

Creating the Human Rights Bar in Israel: 25 Years of the U.S.-Israel Civil Liberties Law Fellowship

by Maria Lokshin* with contributions from Gidon Bromberg, Hassan Jabareen, Banna Shugri Badarne, and Karine Elharrar**

On a trip to Israel in 1983, Professor Herman Schwartz noticed that despite the difficult challenges to human rights and civil liberties in Israel, there were few attorneys and fewer still organizations focused on creating a legal framework and a culture of rights in the society. That short trip, his keen observation, and a determination to create change, would unexpectedly lead to a 25-year quest to transform the face of Israeli human rights and civil liberties.

Today, the U.S.-Israel Civil Liberties Law Fellows Program has helped to create Israel's human rights bar and has reinvented its civil liberties and human rights litigation and advocacy practice. Created by Professor Schwartz in 1984 in partnership with the New Israel Fund, the Program sought to address the absence of professional Israeli human rights lawyers and to grow a culture of respect for civil liberties in Israel. The Program's approach was, and remains, mostly practical, focusing on internships with an important infusion of academic study. The format has remained intact for 25 years: each year the Program brings two fellows from Israel — one Palestinian and one Jewish — to the Washington College of Law (WCL) to study for an LL.M. in the International Legal Studies Program. During the second semester at WCL and over the summer, the fellows intern with two public interest organizations in Washington, D.C. Upon returning home to Israel in the second year of the fellowship, the fellows work, fully funded, at an Israeli human rights organization.

At the time the Program was launched, the United States was at the forefront of promoting and protecting civil liberties, so the idea was for fellows to learn from the U.S. experience. Although civil liberties jurisprudence has been on the decline in the United States since the retirement of Supreme Court Justice Lewis F. Powell in the 1980s, Schwartz still views the United States as the best place to learn about civil rights litigation because it has more public interest organizations and law firms than any other country. "They've got to learn the nuts and bolts of bringing a lawsuit," Schwartz said of the fellows. "The atmosphere of the school is crucial. There is nothing like it in Israel," he added, referring to the variety of courses and diversity of the students at WCL.

After 25 years, the Program has dozens of success stories that indicate it has transformed the face of human rights and

civil rights work in Israel. Originally, the Program was intended to address issues of free speech and discrimination then prevalent in Israel, but its focus has expanded exponentially to address such issues as gender, disability rights, public defense, elder law, and children's rights. In addition, the model originally envisioned for the law fellows — that of the private attorney taking on *pro bono* civil and human rights cases — shifted as many of the fellows went on to found new public interest organizations and expand existing ones.

More than fifty fellows have graduated from the Program to date, and most have remained in the public interest sector in Israel. Some are now judges, others have founded law practices, and yet others continue to empower civil and human rights organizations in Israel and the Palestinian territories. For example, Hassan Jabareen (1994) founded Adalah: The Legal Center for Arab Minority Rights in Israel, the premiere Israeli organization striving through legal defense and advocacy to promote the rights of Palestinian Israeli citizens who make up twenty percent of the Israeli population. Today, Adalah is the Israeli equivalent of the NAACP in the United States. The Association for Civil Rights in Israel (ACRI), though the oldest human rights organization in Israel, consisted of just one half-time employee before the Program was launched. ACRI now has three offices in Tel Aviv, Jerusalem, and Haifa and a variety of departments that deal with different aspects of civil and human rights. Many fellows have made their way through ACRI's doors: Joshua Schoffman, the first law fellow in 1984, was their first legal counsel; and Dan Yakir, ACRI's current, long-time chief legal counsel, was a law fellow in 1988. Moshe Hacoen (1987) established the Jerusalem District Public Defender's Office in 1998 and was instrumental in the creation of public defender legislation in Israel.

