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Teaching In the Midst of War

There is a well-known story, absolutely the truth, that during the liquidation of the Jewish Warsaw ghetto during World War II by the German Army, the Jewish residents of the ghetto conducted underground schools so that their children would not miss a day of learning. The ghetto fought back and eventually the German Army reclaimed the Jewish section, having murdered most of its occupants who were not carted off to German death camps.

The Jewish spirit of learning and the fight for survival continue unabated to this day.

On Sunday, June 15, 2025, I was greatly honored by Dr. Ramon Feldbrin, at Harry Radzyner Law School at Reichman University in Herzliya, Israel by teaching one of his classes on the arcane and complex subject of “jurisdiction.” Fortunately, I was able to deliver the lecture by Zoom.

I sat comfortably in the United States while the students, 15 minutes into the lecture, and the professor, had to head to an underground bunker as a result of Iranian missile attacks directed against civilian targets. The Supreme Leader of the Jihadist Muslim nation has made no secret of its desire to wipe out the West and Israel with the use of nuclear weapons in its pursuit of those who reject Mohammad as the true prophet.

Professor Feldbrin teaches a course in English on American jurisprudence. Israel is a tiny country of only 10 million people situated in one of the worst neighborhoods in the world. Israel is surrounded by 500 million hostile people with thirst for the blood of their enemies. Iran is 60 times larger than Israel and has 90.61 million people as of 2023.

Nevertheless, institutions such as the law school in Herzliya continue to teach their students about peace, justice, and the beauty of the American legal system, which they greatly admire. It takes the students by surprise to learn that the United States has 50 different legal

systems, that each state has its own Constitution, and that each state has its own court system. The students perk up when they hear that the United States Constitution and the 10 Bill of Rights were intended to restrict the federal government and had relatively little application to the states, except to the extent that the United States came into being in 1789 as an experiment in national uniformity.

Jurisdiction is the right of a court to hear a dispute. The first question always entails whether the court or tribunal has a right to consider the subject matter at hand, and the second test is whether the person, the company, or the entity can properly be brought before the court. We call this personal jurisdiction (power over the person) as opposed to subject matter jurisdiction (the right to hear a particular dispute).

In particular, we examined a case recently argued before the United States Supreme Court; *Miriam Fuld vs. Palestinian Liberation Organization* and *United States vs. Palestinian Liberation Organization*. We even listened to a replay of some of the arguments. Miriam Fuld's American born husband Ari was stabbed and killed by a 17-year-old Arab at a mall.

The case involves the Anti-Terrorism Act (ATA) which provided for a private right of action in connection with United States nationals and their families harmed by terror attacks committed abroad. This law was followed in 2019 by the Promoting Security and Justice for Victims of Terrorism Act (PSJVTA).

The PSJVTA was an amendment to ATA. Under the amended law, the Palestinian Liberation Organization (PLO) and the Palestinian Authority (PA), "shall be deemed to have consented to personal jurisdiction" if they pay money to terror attackers or their families or more than 15 days after the statute's enactment they conduct activity while physically present in the United States.

The United States Court of Appeals for the Second Circuit found the statutes unconstitutional under the Fifth Amendment to the United States Constitution. The debate before the United States Supreme Court involved a very complex question as to the difference between the Fifth Amendment to the Constitution (contained within the 10 Bill of Rights) as

opposed to the Fourteenth Amendment to the United States Constitution, the latter having been passed after the United States Civil War.

The issue as to whether a United States Court could hear an action within our borders when American citizens were harmed abroad is relatively new. It was always assumed that the power of the United States extended to foreign nationals who harmed United States citizens wherever the misconduct arose. However, after the Civil War amendments were passed, a more restrictive view of due process evolved. Under this more limited way of looking at United States jurisdiction, a case could not be brought in United States Courts (including the states) unless there were “minimum contacts.” These so-called minimum contacts have led to a plethora of caselaw which can be a struggle for even an experienced lawyer fully to understand.

The question in *Fuld* and *United States vs. PLO, PA* is whether a terrorist organization can be said to consent to a case being heard in the United States where American citizens abroad are injured or killed by the activities of the terrorist organization. The so-called deeming of jurisdiction is nothing more than a statement that terrorist organizations automatically consent to having claims heard in the United States when they kill Americans abroad and pay their “citizens” for the murders they have committed.

The students listened carefully to the lecture, asked thoughtful questions, and clearly prized the opportunity to learn under the most difficult and challenging circumstances. In the states, I have heard students complain about a classroom being too hot or too cold or a chair being too hard or soft. Do we and do our students value education and the opportunity to learn the way these young Israeli students do who were attending the Zoom class while sitting in an underground shelter?

It was a great opportunity for me to talk about a subject that many people do not understand and that few lawyers ever fully comprehend. To the average lawyer, the question of national as opposed to extraterritorial jurisdiction is never thought about, is likely not covered on the Bar exam, and will never be anything that a lawyer has to think about.

However, for the United States, as a nation, we are passionately occupied over the safety of citizens and whether terrorist organizations can escape justice when they pay their followers

to murder and maim Americans abroad. Hopefully, the United States Supreme Court will come down on the side of what is right and just.

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