solely to brighten or freshen the garment, the garment may be soaked in water. Rema cites the view of Rosh and prefaces the contradictory view with the phrase “some forbid.” Rabbi Eliashiv adds that, even according to the stringent view, soaking an unsoiled garment is prohibited only if the garment has become dull or grey and the soaking has the effect of restoring the garment’s luster. If, however, the soaking has no effect whatsoever upon the appearance of the garment, concludes Rabbi Eliashiv, soaking is permissible according to all authorities. Rabbi Eliashiv carefully notes that his opinion in this matter is *contra* that of *Shulhan Arukh ha-Rav*, *Orah Hayyim* 302:21, but that R. Abraham Borenstein of Sochachow, *Avnei Nezer*, *Orah Hayyim*, no. 159, sec. 10, expresses astonishment because he could find no basis for the view expressed by *Shulhan Arukh ha-Rav*. Accordingly, Rabbi Eliashiv permits placing the lenses in a saline situation on *Shabbat*, but only if the lenses have been properly cleaned before *Shabbat*. Under such circumstances, soaking has no cleansing effect but serves only to prevent the lens from shriveling and hence becoming useless.

Rabbi Nissim Karelitz is quoted by Rabbi Ben Zur as permitting the soaking of contact lenses on *Shabbat* on the basis of an entirely different consideration. It is virtually impossible to express the solution absorbed by the lenses. The moisture that is absorbed by the lenses is, practically speaking, removable only through evaporation. Soaking, reportedly

argues Rabbi Karelitz, is tantamount to “washing” only with regard to cloth and the like from which absorbed liquid can be squeezed.

Rabbi Eliashiv omits any explanation for his insistence upon cleansing the lenses before *Shabbat*. However, Rabbi Rubin observes that “it is logical” to assume that, although soaking the leather is not regarded as a form of *libbun* because of its lack of effectiveness, nevertheless, effective chemical removal of a stain that has penetrated a leather garment is forbidden. The halakhic status of plastic, he contends, is comparable to that of leather. Rabbi Rubin then proceeds to argue that soaking lenses in a cleansing solution on *Shabbat* is halakhically forbidden. Presumably, Rabbi Eliashiv insists that the lenses be cleaned prior to *Shabbat* in order to assure that the saline solution will not serve a cleansing purpose. That rationale is explicitly cited in the name of Rabbi Eliashiv by Rabbi Chanunu in the latter’s discussion of the topic.

This writer fails to understand the application of this line of reasoning to contact lenses. The silicone lens does not absorb stains and does not become sullied; on the contrary, a properly maintained lens is always crystal clear. Any distortion that is perceived in a properly maintained lens is due to the presence of surface debris. As explained by *Mishnah Berurah* 302:7 and *Avnei Nezer, Orach Hayyim*, no. 157, sec. 4, removal of surface dirt or debris is not a form of *melabben*.³⁶ *Avnei Nezer, Orach Hayyim*, no. 159, sec. 7, demonstrates that *libbun* applies only to removal of stains or absorbed materials that mar the appearance of the garment. Thus, for example, *Avnei Nezer, Orach Hayyim*, no. 157, sec. 11, demonstrates that *kashering* utensils on *Yom Tov*, albeit forbidden for other reasons, is not prohibited by virtue of *melabben* because the “taste” absorbed by a utensil in no way sullies or mars its appearance. If so, as noted by *Minhat Pri*, it would be permissible even to rub the solution over the lenses on *Shabbat*.

Apparently conceding these points, Rabbi Rubin argues that, if not removed, the proteins adhering to the surface of the lens will eventually cause the lens to become discolored and hence “it is logical” to assume that their removal constitutes a form of *libbun*. This writer is unaware of any source that might substantiate the view that application of a substance designed to prevent future discoloration constitutes *libbun*. The mere fact that a contact lens that is left uncleaned will turn yellow does not lead to the conclusion that removal of the colorless protein is a form of *libbun*. In any event, that consideration is germane only with regard to utilization of an enzyme solution but not with regard to use of a cleansing solution that serves only to remove surface dirt and bacteria. Accordingly, there appears to be no reason to insist upon cleansing the lenses before *Shabbat* if they are to be soaked on *Shabbat* only in an ordinary cleansing solution.