The Program has been feted in its 25th year both in Israel and the United States. In June 2009, Professor Schwartz, WCL Dean Claudio Grossman, and Hadar Harris, Executive Director of the Center for Human Rights and Humanitarian Law, traveled to Israel to participate in celebrations, including a day-long symposium at the Rabin Center in Tel Aviv conducted by the fellows on the state of human rights in Israel. The celebration included a keynote address by retired Israeli Chief Justice Aharon Barak, which was widely covered in the Israeli media, and remarks by the U.S. Ambassador to Israel, James Cunningham. In the United States on March 22, 2010, WCL hosted a roundtable discussion on the future of human rights in Israel featuring four graduates of the program: Joshua Schoffman, mentioned above; Sawsan Zaher, staff attorney at Adalah; Durgham Saif, attorney and former faculty at Haifa University's Arab Minority Clinic; and Moshe Cohen-Eliyah, senior lecturer at the Academic

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THOUGHTS ON TODAY'S PRESSING ISSUES AND TOMORROW'S EMERGING LEADERS:
A CONVERSATION WITH PROFESSOR HERMAN SCHWARTZ

From the beginning of his career, American University Washington College of Law (WCL) Professor Herman Schwartz has been a mainstay in the human rights and civil liberties fields. Through nearly five decades of academic work and legal practice, Professor Schwartz has left his mark on some of the most pressing human rights issues of our day, including promoting social change in Israel, eradicating the modern-day scourge of poverty within both developed and developing nations, and reforming the U.S. prison system.

The creation of the Israel-U.S. Civil Liberties Law Program at WCL has resulted in an enormous expansion of human and civil rights lawyers in Israel during the past twenty-five years of the program's existence. While Professor Schwartz maintains that he "never expected the Program to have the impact that it has," the Civil Liberties Program has, in fact, trained over fifty emerging leaders and has "built a generation of human and civil rights lawyers in Israel."

While welcoming of the successes and accomplishments that the Civil Liberties Program has achieved, Professor Schwartz is never one to be satisfied when more work can be done. "I've been very concerned about poverty and social justice issues for much of my career, but they have come to the fore in [the United States] and abroad as they haven't in the past. They have been a very serious problem for hundreds of years, but the extent of the trouble and the percentage of the population that is affected now goes far above from what we've seen. I would like to see more of a designated focus on poverty within both the [Civil Liberties Program] and public interest law," he states. Through his work as former Chairperson of the National Law Center on Homelessness and Poverty, Professor Schwartz has been intimately engaged with poverty-related issues in the United States. To address these issues, he has pushed for expanded summer programs for school children and connected current law students with local advocacy and non-profit organizations dealing with poverty. Professor Schwartz maintains that one of the largest obstacles is exposure. "Nobody talks about poor people; they talk about the middle class. No one is really capturing the public's attention on poverty today, which is truly unfortunate."

With increases in poverty come increases in crime. Professor Schwartz has worked diligently throughout his career to help reform the U.S. prison system. Shortly after his involvement as an intermediary in the 1971 Attica State Prison uprising, Professor Schwartz founded the American Civil Liberties Union National Prison Project, a program dedicated to ensuring all U.S. prisons, juvenile facilities, and immigration detention centers comply with U.S. law and international human rights principles. The program also attempts to address the over-incarceration crisis in the United States.

Professor Schwartz is particularly disdainful of the United States' current bond system. "So much more harm than good is done through this system. Those who cannot pay simply wait in

cells for months while they lose their homes, jobs, and eventually plead to crimes that they may not have even committed simply because they cannot afford the \$500 bail that it takes to be released. The judge can't pay any attention to the economic situation of the person." Professor Schwartz recounted a case he worked on in 1962, involving a young woman staying with friends after losing her job. The woman was at the house when the police raided her friends' rooms looking for drugs. The police subsequently arrested the young woman. "While her friends, as large-scale [drug] dealers, were able to pay their bail and were immediately released," Professor Schwartz recalls, "[s]he was kept in jail for a month because she was unable to pay the small fee. After a month, she pleaded guilty to the drug charge even though the police had not even found any drugs or evidence to implicate her in her friends' crimes. Unfortunately, this is not a new problem."

Professor Schwartz admits that solutions to such large-scale problems are never easy and that civil liberties and human rights advocates must always be aware of the bigger picture while they work within their specialized fields. "We're dealing with institutionalized situations. Rotten schools lead to less access to jobs, which leads to more poverty, which leads to more crime." The worldwide economic crisis is also a serious concern for Professor Schwartz as he thinks about ways to combat such institutionalized problems. "I don't know where the good jobs are going to come from. We don't have a World War II with pent-up demand. We don't have new technologies that are really bursting and creating the same type of labor-intensive jobs that got us through before."