Cleansing the lenses by means of rubbing the wet lens with a finger is somewhat more problematic. Rubbing a leather garment on *Shabbat* in order to remove a stain is forbidden. *Mishnah Berurah*, *Bi'ur Halakhah* 302:9, asserts that, although rubbing hard leather in this manner is rabbinically prohibited, rubbing soft, supple leather in such a manner constitutes a biblical offense. Rabbi Woszner, however, questions that distinction and asserts that the prohibition against cleansing leather is, in all circumstances, rabbinic in nature. However, the disagreement is only with regard to the stringency of the prohibition, not with regard to the prohibition itself. Accordingly, Rabbi Rubin explicitly prohibits manual cleansing of soft lenses on *Shabbat*. Again, for reasons identical to those stated above, this writer fails to understand how removal of substances that do not sully or stain the lenses can be regarded as a form of *libbun*.

The issue posed by virtue of possible *sehitah* or squeezing is summarily dismissed by Rabbi Rubin on empirical grounds. Although the lens absorbs water it is extremely difficult to force it to expel the liquid it has absorbed. To do so would require an inordinate amount of pressure. Accordingly, he concludes that there is no problem with regard to handling soft contact lenses on *Shabbat*.

The most incisive analysis of these issues may well be that of the late R. Shlomoh Zalman Auerbach as reported by R. Joshua Neuwirth. In his *Shemirat Shabbat ke-Hilkhatah* 15:2, Rabbi Neuwirth permits removal of soft contact lenses and their placement in a "solution" immediately upon removal. When questioned by Rabbi Rubin regarding R. Shlomoh Zalman Auerbach's opinion concerning this matter, Rabbi Neuwirth responded in the name of his mentor: "Ordinary cloth absorbs in its molecules and between the molecules. Contact lenses do not have molecules and intermolecules; rather, they swell because of water, i.e., in the manner of a balloon that swells from the air" (i.e., the balloon fills with air but does not absorb the air).

Employing terminology almost identical to that of Rabbi Neuwirth, Rabbi Efrayim Greenblatt, author of *Teshuvot Rivevot Efrayim*, also permits soaking contact lenses on *Shabbat* but does not permit rubbing the wet lens. Rabbi Greenblatt emphasizes that dirt is not absorbed within the lens but only adheres to the surface, that liquid cannot be expressed from the lens, that the "dirt" does not impede vision, i.e., that it is invisible to the eye, and that the lens does not absorb liquid but that the liquid occupies "the holes in the lens" which is "placed as a ball is placed in water."

Although Rabbi Rubin acknowledges that the scientists whom he consulted did not provide definitive explanations regarding the manner

in which permeable lenses absorb liquids, he dismisses Rabbi Auerbach's contention as scientifically incorrect. In actuality, although imprecisely expressed, Rabbi Auerbach's analysis may well be scientifically accurate. Soaking is regarded as a form of washing because water permeates cloth and is absorbed within its threads, i.e., it replaces air that otherwise occupies the space between the molecules of the cloth. Plastic is known to be non-absorbent. The plastic used in soft contact lenses is probably non-absorbent as well. The so-called "absorption" that takes place in soft lenses probably does not take place within the molecular strands of which the plastic is composed but may simply be the result of the phenomenon of water pushing between strands of plastic without being absorbed in the space between individual molecules. Thus, the phenomenon is analogous to air blown into a balloon that forces the walls of the balloon apart without being absorbed within the walls themselves. If this is indeed the case, there may be grounds to argue that the halakhic status of soft contact lenses is that of leather rather than of cloth.

There is, of course, some absorption of water even by hard leather. The distinction between leather and cloth lies in the fact that leather does not become permeated by water in a manner similar to cloth. Accordingly, it is arguable that, if the water indeed does not thoroughly permeate the intermolecular space of soft plastic, the status of plastic is comparable to that of leather. It was, of course, this lack of precise information regarding the physical properties of plastic that prompted Rabbi Feinstein's earlier noted cautionary advice with regard to even ostensibly non-absorbent plastics.