After a lifetime dealing with civil, social, and human rights issues that are never truly eradicated, one might think that some pessimism might creep into Professor Schwartz's actions. Instead, he continues to stay true to his motto: "You've got to keep trying. You've got to keep trying." Professor Schwartz continues to have a profound influence at WCL and, in turn, students continue to pass along his message of social change to their colleagues in a cycle that is not likely to end anytime soon.

Justin Shore, a J.D. candidate at the American University Washington College of Law and an Articles Editor for the Human Rights Brief, interviewed and profiled Professor Herman Schwartz for this issue.



Professor Herman Schwartz.

Center for Law and Business in Ramat Gan. The panel was followed by a dinner tribute to Professor Schwartz.

The model of the Law Fellows Program has moved beyond Israel and the United States. The Open Society Institute used it to train human rights lawyers in Eastern Europe and now has expanded it to Africa and other parts of the world — a testament to the Program's success.

U.S.-ISRAEL CIVIL LIBERTIES LAW FELLOWS: IN THEIR OWN WORDS

In celebration of the Program's 25th anniversary, former U.S.-Israel Civil Liberties Law Fellows were asked to write a few words about their experiences in and the influence of the Program, their memories of Professor Schwartz, and their reflections on future of human rights and civil liberties in Israel and Palestine. Four of these are excerpted below.



GIDON BROMBERG

Gidon Bromberg is the Israeli Director of EcoPeace/Friends of the Earth Middle East. EcoPeace, a unique regional organization that brings together Jordanian, Palestinian, and Israeli environmentalists to promote sustainable development and advance peace efforts in the Middle East. He founded the organization in 1994, while still completing the law fellowship and has served as the Israeli director ever since.

The law fellowship was an absolutely life changing event. During my studies, I chose to focus on written research on the environmental implications of the Middle East peace process. I came to the key conclusion that environmental issues were missing from the political agenda of the peace negotiations, and that there was a need for environmentalists from the region to get to know each other and perhaps work together.

Prior to returning to Israel for the second year of my fellowship with *Adam Teva V'din*, I negotiated with the former director of the organization to spend ten percent of my time trying to develop cross-border links and cooperation with environmentalists from Israel's neighboring countries. While still in the United States, I met with potential funders, trying to interest them in supporting the first gathering of environmental activists from the region. Within three months of my return to Israel, the money was raised, contacts developed, and a first meeting was held that led to the establishment of the first ever regional environmental organization, then involving Egyptians, Jordanians, Palestinians, and Israelis.

After fifteen years of working on cross border environmental issues, the key issues of *EcoPeace* are very much on the political agenda. Still, there remains a great deal more to do. Water issues as a human right are still very much hostage to the lack of progress in the peace process, shared waters are heavily polluted and regional institutional structures dealing with water and the environment are lacking. Yet we remain hopeful that through the dual nature of our work — top-down advocacy and bottom-up community mobilization — we will continue to see real change on the ground.



HASSAN JABAREEN

Hasan Jabareen, together with his wife Rina who he met while in Washington, D.C., established Adalah — The Legal Center for Arab Minority Rights. Since Adalah's establishment, Rina has served as the International Advocacy Director and Hassan as the organization's General Director and Legal Director. In addition, Hassan initiated and taught the first course on the legal status of Arabs in Israel at the law faculties of Haifa, Hebrew, and Tel Aviv Universities. Today, this course is taught in almost all of the law schools in Israel.

When I started the fellowship in 1994, there was almost no critique of the law in the Israeli legal literature or by the few Israeli human rights organizations, and the law was perceived as neutral and objective. There were almost no critical articles in the Hebrew law journals regarding the rights of the Arabs in Israel. At American University, I was exposed to a wide range of legal literature and theory dealing with the history of slavery, racial discrimination, segregation, and critical legal studies. I interned at the *NAACP Legal Defense Fund* in Washington, D.C. and found that marginalized groups can formulate and implement their legal agenda independently.

During my year at American University, I came to Herman's office one day and said that I was interested in pursuing a S.J.D. after finishing my LL.M. His response was, "Who needs another academic? We have a lot of academics. You must make a difference as a human rights lawyer who will serve his people. Go back and establish a legal center for the Arabs in Israel and in this way you will make a difference." I took Herman's advice. I will always see Herman as one of the conceptual founders of *Adalah*. Herman has continued to keep in contact with us over the years and we meet often in Washington D.C. or Haifa.