Dr. Abraham Abraham, *Nishmat Avraham*, V, *Orah Hayyim* 321:11, sec. 2, records that Rabbi Neuwirth reported that R. Shlomoh Zalman Auerbach permitted placing contact lenses in liquid only while they are still moist. Rabbi Auerbach forbade placing a dried out lens even in a non-cleansing saline solution because in such circumstances, the liquid has a restorative effect, a factor that renders the act forbidden just as it is forbidden to place a *lulav* in water on *Shabbat*. Rabbi Auerbach is also quoted as stating that if the lens has become shriveled or wrinkled because of lack of moisture the infraction is even more serious. Since a lens in such condition is unusable, placing it in a liquid, declared Rabbi Auerbach, is tantamount to the forbidden act of completing the fashioning of a utensil on *Shabbat*.

NOTES

1. Cf., however, Rambam's *Commentary on the Mishnah*, *Shabbat* 103a, in which he posits a separate category of labor in the nature of "roshem" or graphic representation.
2. Actually, it is not immediately clear why the television image should be regarded as non-durable. The image will indeed be eliminated, but only when the person whose image is captured moves out of camera range. In effect, removal of oneself from camera range is a form of "erasure;" were one to remain immobile, the image would be permanent in duration. Nevertheless, the image must be regarded as non-durable because the image perceived over a period of time is not a single image but a series of discrete ephemeral images. The electronic image exists for only a matter of microseconds but is constantly being reproduced and thereby gives the illusion of permanence.
3. For a comprehensive survey of the halakhic ramifications of acts entailing entirely unintended results (*davar she-eino mitkhaven*) see *Encyclopedia Talmudit*, VI, 631-658.
4. See *Mishnah Berurah*, *Bi'ur Halakhah* 320:13, s.v. *de-lo niha leih*.
5. Some early-day authorities, including Rosh, *Shabbat* 14:9, and Ran, *Shabbat* 110b, maintain that *Arukh's* permissive ruling is limited to Sabbath restrictions which are circumscribed in their limitation to *melekheth maha-shevet*, i.e., the prohibition applies only to acts that are intentional rather than inadvertent. According to their view, acts entailing other biblical prohibitions are biblically forbidden even if the unintended result is *lo-niha leih*.
6. Me'iri, *Shabbat* 29b and 103a, maintains that an unintended effect that is actually deleterious and clearly unwanted, rather than neutral and hence merely of no concern one way or the other, is not prohibited even by rabbinic edict and is entirely permissible. See *Encyclopedia Talmudit*, VI, 650, note 245. *Tosafot*, *Shabbat*, 75a, s.v. *tefei*, regards a *pesik reisha* as rabbinically forbidden even under such circumstances. This also appears to be the position of *Shulhan Arukh*, *Orah Hayyim* 320:18. See *Mishnah Berurah*, *Bi'ur Halakhah* 320:18, s.v. *yesh mi she-mattir*. See also *Encyclopedia Talmudit*, *ibid.*, note 249.
7. For additional sources see *Encyclopedia Talmudit*, VI, 651, note 251.
8. See *Encyclopedia Talmudit*, VI, 651, note 259 and p. 652, note 268.
9. See, however, conflicting rulings cited by *Yad Malakhi*, *kelalei ha-dinim*, sec. 624.
10. See *Sha'ar ha-Melekh*, *Hilkhot Shabbat* 25:24; Ran, *Shabbat* 111a; and *Encyclopedia Talmudit*, VI, 652, note 272.
11. See Me'iri, *Shabbat* 29b; *Tosafot*, *Shabbat* 103a; *Magen Avraham* and *Mahazit ha-Shekel*, *Orah Hayyim* 314:5; R. Isaac Elchanan Spektor, *Teshuvot Be'er Yizhak*, *Orah Hayyim*, no.15; and R. Raphael Shapiro, *Torat Refa'el*, no. 27.
12. Ironically, the presence of a television camera presents the least significant halakhic problem to a would-be trespasser. The trespasser has a negative interest in being caught by the camera because the result will likely be action that will frustrate his desire to gain entry. For such an individual, the act is assuredly *lo niha leih*.

13. It is of interest to note that inquiries were made of the *urim ve-tumim* on *Shabbat*. See Rashi, *Eruvin* 45a, s.v. *i shari* and *Menahot* 95b. Although the "writing" that appeared on the breastplate of the High Priest was in the nature of a divine response rather than a human act, that phenomenon would have been somewhat incongruous if it involved an act even rabbinically proscribed as a violation of *Shabbat* restrictions.
14. See also R. Chaim Shmerler, *Kerem Shlomoh*, Kislev 5752.
15. Rambam rules that the prohibited act is in the category of "writing" but does not rule that it is a form of "dyeing" despite the fact that painting or drawing is accomplished only by effecting a contrast in pigmentation. R. Eliezer David Grunwald, *Keren le-David*, *Orah Hayyim*, no. 102, observes that a necessary element of "dyeing" as a prohibited form of labor is the desire to effect a change in color just as "squeezing" is defined by *Shulhan Arukh* 320:7 as a prohibited act only when undertaken in order to gain access to the liquid thereby expressed. Painting or drawing, argues *Keren le-David*, is "writing" but not "dyeing" because, even though the form or shape is recognizable only by virtue of a contrast in pigmentation, the person performing such an act is concerned only with producing a recognizable image or shape but not with its color. It would then follow that, according to *Keren le-David*, an artist who chooses his colors with care and skill precisely because he wishes a particular effect that is contingent upon color will indeed have performed a prohibited act of "dyeing" as well as a prohibited act of "writing."
16. The latter responsum was also addressed to R. Ephraim Greenblatt and appears in his *Rivevot Efrayim*, III, no. 247.
17. For further discussion of Taz' position regarding physical assistance see the note appended by the son of the author to *Teshuvot Noda bi-Yehudah*, *Mahadura Kamma*, *Orah Hayyim*, no. 76 and R. Eliezer Fleckles, *Teshuvah me-Ahavah* I, no. 134.
18. Somewhat incongruously, *Be'er Mosheh*, VII, *Kuntres Elektrik*, II, no. 50, permits even a patient not suffering from a serious malady to position himself for X-rays. *Be'er Mosheh* contends that the image produced by an X-ray machine is not a form of "writing" because "the images are not recognizable and are comprehensible only to individual experts." Although it is quite true that in many instances only a trained practitioner can "read" an X-ray for the purpose of identifying an anomaly, nevertheless, the X-ray produces an image of an anatomical structure that can be recognized by anyone.
19. See *Shiltei Gibborim*, *Shabbat*, chap. 13, sec. 3
20. See *infra*, note 30.
21. In *Shevet ha-Levi*, III, no. 97, Rabbi Wosznier permits wearing a self-winding watch on *Shabbat* on the basis of this notion.
22. For a discussion of whether "weight" constitutes an act with regard to homicide see R. Iser Zalman Meltzer, *Even he-Azel*, *Hilkhhot Yesodei ha-Torah* 5:1, and R. Levi Yitzchak Halperin, *Ma'aseh u-Gerama be-Halakhah* (Jerusalem, 5737), pp. 225 ff.
23. The Gemara, *Sukkah* 28a, reports: "It was said of Yonatan ben Uziel that, when he sat and was engaged in the study of Torah, a bird flying in the air [over him] was immediately burned." On this analysis, Yonatan ben Uziel would not have incurred tort liability for destruction of a bird in that man-