Recently, Herman was seriously involved in our citizenship law case, dealing with the ban of family unification between Palestinians, before the Israeli Supreme Court. He constituted a group of international lawyers who prepared expert opinions that we filed before the court in 2009. Herman has always struggled for civil rights and equality for all in the United States and his dream is that those values will be assured here in Israel. I am sure that Herman will continue to deeply influence and be involved with human rights lawyers in Israel. We need him.

I believe that sometime in the distant future human rights in Israel/Palestine will be respected. Unfortunately, this will come far in the future after a long history of occupation, segregation, national discrimination, and some forms of apartheid and colonialism in this land.

BANNA SHUGRI BADARNE

Banna Shugri Badarne, formerly a lawyer at ACRI, was appointed Director of the Legal Division of the Public Committee against Torture. She also volunteers for the Working Group for Equal Status Rights, specifically on Arab women's personal status rights, and for Sawa, an association for the protection of rape and sexual assault victims in the occupied territories and

in East Jerusalem. In addition, she is a member of the Steering Committee of the Civil Liberties Law Program. She is married with two children and lives in Jerusalem.

I had always intended to study law and work in the area of human rights. My internships were with the Human Rights Watch (HRW) and the Arab-American Anti-Discrimination Committee (ADC). The internship at HRW in the Department of Women in the Middle East gave me a wider perspective on the scope of discrimination against women, particularly in regards to their civil and personal status. The experience at ADC gave me the opportunity to compare laws and the realities of racist practices on the ground, especially against Arabs, both in Israel and the United States. The Program also helped me to improve my English, which is essential for promoting human rights in Israel at an international level. Without this scholarship, I would not have been able to study for a master's degree abroad, which was a richer and more practical experience than any option available in Israel.

The fellowship took place during a particularly hard time for me personally and "nationally," since I had to part not only from my family but from my partner, whom I married just before I left. Soon after I left Israel, the "October events" took place and my husband's cousin was killed. It was very difficult to be away. However, being abroad allowed me to discuss the painful issues and confront them, even from afar.

My thoughts about the future are gloomy and pessimistic, especially considering the recent political developments, which leave no doubt about the decline in awareness about the need to protect human rights in Israel and the rights of the Palestinians in particular, whether they are Israeli citizens or residents of the occupied territories. The decline is expressed in legislation, in its implementation, and particularly in the unbearable ease with which these violations take place. My concern is that these infringements have already filtered through the areas that are considered classical human rights, such as freedom of expression and freedom of association, and are even affecting the activists and defenders of human rights.



KARINE ELHARRAR

Karine Elharrar lives in Tel Aviv and runs the legal clinic of the Law Faculty of Bar-Ilan University and serves as the director of the Disability Rights Clinic. She is also a member of the Legal Aid Committee of the Bar Association and coordinates the association's Forum for Social Organizations. In addition, she has been a volunteer for the Movement to Fight Poverty's Heart of Justice Project for the past ten years.

The Program represents a professional jump start and an unforgettable experience on just about every level. On the professional level, I was privileged to study at an excellent university and to be exposed to the work of influential and important organizations. Similarly, I feel that I also gained a great deal from the Program on a personal level. This was the first time that I experienced complete independence, which enabled me to discover new strengths.

One of the most amazing experiences I was privileged to have was my internship at the American Association of People with Disabilities. I gave a lecture at the House of Representatives for congressional aides on health rights in Israel. There are no words to describe my feelings on that day. This is one example, and there are many more, that emphasize the exposure to influential organizations and people that I gained from the Program.

As soon as I returned to Israel, I began my second-year fellowship at the Disability Rights Clinic at Bar-Ilan University. During this year I found myself applying standards that I absorbed during my internship at rights organizations in Washington, D.C. At the end of my scholarship, I was employed full-time at the *Disability Rights Clinic* at Bar-Ilan and, today, three years after my return to Israel, I am the head of the legal clinics at Bar-Ilan University.

Today, "human rights" is no longer taboo in Israel. It is no longer possible to boast that human and civil rights are simply given without a struggle, but I definitely think that there has been progress in this issue in terms of public awareness and its implementation. **HRB**