- ner. Cf., the comment of R. Meir Shapiro cited in Aaron Suraski, *Rabbi Meir Shapiro be-Mishnah, be-Omer u-be-Ma'as* (Bnei Brak, 5724), I, 425f. and *idem*, *Nizozei Or ha-Me'ir* (Bnei Brak, 5734), p. 215f.
24. Cf., *Teshuvot Shevet ha-Levi*, III, 97.
25. Such suckling is indeed only rabbinically forbidden but solely because it is not a "natural" way for man to express milk rather than because the act is not at all a form of labor.
26. See R. Shlomoh Fisher, *Bet Yishai*, I, no. 17 and R. Isaac Malzan, *Shevitat ha-Shabbat, Melekhet Dash*, sec. 99.
27. This understanding of Ralbag is reflected in a note by R. Ya'akov Leib Levy on Exodus 22:9 in the Mossad Harav Kook edition of Ralbag's commentary on the Torah, *Perushei ha Torah le-Rabbenu Levi ben Gershom (Ralbag)* (Jerusalem, 5755) edited by Rabbi Levy.
28. See also *Arnei Nezer, Orah Hayyim*, no. 251.
29. See the glosses of R. Akiva Eger to *Yoreh De'ah* 87:6 and 92:2; *Shulhan Arukh ha-Rav, Kuntres Aharon* 277:1; and *Teshuvot Helkat Yo'av*, I, no. 8. See also *Encyclopedia Talmudit*, VI, 652-655.
30. See also R. Aryeh Zevi Frommer, *Teshuvot Erez Zevi*, no. 112, s.v. *mi-kol makom*; R. Shlomoh Zalman Auerbach, *Kovez Ma'amarim be-'Inyannei Hashmal* (Jerusalem, 5738), p. 25; R. Levi Yitzchak Halperin, *Teshuvot Ma'aseh Hosehev*, I, no. 12, sec. 5; and R. Joshua Neuwirth, *Shemirat Shabbat ke-Hilkhatah* 12:18, note 51.
31. This is also the position of R. Chanoch Henach Eiges, *Maharheshet*, I, no. 42.
32. This is also the position of R. Abraham Borenstein, *Eglei Tal, Ofeh*, no. 16, sec. 33.
33. Cf., however, *Teshuvot Oneg Yom Tov, Orah Hayyim*, no. 20, who maintains that even such an act constitutes a transgression according to R. Akiva Eger.
34. See also the letter written by R. Shlomoh Zalman Auerbach published in *Me'or ha-Shabbat*, I, 624 as well as *Me'or ha-Shabbat*, chap. 18, notes 16, 55, 65 and 100 and R. Joshua Neuwirth, *Shemirat Shabbat ke-Hilkhatah*, 10:16, note 44.
35. Rabbi Auerbach expresses reservations with regard to this point. He suggests that, since opening the door is the usual way of turning on a refrigerator light and release of the button is accomplished directly by opening the door, opening the refrigerator door and releasing the button controlling the light may constitute two discrete acts performed simultaneously. If so, causing the light to go on is an independent *mitasek* and not a *pesik reisha* of opening the door.
36. Cf., R. Akiva Eger, *Gilyon ha-Shas, Shabbat* 147a and *Mishnah Berurah, Bi'ur Halakhah* 302:1 and *Sha'ar ha-Ziyyun* 302:41.

BOOK REVIEW

THE RELIGIOUS THOUGHT OF HASIDISM: TEXT AND COMMENTARY, translated and edited by *Norman Lamm*, with contributions by *Allen Brill* and *Shalom Carmy*. (KTAV/Yeshiva University Press, 1999. 711 pages.)

Reviewed by
Nehemia Polen

Recently the journal *Prooftexts: A Journal of Jewish Literary History* devoted three entire issues to the theme, "The Jewish Anthological Imagination."¹ It is surprising that not a single article focused on the hasidic movement, especially since, almost from the very beginning, hasidic literature has often taken the form of anthology. Responding to the demand from an eager hasidic reading public, early editors and publishers collected teachings, tales, aphorisms and moral maxims from the *Besht*, the *Maggid* of Mezeritch, and other masters.² Indeed, the titles of many hasidic works share a common first word—*Likkutei* or *Likkutim*—announcing that the work is a collection or anthology of some sort.

The Religious Thought of Hasidism: Text and Commentary thus stands in an old and honorable hasidic tradition. But at the same time, the publication of this work is a unique and significant event. Norman Lamm, along with his collaborators Yaakov Elman, Alan Brill and Shalom Carmy can justly claim to have put together one of the most comprehensive anthologies of hasidic thought in any language. Its scope and coverage are simply breathtaking. There are eighteen chapters, each devoted to a major category. But this only begins to tell the story, for the chapters are further divided into smaller units of analysis. The result is a feast for the mind and spirit. Whether one is interested in hasidic views on the soul, faith, Torah study, prayer, repentance, joy, humility, redemption or many other areas, one now has a reliable guide. Each chapter is provided with an introduction, and the selections are amply annotated. Most important for our contemporary context, the selections are all translated into clear and comprehensible English, no small feat for texts which are often technical and presuppose much prior knowledge.

Wisdom and insight are evident everywhere. This volume is obviously the result of a lifetime of study, teaching, and reflection. Certain chap-